

R.O.W. File No. _____
Project No. _____
Account No. _____
Location _____

POSSESSION AND USE AGREEMENT

This Agreement is made this 18th day of January, 2008, between the City of Aurora, Colorado (hereinafter referred to as the "City"), and Spinnaker Run Condominium Association (hereinafter referred to as the "Association") for the purpose of granting the irrevocable right to possession and use to the City of a bike path easement for the purpose of constructing a bike path. The property involved is described more fully on Exhibit A attached hereto and incorporated herein by this reference.

1. In consideration for this irrevocable grant of possession, the City will tender to the Association the sum of \$3,000.00. The City shall be entitled to take possession upon full execution of this Agreement and tender of payment. It is agreed this sum shall be deducted from any final settlement amount, award or verdict. It is also agreed that in the event the ultimate settlement amount, award or verdict is less than this sum, the Association shall not have to refund the difference to the City.

2. The Association represents that the title to the property is free and clear of all liens and encumbrances or that proper releases will be executed for the property herein described prior to funds being disbursed under this Agreement. The Association further agrees to hold the City harmless from all liability for unreleased or undisclosed liens or encumbrances affecting the property herein described.

3. This Agreement is made with the understanding the City will continue to negotiate in good faith with the Association to acquire the interest in the property described by direct purchase. It is further understood in the event a settlement is not reached in 90 days of the signing of this Agreement, such failure will be a confession that the negotiations to acquire the property have proved futile. At this point, the City may begin proceedings in eminent domain to acquire title to the property herein described. The City shall not unreasonably delay the commencement of proceedings under eminent domain law once the time provided for in this paragraph has expired. If the City begins proceedings in eminent domain, it is understood and agreed that this Agreement shall continue in effect until either a settlement is reached or a rule and order is provided for in C.R.S. 38-1-105(3) is entered by the court.

4. If the City begins proceedings in eminent domain, it agrees to deposit the remaining amount of the value of the just compensation owed to the Association into the registry of the court if it has not previously tendered 100 percent of this amount. Any sums deposited in the registry may be withdrawn by the Association if all parties interested in the property sought to be acquired consent

and agree to such withdrawal. Any such withdrawal of said deposit shall be deducted by the clerk from any award or verdict entered thereafter or by the City from any settlement reached.

5. It is agreed by the parties that in the event proceedings in eminent domain are begun, the valuation date for determining the amount of just compensation shall be the day on which payment was tendered to the Association pursuant to paragraph one above.

6. It is agreed by entering into this Agreement the undersigned do not waive any right to raise any issue pertaining to just compensation at the time of trial.

7. The purpose of this Agreement is to allow the Colorado Department of Transportation and its contractors to proceed with its construction project without delay and to allow the Association to avoid litigation at this time.

8. This Agreement shall be deemed a contract and it shall bind the parties only when fully executed by all parties or their designated representatives and all City signatures have been obtained. This contract shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties.

9. Notwithstanding the rights provided here to the City, the Association reserves the right, for itself and for its members, agents, employees, guests and assigns to cross the bike path described in Exhibit A at substantially right angles, for ingress to and egress from the vehicle storage compound. City agrees to hold the Association and its members, agents, employees, guests and assigns harmless and release them from any claims for any damage occurring to the bike path arising out of the reservation contained herein.

10. Other Conditions:

a. City shall be responsible for the maintenance, repair and replacement of the bike path, including snow removal.

b. City shall, insofar as it legally may, hold the Association harmless and indemnify the Association for any injury to person or property relating to the construction of the bike path or the storage of materials or machinery on the Association's property until the later of conveyance of the property described in Exhibit A to the City or until the City completes all work of any type on the Association's property and removes all materials and machinery therefrom. In any case, the City shall, insofar as it legally may, hold the Association harmless and indemnify the Association for as long as the City's equipment, materials, or employees are on the Association's property. City shall cause its contractor to add the Association to its general liability insurance policy during the pendency of the construction of the bike path and for so long as the City or its contractor maintains employees, materials, or any other equipment on the Association's property.

c. Association agrees to indemnify and hold harmless the City from all claims and liability related to the presence, disposal, release, or clean-up of any contaminants located on or attributable to activities occurring on the property and caused by the Association prior to the execution of this Agreement.

d. City agrees to reimburse the Association for the cost of relocating that portion of the vehicle storage compound which is affected by the installation of the bike path to a mutually agreeable location which will not interfere with the bike path. City agrees to reimburse the Association for the cost of relocation within 30 days of submitting its invoice to the City. The City agrees that the relocated portion of fence will be new construction with new materials of comparable quality to the existing structure. Any portion of the fence that the Association wishes to replace, other than that portion which was necessary for relocation, will be at the Association's expense.

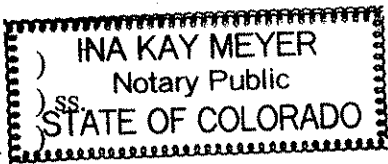
Robert Makari, Pres.
Spinnaker Run Condominium Assoc.

84-0816941
SS# or FEIN#

1-18-01
Date

STATE OF COLORADO

COUNTY OF Arapahoe



The foregoing instrument was acknowledged before me this 18 day of January, 2001 by Robert Makari as President of Spinnaker Run Condominium Association.

Witness my hand and official seal.
My commission expires: 8-17-2002

City of Aurora, Colorado

Director of Public Works Date

Reviewed by: _____
Utilities

Approved as to Form

Reviewed by: _____
Real Property

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2000 by _____ as _____ of the City of
Aurora, Colorado.

Witness my hand and official seal.
My commission expires: _____

EXHIBIT A

Parcel AURORA

Beginning at the W $\frac{1}{4}$ corner of said Section 36; Thence N. $89^{\circ} 41' 47''$ E., a distance of 521.079 meters (1709.57 feet) to the TRUE POINT OF BEGINNING, said point lying on the southerly R.O.W. line of E. Cornell Ave.;

1. Thence along the arc of a curve to the left having a radius of 92.964 meters (305.00 feet), a distance of 3.600 meters (11.81 feet), along said southerly R.O.W. line, (the chord of said arc bears S. $82^{\circ} 41' 17''$ E., a distance of 3.600 meters (11.81 feet));
2. Thence S. $06^{\circ} 44' 52''$ W., a distance of 9.165 meters (30.07 feet);
3. Thence along the arc of a curve to the right having a radius of 32.100 meters (105.32 feet), a distance of 19.881 meters (65.23 feet), (the chord of said arc bears S. $24^{\circ} 03' 02''$ W., a distance of 19.564 meters (64.19 feet)) to the northwesterly R.O.W. line of S. H. 225 (Nov. 1997);
4. Thence S. $71^{\circ} 09' 56''$ W., a distance of 10.292 meters (33.77 feet), along said northwesterly R.O.W. line;
5. Thence along the arc of a curve to the left having a radius of 28.500 meters (93.50 feet), a distance of 26.789 meters (87.89 feet), (the chord of said arc bears N. $33^{\circ} 12' 31''$ E., a distance of 25.813 meters (84.69 feet));
6. Thence N. $06^{\circ} 44' 53''$ E., a distance of 9.215 meters (30.23 feet), more or less, to the TRUE POINT OF BEGINNING.

The above described easement contains .011 hectares/114.6 square meters (.028 acres/1233 square feet), more or less.

E. CORNELL AVE.

EXHIBIT A

T.P.O.B.

DIRT

PE-116

B.O.A.

S.67°

S.67°09'26"W.

P.O.B. 116

N.7' 12.7'

1127
1°09'56"E.
(7.96')

