McGEADY SISNEROS

McGeady Sisneros P.C.
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1214
303.592.4380 tel 303.592.4385 fax
www.mcgeadysisneros.com

MEMORANDUM

To: Board of Directors, Beebe Draw Farms Authority

From: McGeady Sisneros, P.C.

Date: June 26, 2014

Re: Phased Exclusion and Inclusion of Property

REI Limited Liability Company (the "**Developer**") is the owner of 82 lots (the "**Property**") currently located within the boundaries of Beebe Draw Farms Metropolitan District No. 2 ("**District No. 2**"). The Amended and Restated Consolidated Service Plan for Beebe Draw Farms Metropolitan District No. 1 ("**District No. 1**") and District No. 2 (collectively with District No. 1, the "**Districts**"), the Authority Establishment Agreement (the "**AEA**"), and that certain Inclusion Exclusion Agreement by and between the Districts and the Authority, dated May 10, 2011(the "**Inclusion Exclusion Agreement**"), contemplate that the Property within District No. 2 will develop in phases, and the Developer will petition for the exclusion of portions of the Property from District No. 2, and petition for inclusion of such property into District No. 1, ***prior to the issuance of the first certificate of occupancy for a single family residence within such phase***. The following memorandum outlines the policies set forth in the Inclusion Exclusion Agreement for such inclusions and exclusions to proceed.

1. Exclusion Process from District No. 2

(a) On or before the 30th day after the approval of a building permit for construction of the first home within a phase of the Property, the Developer shall file a Petition for Exclusion (the "**Exclusion Petition**") with the District No. 2 Board of Directors for exclusion of such phase.

(b) Within thirty (30) days of receipt of the Exclusion Petition, the District No. 2 Board of Directors shall conduct a public hearing on such exclusion (the "**Exclusion Hearing**"), the procedure for which is as follows:

(i) District No. 2 must publish notice[1] of the Exclusion Hearing, a one-time publication in The Greeley Tribune, providing the (i) date; time and location of such meeting; (ii) the names and addresses of the petitioners; and (iii) notice that all persons interested shall appear at such time and place and show cause in writing why the Exclusion Petition should not be granted.

(ii) The Board will hear the Exclusion Petition at the scheduled Exclusion Hearing and grant or deny the Exclusion Petition, in whole or in part, with or without conditions.

(iii) Assuming the Board grants the Exclusion Petition, the Board shall adopt a Resolution approving the Exclusion Petition and authorize legal counsel to file a certified copy of the findings with the Weld County District Court asking the Court to issue an Order for Exclusion (the "**Exclusion Order**") to exclude the property from the boundaries of District No. 2.

(iv) The exclusion will become effective upon the date the Exclusion Order is recorded in the real property records of Weld County (See Section 3 below).

(v) Developer acknowledged in the Inclusion Exclusion Agreement, and pursuant to State Statute, any property excluded from District No. 2 shall remain subject to any property taxes or mill levies assessed for outstanding obligations of District No. 2

(c) *Note: at any time prior to the Exclusion Hearing, the Developer may amend the Exclusion Petition to remove portions of the Property from the Exclusion Petition.*

2. <u>Inclusion Process into District No. 2</u>

(a) Simultaneous with the Developer's filing of an Exclusion Petition with District No. 2, the Developer shall also submit a Petition for Inclusion (the "**Inclusion Petition**") for the same property as indicated on the Exclusion Petition to the Board of Directors for District No.1.

(b) Within thirty (30) days of receipt of the Inclusion Petition, the District No. 1 Board of Directors shall conduct a public hearing on such inclusion (the "**Inclusion Hearing**"), the procedure for which is as follows:

(i) District No. 1 must publish notice[2] of the Inclusion Hearing, a one-time publication in The Greeley Tribune, providing the (i) date; time and location of such

---

[1] Although the statute does not require a certain time frame for which the publication must occur prior to the hearing, we recommend publication occur at least five (5) working days prior to the hearing.
[2] Although the statute does not require a certain time frame for which the publication must occur prior to the hearing, we recommend publication occur at least five (5) working days prior to the hearing.

meeting; (ii) the names and addresses of the petitioners; and (iii) notice that all persons interested shall appear at such time and place and show cause in writing why the Inclusion Petition should not be granted.

(ii) The Board will hear the Inclusion Petition at the scheduled Inclusion Hearing and grant or deny the Inclusion Petition, in whole or in part, with or without conditions.

(iii) Assuming the Board grants the Inclusion Petition, the Board shall adopt a Resolution approving the Inclusion Petition and authorize legal counsel to file a certified copy of the findings with the Weld County District Court asking the Court to issue an Order for Inclusion (the "**Inclusion Order**") to include the property into the boundaries of District No. 1.

(iv) The inclusion will become effective upon the date the Inclusion Order is recorded in the real property records of Weld County (See Section 3 below).

(c) *Note: at any time prior to the Inclusion Hearing, the Developer may amend the Inclusion Petition to remove portions of the Property from the Inclusion Petition.*

3. <u>Recordation of the Orders</u>

(a) Pursuant the Inclusion Exclusion Agreement, the Districts agree that the Orders shall be recorded in the following order:

(i) First, the Inclusion Order shall be recorded with the real property records of Weld County; and

(ii) Second, immediately following the recording of the Inclusion Order, the Exclusion Order shall be recorded with the real property records of Weld County.

4. <u>Failure to Include/Exclude Property</u>

(a) Pursuant to the Inclusion Exclusion Agreement, in the event District No. 2 determines after the Exclusion Hearing not to exclude a parcel that was the subject of such Exclusion Hearing, District No. 2 shall not be permitted to incur any additional debt, including any pledge agreements with the Authority providing for the imposition of ad valorem property taxes by District No. 2 and payment of the proceeds thereof to the Authority, or issuing bonds to third parties.

(b) Pursuant to the Inclusion Exclusion Agreement, in the event District No. 1 determines after the Inclusion Hearing not to include a parcel that was the subject of such Inclusion Hearing, District No. 1 shall be required to impose the Additional O&M Mill Levy required by the AEA (but not in excess of the District No. 1 Mill Levy Cap of 40 mills) to recoup

revenues that would otherwise have been generated from the un-included property. District No. 2, however, shall not increase its operations and maintenance mill levy is such a situation.