CITY OF CENTRAL, COLORADO
NOTICE OF A REGULAR MEETING of the CITY COUNCIL to be held on
Tuesday, March 20, 2018 @ 7:00 p.m.
141 Nevada Street, Central City, Colorado
AGENDA

The City Council meeting packets are prepared several days prior to the meetings and available for public inspection at City Hall during normal business hours the Monday prior to the meeting. This information is reviewed and studied by the City Council members, eliminating lengthy discussions to gain basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis. Agendas are posted on the City’s website, the City Hall bulletin board and at the Post Office the Friday prior to the Council meeting.

7:00pm Council Meeting

1. Call to Order.

2. Roll Call, Mayor Kathryn Heider
   Mayor Pro-Tem Shirley Voorhies
   Council members Judy Laratta
   Jeff Aiken
   Mary Bell

3. Pledge of Allegiance

4. Additions and/or Amendments to the Agenda.

5. Conflict of Interest.

6. Consent Agenda: The Consent Agenda contains items that can be decided without discussion. Any Council member may request removal of any item they do not want to consider without discussion or wish to vote no on, without jeopardizing the approval of other items on the consent agenda. Items removed will be placed under Action items in the order they appear on the agenda (this should be done prior to the motion to approve the consent agenda).

   Regular Bill lists through March 14, 2018; and
   City Council minutes; March 6, 2018.

PUBLIC FORUM/AUDIENCE PARTICIPATION — (public comment on items on the agenda not including Public Hearing items): the City Council welcomes you here and thanks you for your time and concerns. If you wish to address the City Council, this is the time set on the agenda for you to do so. When you are recognized, please step to the podium, state your name and address then address the City Council. Your comments should be limited to three (3) minutes per speaker. The City Council may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and your questions may be directed to the City Manager for follow-up. Thank you.

PUBLIC HEARING —

7. Ordinance No. 18-02: An ordinance of the City Council of the City of Central, Colorado conditionally approving a Lease Agreement with Denver Adventures, LLC. (Rears)

ACTION ITEMS: NEW BUSINESS —

8. Ordinance No. 18-03: An ordinance of the City Council of the City of Central, Colorado conditionally authorizing the sale and transfer of City owned property. (Miera)

9. Resolution No. 18-08: A resolution of the City Council of the City of Central, Colorado approving a Memorandum of Agreement with the Colorado Department of Labor and Employment, Division of Oil and Public Safety, related to the regulation of conveyances. (Rears)
REPORTS –

10. Staff updates –

COUNCIL COMMENTS – limited to 5 minutes each member.

PUBLIC FORUM/AUDIENCE PARTICIPATION – for non-action items not Action or Public Hearing items on this agenda (same rules apply as outlined in the earlier Public Forum section).

ADJOURN. Next Council meeting April 3, 2018.

Please call Reba Bechtel, City Clerk at 303-582-5251 at least 48 hours prior to the Council meeting if you believe you will need special assistance or any reasonable accommodation in order to be in attendance at or participate in any such meeting.
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Grand Totals: 58,249.69
CALL TO ORDER
A regular meeting of the City Council for the City of Central was called to order by Mayor Heider at 7:04 p.m., in City Hall on March 6, 2018.

ROLL CALL
Present: Mayor Heider
   Mayor pro tem Voorhies
   Alderman Laratta
   Alderman Aiken
   Alderman Bell

Absent: None

Staff Present:  City Manager Miera
   Attorney McAskin
   City Clerk Bechtel
   Public Works Director Hoover
   Fire Chief Allen
   Captain Ihme GCSO

Pledge of Allegiance was recited by all present.

ADDITIONS AND/OR AMENDMENTS TO THE AGENDA
The agenda was approved as presented.

CONFLICTS OF INTEREST
No Council Member disclosed a conflict regarding any item on the agenda.

CONSENT AGENDA
Mayor pro tem Voorhies moved to approve the consent agenda containing the regular bill lists through February 27 and the City Council minutes for the meeting on February 20, 2018. Alderman Aiken seconded, and without discussion, the motion carried unanimously.

PUBLICFORUM/AUDIENCEPARTICIPATION
No one requested time to address the Council.

PUBLIC HEARING
Ordinance No. 18-02: An ordinance of the City Council of the City of Central, Colorado conditionally approving a Lease Agreement with Denver Adventures, LLC.
Manager Miera explained that the lease agreement with Denver Adventures LLC to lease up to three acres of City-owned property at Chase Gulch Reservoir for Operator’s adventure-related activities including zip lines and a ropes course is still being finalized. They have signed a Letter
of Intent. Staff is requesting that the Public Hearing be continued to the meeting on March 20, 2018.

Mayor Heider opened the Public Hearing at 7:08 p.m. Jeremy Fey, 202 W 6th High, spoke favorably about Denver Adventures, LLC whom Mr. Fey introduced to the Central City area.

Mayor pro tem Voorhies moved to continue the Public Hearing in consideration of Ordinance No. 18-02: An ordinance of the City Council of the City of Central, Colorado conditionally approving a Lease Agreement with Denver Adventures, LLC approved on first reading on February 20, 2018, and further move that the continued second reading with a Public Hearing on Tuesday, March 6, 2018 at 7:00 p.m. in these Council Chambers. Alderman Laratta seconded, and without discussion, the motion carried unanimously.

**ACTION ITEMS: NEW BUSINESS - None**

**REPORTS**
Council had no questions for staff.

**COUNCIL COMMENTS**
Mayor pro tem Voorhies noted that Micki Rosenbaum from Century Casino copied her on a letter that also went to the City regarding snow removal. Manager Miera noted that the City has responded to that letter and all parties are in agreement.

**PUBLICFORUM/AUDIENCEPARTICIPATION**
No one requested time to address the Council.

**EXECUTIVE SESSION**
At 7:15 p.m., Mayor pro tem Voorhies moved to go into Executive Session pursuant to Sections 24-6-402(4)(b) and -402(4)(e) Colorado Revised Statutes, to discuss specific legal questions and to instruct negotiators regarding proposed minor changes to “Growth IGA” (Intergovernmental Agreement dated September 29, 1999); pursuant to Sections 24-6-402(4)(b) and -402(4)(e), Colorado Revised Statutes to discuss specific legal questions and to instruct negotiators regarding taxation of free play – proposed adjustments to gaming tax rates based on casino free play; and pursuant to Sections 24-6-402(4)(a) and -402(4)(e) to discuss the potential sale of real property owned by the City, to develop strategies for negotiation and instruct negotiators regarding the potential sale of City-owned property; and further moved to reconvene the March 6th regular City Council meeting at the conclusion of the executive session to provide instruction to City Staff, if required, or to adjourn the March 6th meeting. Alderman Laratta seconded, and without discussion, the motion carried unanimously.

At approximately 8:28 p.m. the executive session was concluded and Mayor Heider announced that the participants in the executive session had been: Mayor Kathryn Heider, Mayor pro tem Voorhies, Alderman Laratta, Alderman Aiken, Alderman Bell, City Manager Daniel Miera, and City Attorney Marcus McAskin.

Mayor Heider proceeded to make the following announcement: For the record, if any person
who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings law, I ask that you state your concerns for the record.

No concerns were noted.

Mayor pro tem Voorhies moved to adjourn the March 6th regular City Council meeting. Alderman Bell seconded, and without discussion, the motion to adjourn was approved unanimously at 8:30 p.m.

The next regular City Council meeting is scheduled for Tuesday, March 20, 2018 at 7:00 p.m.

____________________________________________________________________________________

Kathryn A. Heider, Mayor  Reba Bechtel, City Clerk
AGENDA ITEM #7

CITY COUNCIL COMMUNICATION FORM

FROM: Ray Rears, Community Development Director

DATE: March 20, 2018

ITEM: Ordinance No. 18-02 - An Ordinance of the City Council of the City of Central, Colorado, Conditionally Approving a Lease Agreement with Denver Adventures, LLC

☐ ORDINANCE
☐ MOTION
☐ INFORMATION

I. REQUEST OR ISSUE:

Ordinance 18-02 (the “Ordinance”) conditionally approves a lease agreement with Denver Adventures LLC (the “Lease Agreement”) to permit Denver Adventures, LLC (the “Operator”) to lease up to three (3) acres of City-owned property at Chase Gulch Reservoir (the “Leased Premises”) for Operator’s adventure-related activities including zip lines and a ropes course and to allow Lessee to lease the second floor of the City’s Visitor Center (“Visitor Center”) as the check-in and drop-off location for all Business Activities for a limited period of time.

The current draft of the Lease Agreement is attached, though City Staff and the Operator continue to work through the final details of the Lease Agreement. Currently it is anticipated that the final draft of the Lease Agreement will be distributed to City Council at or prior to the March 20th regular meeting. A formal action from Council is being requested on the Ordinance following the conclusion of the public hearing, with the assumption that the final lease terms can be agreed upon in accordance with the terms of the Ordinance, which authorizes the Mayor, with the input of the City Manager and City Attorney, to negotiate non-material changes to the Lease Agreement prior to execution by the Mayor, provided that such changes do not increase the financial obligations of the
City. If mutual agreement on material terms of the Lease Agreement have not been agreed upon by City Staff and the Operator prior to March 20th, staff will request that the Public Hearing be continued to the next regular Council Meeting on April 3, 2018.

II. RECOMMENDED ACTION / NEXT STEP:

Assuming we have the final draft ready for Council review and approval at the March 20th regular meeting; the Mayor will re-open the continued public hearing for Ordinance No. 18-02, solicit additional public comment and discuss with other members of Council the terms of the Lease Agreement. Staff currently anticipates recommending approval of the Lease Agreement in the form presented.

III. FISCAL IMPACTS:

Staff has been negotiating with the Operator terms of the Lease Agreement and Operating Plan to be incorporated in the Lease Agreement which includes a graduated payment plan (based on revenues generated by the Operator) for the use of the Leased Premises once the operation is fully established. The project is expected to increase revenue for the City directly as well as promote additional business activity over the long-term [greater than four years] in the downtown historic core as there are specific requirements within this agreement that that require pick-up and drop off will be within the downtown City core, for the Operator to continue to utilize City property.

Other than the $1 per year lease payment for use of the 2nd floor of the Visitor Center until 2021, there will be no direct revenue for the City. From year 2022, onward the City will receive a percentage of the gross revenue for the use of the leased area as detailed in the chart below. The specific amount of revenue the City would depend on the success of the operation:
<table>
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<tr>
<th>YEAR</th>
<th>RENT AMOUNT/TERMS</th>
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</thead>
<tbody>
<tr>
<td>Lease Years 1 (remainder of 2018), 2 (2019), 3 (2020) and 4 (2021)</td>
<td>$1.00/year, paid no later than April 30 of each applicable Lease Year</td>
</tr>
<tr>
<td>Lease Year 5 (2022)**</td>
<td>2% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 4, paid no later than April 30 of Lease Year 5</td>
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<td>Lease Year 6 (2023)</td>
<td>3% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 5, paid no later than April 30 of Lease Year 6</td>
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<tr>
<td>Lease Year 7 through Lease Year 15</td>
<td>4% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 6 through 15, paid no later than April 30 of immediately following Lease Year</td>
</tr>
<tr>
<td>** Lessee shall have no right to occupy the Visitor Center on and after January 1, 2022</td>
<td></td>
</tr>
<tr>
<td>First Option Term (if option exercised)</td>
<td>A renegotiated rate with a cap of 6% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 16 through 25, paid no later than April 30 of immediately following Lease Year</td>
</tr>
<tr>
<td>Second Option Term (if option exercised)</td>
<td>A renegotiated rate with a cap of 6% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 26 through 35, paid no later than April 30 of immediately following Lease Year</td>
</tr>
</tbody>
</table>

IV. **BACKGROUND INFORMATION:**

City staff has been working with the Operator over last few months to develop a suitable plan for the use and operation of the site. As set forth above, the draft of the Lease Agreement as it is currently, the following terms have been agreed upon.

No Planning Commission or formal land review process is required per the Land Development Code Section 16.1.101.b.1. This section gives City Council exclusive review of this request, since the property is owned by Central City.
Term:

15-year initial term with the opportunity for two ten-year extensions for a maximum of 35-year use of the Reservoir property.

Use of the 2nd Floor of the Visitor Center would conclude in 2021. At or prior to that date the Operator would be required to establish another location with the City’s historic core.

Insurance:

Workers Compensation, Comprehensive General Liability and Automobile Liability Insure will be required at acceptable levels ($500k-$2 Million).

Indemnification of the City:

Included.

Parking:

Parking for this use by the public will be limited to the downtown core, as shuttles will be the only access to Dam Road for this activity.

Public Use:

The public will not be restricted from use of the Reservoir property, with the exception of the specific leased areas related to constructed improvements. Current and future trails constructed around the Reservoir property will be open to the public unless constructed for the sole purpose of accessing the adventure course and which are not necessary for overall trail network circulation.

Plans:

Once the Lease Agreement is finalized the Operator will be required to survey the leased premises as well as provide a detailed “Operating Plan” of the use this calendar year. The Operating Plan will need to be reviewed and approved each year, as it relates to any planned expansion or phases of the use.
Construction:

Permits will be required for all grading and construction activity, ensuring conformity to the Land Development Code, 2015 International Building Codes and the Design Standards for Construction. Prior to any construction activity, the City will review and provide written authorization for the work, including the removal of any trees or other vegetation necessitated by the project. No trees will be removed without the advance written authorization of the City.

The Operator desires to start construction this spring, in order to potentially open operations (for Phase 1 improvements) by late summer of 2018.

Water Usage:

Use of the water will be limited to what is permitted by law. It is expected to include the rental of watercraft for use on the reservoir, with limited to no skin contact with the water surface. Staff will bring forward a revision the City Municipal Code, Chapter 11, Article IV related to Regulations for Use of Chase Gulch Reservoir which would incorporate this; and clarify other uses conducted at this site.

End of the Agreement:

Once the agreement has ended, the Lessee is required to remove all of the equipment with 90 days and return the site to a condition similar to what exists today. The City will hold a $10,000 deposit to ensure compliance and removal of the equipment. The deposit will be paid in tiers, with the full amount received by the end of 2019.

Conditions of Approval:

This Ordinance conditionally approves the Lease Agreement, and authorizes the Mayor to execute the Lease Agreement on behalf of the City once the following conditions have been satisfied:

(a) The City and Operator have caused a legal description and map of the Leased Premises to be prepared, signed and stamped by a licensed professional land surveyor, which description of the Leased Premises will be incorporated into the Lease Agreement as Exhibit A; and

(b) The City and Operator have agreed on the terms and conditions of the Project-specific operating plan (the “Operating Plan”), which Operating Plan will be incorporated into the Lease Agreement as Exhibit B.

These conditions are specifically set forth in the Ordinance.
V. **LEGAL ISSUES:**

A revised final draft Lease Agreement will be presented during this meeting, which will differ from the draft included in your packet. The specific changes will be presented and discussed at that time.

VI. **CONFLICTS OR ENVIRONMENTAL ISSUES:**

None.

VII. **SUMMARY AND ALTERNATIVES:**

City Council has the following options:

- (1) Re-open the continued public hearing and approve the Ordinance (approving the final draft of the Lease Agreement, as revised), with the conditions identified in the Ordinance.

- (2) Re-open and continue the public hearing to a time and date certain;
(3) Re-open the public hearing and direct staff to make revisions to the Ordinance or Lease Agreement and schedule consideration of the Ordinance on a future City Council agenda for second reading; or

(4) Reject or deny the Ordinance.

RECOMMENDED MOTION: "I MOVE TO APPROVE ORDINANCE NO. 18-02, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO CONDITIONALLY APPROVING A LEASE AGREEMENT WITH DENVER ADVENTURES, LLC, APPROVED ON FIRST READING ON FEBRUARY 20, 2018."
CITY OF CENTRAL, COLORADO
ORDINANCE 18-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO CONDITIONALLY APPROVING A LEASE AGREEMENT WITH DENVER ADVENTURES, LLC

WHEREAS, the City of Central ("City") is a home rule municipality with all powers granted by Article XX of the Colorado Constitution and the City’s Home Rule Charter; and

WHEREAS, the City Council of the City possesses the authority to enter into lease agreements for real property owned by the City when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City and Denver Adventures, LLC, a Colorado limited liability company ("Operator") have agreed to the terms and conditions by which the City will lease certain property within the Chase Gulch Reservoir for use as a zip line and ropes course (the "Project"); and

WHEREAS, the property to be leased to the Operator shall not exceed three (3) acres of City-owned property (the "Leased Premises"), unless an expansion of the boundaries of the Leased Premises is approved by subsequent Ordinance duly-adopted by City Council; and

WHEREAS, the primary term of the Lease Agreement (the "Lease") shall be fifteen (15) years, with an option to extend the Lease for two (2) additional ten-year terms.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO THAT:

Section 1. Conditional approval of Lease Agreement. The Lease Agreement in the form attached as Exhibit 1 is hereby approved. The Mayor, with the input of the City Manager and City Attorney shall be authorized to negotiate non-material changes to the Lease prior to execution by the City, provided that such changes do not increase the financial obligations of the City. The Mayor and other proper City officials are hereby authorized to execute the Lease by and on behalf of the City of Central following review and approval of the Lease as to form by the City Attorney, and following the date on which the following conditions have been satisfied:

(a) The City and Operator have caused a legal description and map of the Leased Premises to be prepared, signed and stamped by a licensed professional land surveyor, which description of the Leased Premises will be incorporated into the Lease Agreement as Exhibit A; and

(b) The City and Operator have agreed on the terms and conditions of the Project-specific operating plan (the "Operating Plan"), which Operating Plan will be incorporated into the Lease Agreement as Exhibit B.
Section 2. Delegation of Authority to City Manager. The City Manager shall be authorized to approve the Operating Plan prior to its incorporation into the Lease. No further City Council approval of the Operating Plan shall be required. The City Manager shall also be authorized to execute and deliver any and all other documents reasonably necessary or convenient to effectuate the intent of the Lease, in accordance with the terms of this Ordinance.

Section 3. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. Safety Clause. The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

Section 5. Effective Date. This Ordinance shall become effective immediately following publication, public hearing and the approval of City Council following second reading in accordance with Sections 5.9 and 5.10 of the City Charter.

INTRODUCED AND READ by title only on first reading at the regular meeting of the City Council of the City of Central on the 20th day of February, 2018, at Central City, Colorado.

CITY OF CENTRAL, COLORADO

______________________________
Kathryn A. Heider, Mayor

Approved as to form:

______________________________
Marcus McAskin, City Attorney

ATTEST:

______________________________
Reba Bechtel, City Clerk
PASSED AND ADOPTED on second reading, at the regular meeting of the City Council of the City of Central on the 20th day of March, 2018.

CITY OF CENTRAL, COLORADO

______________________________
Kathryn A. Heider, Mayor

ATTEST:

______________________________
Reba Bechtel, City Clerk

POSTED IN FULL AND PUBLISHED BY TITLE AND SUMMARY in the Weekly Register Call newspaper on February 22, 2018.

POSTED AND PUBLISHED BY TITLE [AND SUMMARY IF AMENDED ON SECOND READING] in the Weekly Register Call newspaper on March 22, 2018.
Exhibit 1

Lease Agreement
LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this ___ day of ____________, 2018, by and between the CITY OF CENTRAL CITY, a Colorado home rule municipal corporation having an address of 141 Nevada Street, P.O. Box 249, Central City, Colorado 80427 (the "City"), and DENVER ADVENTURES, LLC, a Colorado limited liability company with offices at 12520 W. Auburn Ave., Lakewood, CO 80228 ("Lessee"). The City and the Lessee may be collectively referred to as the "Parties" and each individually as "Party".

Section 1. General

1.1 Consideration. City enters into this Lease in consideration of the payment by Lessee of the rents herein reserved and the keeping, observance and performance by Lessee of the covenants and agreements of Lessee herein contained.

1.2 Purpose. The purpose of this Lease is to permit Lessee to establish an adventure course, including zip lines and a ropes course ("Business Activities"), on a portion of City-owned property not to exceed three (3) acres in area in the Chase Gulch Reservoir ("Reservoir") and to allow Lessee to lease the second floor of the City’s Visitor Center ("Visitor Center") as the check-in and drop-off location for all Business Activities for a limited period of time, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Leased Premises"). The Parties agree that the three (3) acres of the Reservoir included in the Leased Premises may be noncontiguous. The Business Activities shall be undertaken in accordance with a plan for operation approved by the City ("Operating Plan"), attached hereto as Exhibit B, referenced in paragraph 2.10 of this Lease. No Conditional Use Permit is required from the City for the Business Activities.

Section 2. Leased Premises and Term

2.1 Leased Premises. City hereby leases to Lessee, and Lessee hereby leases from City, the Leased Premises for the Lease Term as defined in 2.2, below, subject to existing covenants, conditions, restrictions, easements and encumbrances affecting the same. In addition, Lessee, its employees, agents, contractors and customers shall be afforded the same rights as the general public to access and use of the Reservoir and Visitor Center.

2.2 Reservoir Lease Term. The term of this Lease pertaining to the portion of the Reservoir constituting part of the Leased Premises shall commence on the date of mutual execution by the Parties ("Effective Date") and shall terminate on December 31, 2032 ("Primary Term"). Upon the expiration of the Primary Term, if Lessee is not in default of this Lease, Lessee shall have the option to extend the lease term for two (2) additional ten-year terms, upon the same terms and conditions set forth in the Lease (the first ten-year term shall be referred to as the "First Option Term", and the second ten-year term shall be referred to as the "Second Option Term"). The Primary Term, First Option Term,
and Second Option Term, if applicable, shall be referred to herein as the “Lease Term”. In order to extend this Lease into each Option Term, Lessee must give written notice to City of its election to extend the Lease Term. Such notice shall be given to City not sooner than 180 days and not later than 90 days prior to the expiration of the Primary Term and First Option Term, as applicable. As used herein, a “Lease Year” is the 12 months commencing on January 1 and ending on December 31, for each year during the Lease Term (other than 2018). The Lease shall continue for the full Lease Term notwithstanding any occurrence preventing or restricting use and occupancy of the Leased Premises, including any damage or destruction affecting the Leased Premises, and any action by governmental authority relating to or affecting the Leased Premises, except as otherwise specifically provided in this Lease.

2.3 Visitor Center Lease Term. The Lessee shall use the Visitor Center as the sole check-in and drop-off location for all Business Activities until such time as the Lessee identifies a permanent check-in and drop-off location within the historic downtown core of the City. On and after January 1, 2022, the Visitor Center shall no longer be included in the Leased Premises, and “Leased Premises” shall refer to that portion of the Reservoir property specifically identified in Exhibit A. If the historic Belvidere Theater (“Belvidere”) has been rehabilitated and if the City remains the owner of the Belvidere, the City shall consider leasing a portion of the Belvidere to Lessee. Any lease of a portion of the Belvidere will be at current market rate(s) and on a space-available basis.

2.4 Shuttles. Lessee shall use designated areas for any shuttles used by Lessee to pick up and drop off customers when Lessee is engaging in the Business Activities. The designated areas shall be agreed upon by the City and Lessee. This paragraph 2.4 shall apply to both the Reservoir portion and the Visitor Center portion of the Leased Premises.

2.5 Covenant of Quiet Enjoyment. City covenants and agrees that, provided Lessee is not in default and keeps, observes and performs the covenants and agreements contained in this Lease, Lessee shall have quiet and peaceable possession of the Leased Premises for the purposes contemplated by this Agreement and such possession shall not be disturbed or interfered with by City or by any person claiming by, through or under City. Provided however, Lessee, its employees, agents, and contractors and customers, shall have access to the Leased Premises only during normal business hours as defined in Lessee’s Operating Plan, unless City consents otherwise in writing.

2.6 Condition of Leased Premises. Lessee shall have the right to inspect and note the condition of Leased Premises, or any portion thereof, prior to execution of this Lease. Lessee covenants and agrees that, upon taking possession of the Leased Premises, Lessee shall be deemed to have accepted the Leased Premises in its “as is” condition. The City makes no warranty or representation, express or implied, with respect to any of the Leased Premises or any part thereof either as to its fitness for use, design or condition for any particular use or purpose, or otherwise, as to quality or material or workmanship therein, latent or patent, safety or security, of any improvements, it being agreed that all such risks are to be borne exclusively by Lessee.

2.7 Improvements to Leased Premises. Any authorized improvements to the Leased Premises installed or constructed by Lessee for Business Activities and specifically authorized by the Operating Plan shall be referred to as the “Improvements.” The Improvements shall not include any trails or trail systems constructed by Lessee, with the City’s approval, as set forth in paragraph 5.5 of this Lease unless the sole purpose of construction of the trails is for accessing the Reservoir portion of the Lease Premises. No Improvements shall be made to or constructed upon the Leased Premises unless the final plans and specifications for such improvements have been approved by the City and
the City has issued permits authorizing the installation of the Improvements on the Lease Premises. The Improvements shall be constructed in strict accordance with such approved plans, specifications and permit conditions. The Improvements shall remain the property of the Lessee and can only be used, accessed operated, maintained or modified by the Lessee. Lessee shall not make any further alterations, additions or improvements to the Leased Premises without obtaining the written consent of the City, which consent shall not be unreasonably withheld. In the construction of the Improvements, Lessee shall not intentionally fell or prune any trees, shrubbery, or other vegetation situated within the Leased Premises without the consent of City. Any removal or trimming of trees, shrubs, or other vegetation shall require written consent of the City. Lessee shall consult with and follow the direction of the City before commencing with any removal or trimming of any trees, shrubs, or other vegetation. Lessee shall be required to remove all Improvements and Lessee Equipment (as that term is defined in paragraph 6.11 below) from the Leased Premises within ninety (90) days following the termination of this Lease. If Lessee fails to remove the Improvements within ninety (90) days following the termination of this Lease, then, in addition to the remedies provided for in paragraph 2.9 and any other applicable remedies set forth in this Lease, the Improvements shall become the property of the City.

2.8 Modifications to the Leased Premises. Lessee will make the necessary modifications to the Leased Premises, subject to approval by the City, to reasonably manage the risk of conducting the Business Activities and promote efficient operations of the Business Activities. Any modifications, including minor soil disturbance activities such as digging post holes, pouring concrete, and basic excavating, shall be clearly defined for the City’s approval.

2.9 Security Deposit. Lessee shall remit to the City a deposit of ten thousand dollars and no cents ($10,000.00) as security for Lessee’s faithful performance of Lessee’s obligations hereunder (“Security Deposit”). The Lessee shall remit the Security Deposit to the City in three installment payments as follows: (1) the Lessee shall pay the first installment payment to the City in the amount of two thousand five hundred dollars and no cents ($2,500.00) on or prior to December 31, 2018; (2) the Lessee shall pay the second installment payment to the City in the amount of five thousand dollars and no cents ($5,000.00) on or prior to July 1, 2019; and (3) the Lessee shall pay the third and final installment payment to the City in the amount of two thousand five hundred dollars and no cents ($2,500) on or prior to January 1, 2020. If Lessee fails to pay rent or other charges due, or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of said Security Deposit for the payment of any rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Lessee’s default, or to compensate City for any loss or damage which City may suffer thereby. If Lessee fails to remove Improvements from the Leased Premises within ninety (90) days from the termination date of this Lease, then the City will be authorized to use the Security Deposit to pay for costs of removal of such equipment and returning the Leased Premises to substantially the same condition as existed prior to the Effective Date. If City uses or applies all or any portion of the Security Deposit, Lessee shall, within fifteen (15) days after written demand therefore, deposit a cashier’s check or money order with City in an amount sufficient to restore the Security Deposit to ten thousand dollars and no cents ($10,000.00) and Lessee’s failure to do so shall be a material breach of this Lease. City shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee’s obligations hereunder, the Security Deposit, or so much thereof as has not been applied by City, shall be returned, without payment of interest or other increment for its use, to Lessee within sixty (60) days after the expiration of the term hereof, and after Lessee has vacated the Leased Premises. No trust relationship is created herein between City and Lessee with respect to said Security Deposit.
2.10 **Permitted Use Generally.** Lessee shall use and occupy the Leased Premises solely for the purpose of constructing the Improvements and operating the Business Activities in accordance with the Operating Plan. Following the Effective Date, Lessee shall submit an updated Operating Plan annually to the City Manager on or before April 30th (commencing with April 30, 2019), for review and approval by the City. Notwithstanding the foregoing, following approval of the initial Operating Plan, the City’s authority to approve or reject the Operating Plan when it is submitted each year is limited to updates, additions, or other revisions to the previously approved Operating Plan. The City reserves the right to review and request amendments or changes to the Operating Plan during any given Lease Year, as necessary. The Operating Plan submitted on an annual basis shall include copies of all updated certificates of insurance, as required by Section 4 of this Lease. The Operating Plan may be approved administratively by the City Manager or his or her designee, but the City Manager reserves the right to have the Operating Plan scheduled for review by City Council at a regular or special meeting. The Leased Premises should not be used for any purpose other than construction of the Improvements and operation of the Business Activities without the prior written consent of the City, which City may withhold at its sole discretion. Lessee shall not use the Leased Premises for any commercial activity other than the Business Activities unless authorized by City through the issuance of a Temporary Use Permit for Special Events pursuant to Section 16-3-401 of the City’s Land Development Code. The Business Activities and any actions taken by Lessee under this Lease shall not affect the daily duties of the City’s Water Department in maintaining the Reservoir and the City’s water system.

2.11 **Permitted Use of the Reservoir.** Chase Gulch Reservoir is suitable for offering paddle boarding or other non-motorized water craft activity. In future phases and depending on demand, the Operator may offer paddle boarding, canoeing, or other non-motorized boat tours. Operator shall not conduct paddle boarding, or other water craft activities if the same violate the City’s Regulations for Use of Chase Gulch Reservoir, codified in Article IV of Chapter 11 of the Municipal Code, and as the same may be amended from time to time (“Reservoir Regulations”). The Parties agree that the Reservoir Regulations prohibit the use of gas motor boats, and that no swimming, wading or body contact with the water is allowed, other than incidental contact with the water when launching or retrieving approved water craft. The Lessee’s use of Chase Gulch Reservoir shall not compromise water quality controls in the Chase Gulch Reservoir or water quality as mandated by applicable provisions of the Federal Safe Drinking Water Act (42 U.S.C. §300f et seq.) or the Colorado Primary Drinking Water Regulations (5 C.C.R. § 1003-1 et seq.) and regulations promulgated thereunder, and shall not interfere with reservoir maintenance activities undertaken by the City, the Colorado State Engineer, or the Colorado Division of Water Resources – Dam Safety Division. All gas- or oil-powered machinery and equipment shall remain above the high-water mark of the Reservoir or at least ten (10) feet from the water’s edge, whichever is less. All uses of the Reservoir pursuant to this Lease shall be in conformance with the City’s water rights pursuant to the decrees issued in the following cases: 91CW125, 92CW168, 94CW63, and 96CW1032. Prior to beginning any water activities as permitted by this Agreement, the Lessee shall provide buoys with ropes between them suitable to prevent access near the dam and spillway if none are present.

2.12 **No Water Level Guarantee.** The City does not guarantee any specific water level in Chase Gulch Reservoir. If the water level of the Reservoir changes such that Lessee cannot engage in any of its Business Activities, or any portion thereof, for any reason whatsoever the City shall not be liable for any of Lessee’s losses due to the water level of the Reservoir or changes thereof.
2.13 Maintenance of Reservoir Access Roads. The City shall have no obligation to plow the road identified on Exhibit C ("Access Road"). Any snow plowing or other routine maintenance performed by Lessee on the Access Road must be performed in a manner suitable to the City. Lessee shall bear any and all costs related to plowing the Access Road. The City may assist with plowing of the dam road, if resources are available, through a separate contract for services.

2.14 Use of the Reservoir by Governmental and Private Third-Parties. The City agrees to not enter into a written agreement with any other governmental entity to allow said governmental entity to store water in Chase Gulch Reservoir if said water storage would or does have the potential to inundate the Leased Premises, would otherwise render the Leased Premises untenable, or would result in the inability of the Lessee to operate the Business Activities according to the approved Operating Plan, unless the City includes terms and conditions in the written agreement satisfactory to Lessee, allowing for relocation of the Improvements or otherwise compensating Lessee for the depreciated value of the Improvements. If the Leased Premises or substantially all of the Leased Premises shall be taken by right of eminent domain or by condemnation or shall be conveyed in lieu of any such taking, then the Lease, at the option of either the Lessee or the City, shall forthwith cease and terminate. In the event of any such taking or conveyance, the City shall receive the entire award or consideration for the portion of the Leased Premises so taken, but shall cause a percentage of the award or consideration to be paid over to Lessee sufficient to compensate Lessee for the depreciated value of the Improvements. Furthermore, during the term of this Lease, the City agrees not to lease any portion of its Chase Gulch Reservoir property to any outdoor adventure operator similar to Lessee without Lessee’s advance written approval. The City shall not actively seek other similar outdoor adventure outfits for the Central City area; however, the City shall not be restricted from working with such groups or business entities whom the City did not actively seek out.

2.15 Public Use of Leased Premises. The general public shall have access and equal rights to use any roads or trails that pass through the Leased Premises for ingress or egress to public property, restrooms, parking, pavilions or picnic or other public areas located within the area of the Reservoir. Lessee shall not be in violation or default of this Lease to the extent that it limits public access to those areas of the Leased Premises that Lessee and City agree in writing shall be inaccessible to the general public.

2.16 Permits. The Lessee shall be solely responsible for obtaining all necessary permits, easements, or other permissions from third parties, including governmental agencies, for the construction and maintenance of the Improvements and the operation of the Business Activities. Lessee shall also be responsible for complying with all applicable zoning requirements of the City for the Leased Premises.

Section 3. Rent

3.1 Rent. Lessee covenants and agrees to pay to City, without offset, deduction or abatement, Rent as follows:
<table>
<thead>
<tr>
<th>YEAR</th>
<th>RENT AMOUNT/TERMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Years 1 (remainder of 2018), 2 (2019), 3 (2020) and 4 (2021)</td>
<td>$1.00/year, paid no later than April 30 of each applicable Lease Year</td>
</tr>
<tr>
<td>Lease Year 5 (2022)**</td>
<td>2% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 4, paid no later than April 30 of Lease Year 5</td>
</tr>
<tr>
<td>Lease Year 6 (2023)</td>
<td>3% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 5, paid no later than April 30 of Lease Year 6</td>
</tr>
<tr>
<td>Lease Year 7 through Lease Year 15</td>
<td>4% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 6 through 15, paid no later than April 30 of immediately following Lease Year</td>
</tr>
<tr>
<td>**Lessee shall have no right to occupy the Visitor Center on and after January 1, 2022</td>
<td></td>
</tr>
</tbody>
</table>

| First Option Term (if option exercised) | A renegotiated rate with a cap of 6% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 16 through 25, paid no later than April 30 of immediately following Lease Year |
| Second Option Term (if option exercised) | A renegotiated rate with a cap of 6% of Lessee’s gross annual revenue earned from the Business Activities from Lease Year 26 through 35, paid no later than April 30 of immediately following Lease Year |

3.2 **Place of Payments.** Rent and all other sums payable by Lessee to City under this Lease shall be paid to City at the address set forth in paragraph 10.6 of this Lease, or such other place as City may, from time to time, designate by written notice.

3.3 **Rent Absolute.** Rent shall be payable without offset, reduction or abatement for any cause except as otherwise specifically provided in this Lease.

3.4 **Verification of Gross Annual Revenue.** Eligible gross annual revenue, earned by Lessee from the Business Activities, shall be verified by a certified public accountant within sixty (60) days of the date of a notice to review and confirm revenue mailed by the City to Lessee pursuant to paragraph 10.6 of this Lease. The expense of the certified public accountant shall be borne by the Lessee, and the City shall have access to the audited records. The City may send notice requesting such verification no more than once per calendar year.
Section 4. Insurance and Indemnification

4.1 Casualty and Liability Insurance. Lessee agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Lessee shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Lease by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Lessee shall procure and maintain, and shall cause each subcontractor of the Lessee, if any subcontractor is engaged in the Business Activities, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with insurers acceptable to the City. All coverage shall be continuously maintained from the Effective Date of this Lease. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Business Activities under this Lease, and Employer’s Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be specifically applicable to the Leased Premises and all operations conducted by the Lessee pursuant to this Lease, including the Business Activities. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate with respect to each of Lessee’s owned, hired and/or non-owned vehicles assigned to or used in performance of the Business Activities. The policy shall contain a severability of interests provision.

B. The policies required above, except Workers’ Compensation insurance, Employers’ Liability insurance and Professional Liability insurance, shall be endorsed to include the City, its officers and employees, as an additional insured. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Lessee. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Lessee shall be solely responsible for any deductible losses under each of the policies required above.
C. Certificates of insurance shall be completed by Lessee's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall identify this Lease and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words “endeavor to” appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. The Lessee’s failure to obtain and continuously maintain policies of insurance in accordance with this Section shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Lessee arising from performance or nonperformance of this Lease. Failure on the part of Lessee to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of the Lease.

E. The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently $350,000 per person, $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as from time to time amended, or rights, immunities, and protections otherwise available to City, its officers, or its employees.

F. The Lessee shall provide the City with a certified copy of any policy or policies of insurance required by this Section 4 within fifteen (15) calendar days following the City’s written request for same.

G. Updated certificates of insurance shall be provided to the City on an annual basis with the annual Operating Plan submittal required by paragraph 2.10 of this Lease.

4.2 Lessee Indemnification of City. Lessee covenants and agrees to protect, indemnify and save City harmless from and against all liability, obligations, claims, damages, penalties, causes of action, costs and expenses, including attorneys’ fees, imposed upon, incurred by or asserted against City by reason of (a) any accident, injury to or death of any person or loss of or damage to any property occurring on or about the Leased Premises or as part of the Business Activities; (b) any act or omission of Lessee or Lessee’s officers, employees, agents, guests or invitees or of anyone claiming by, through or under Lessee; (c) any use which may be made of the Leased Premises by Lessee, or condition existing upon, the Leased Premises created by Lessee; (d) Lessee’s Improvements, fixtures or equipment placed upon the Leased Premises; (e) any failure on the part of Lessee to perform or comply with any of the provisions, covenants or agreements of Lessee contained in this Lease or the Operating Plan; and (f) any violation of any law, ordinance, order, rule or regulation of governmental authorities having jurisdiction by Lessee or Lessee’s officers, employees, agents, guests or invitees or by anyone claiming by, through or under Lessee. Lessee further covenants and agrees that, in case any action, suit or proceeding is brought against City by reason of any of the foregoing, Lessee will, at Lessee’s sole cost and expense; defend City in any such action, suit or proceeding with counsel reasonably acceptable to City. If City is required to retain CIRSA-appointed counsel (or other defense or outside counsel) to defend the City against any action related to Lessee’s Business Activities or the Leased Premises, the Lessee agrees to pay the City’s out-of-pocket deductible (currently $5,000 per claim), and all other costs and expenses incurred by the City in defending the City against liability.
Section 5. Utility, Operating, Maintenance, Repair and Parking Expenses

5.1 Utility Charges. Lessee shall promptly pay all fees, taxes, costs and charges for all services, including telephone, cable, communications, and other services for Lessee’s Business Activities. If Lessee must use a service paid for or provided by the City, Lessee shall pay the City as additional rent the Lessee’s share of all fees, costs and charges of the services as reasonably determined by the City within thirty (30) calendar days of Lessee’s receipt of written notice. If either party wishes to establish separate metering of a service at the party’s sole cost and expense, the other party shall cooperate on that matter. As part of reasonably determining the Lessee’s share of all such fees, costs and charges, the City will analyze the average total expenses (applicable fees, costs and charges) over the immediately preceding 12-month period.

5.2 Operating Expenses. Lessee covenants and agrees to pay all costs and expenses of the Business Activities, including costs and expenses for utilities.

5.3 Maintenance and Repair Expenses. Lessee shall make, at Lessee’s expense, all repairs to the Improvements necessary to maintain the Improvements in a safe operating condition in conformance with any applicable regulatory requirements. Any damage or destruction to the Improvements shall be promptly repaired or replaced by Lessee.

5.4 Parking and Parking Expenses. There shall be no public parking at the Reservoir portion of the Leased Premises. All public parking shall be within the downtown core of the City, which shuttles transporting Lessee’s customers to and from the Reservoir. The City shall not charge Lessee any Parking and Development Impact Fees during the time which Lessee is leasing the Visitor Center portion of the Leased Premises.

5.5 Trail Development. As of the Effective Date of this Lease, no trails or trail systems exist on the Leased Premises. Prior to the construction by Lessee of any trails or trail systems on the Reservoir portion of the Leased Premises, Lessee must obtain prior written approval from the City for the design, construction, and maintenance plans for such trails or any grading activity of any kind. Any trails or trail systems approved by the City shall conform to the requirements of any applicable City ordinances, regulations, rules, or policies, including any sustainable trail construction and maintenance policies, in effect at the time of approval. The City shall retain a six-foot (6 ft.) wide easement over any future trails or trail system within the area of the Leased Premises which does not directly impact Lessee’s commercial operations within the Leased Premises in accordance with the Operating Plan. In no event may Lessee construct trails outside the Leased Premises without prior written approval of the City.

5.6 Engineering. Engineering plans and drawings, operational manuals, inspection records and certifications of Lessee related to the Business Activities and the Leased Premises shall be made available to City for inspection pursuant to paragraph 6.15 of this Lease. All Improvements shall be appropriately engineered and permitted, when applicable.

Section 6. Other Covenants of Lessee

6.1 Use by Lessee. Lessee covenants and agrees to use the Leased Premises solely for the Business Activities operated in accordance with the Operating Plan and in compliance with all rules and regulations, and any and all other zoning or ordinance restrictions required by any applicable
governmental authority. The Business Activities shall be conducted in a business-like manner and in
corformance with all applicable regulations. The Business Activities will be operated by Lessee and
its employees, and Lessee shall be responsible for the training and management of employees and the
construction, maintenance, equipment, insurance, compliance with applicable laws, and operations of
its facilities on the Leased Premises.

6.2 Compliance with Laws. The Lessee shall comply with all applicable laws, rules,
regulations and codes of the United States, the State of Colorado, and the standards of the Association
of Challenge Course Technology ("ACCT"). The Lessee shall also comply with all applicable
ordinances, regulations, and resolutions of the City. Lessee covenants and agrees that nothing shall be
done or kept on the Leased Premises in violation of any law, ordinance, order, rule or regulation of any
governmental authority having jurisdiction and that the Leased Premises shall be used, kept and
maintained in compliance with any such law, ordinance, order, rule or regulation.

6.3 Compliance with Insurance Requirements. Lessee covenants and agrees that nothing
shall be done or kept on the Leased Premises which might impair or increase the cost of insurance
maintained with respect to the Leased Premises or the Property, which might increase the insured risks,
or which might result in cancellation of any such insurance.

6.4 No Waste, Hazardous Waste, Hazardous Substances or Impairment of Value. Lessee
covenants and agrees that nothing shall be done or kept on the Leased Premises which might impair
the value of the Leased Premises or which would constitute waste or Hazardous Substances; however,
Lessee may use Hazardous Substances in the Leased Premises in compliance with all applicable laws,
regulations, rules, or policies. The term "Hazardous Substance" as used in this Lease shall mean any
product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release is
either: (i) regulated or monitored by any governmental authority, or (ii) a basis for potential liability of
the City to any governmental agency or third party under any applicable statute or common law theory.
Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and or
crude oil or any products, by products or fractions thereof.

6.5 No Hazardous Use. Lessee covenants and agrees that nothing shall be done or kept on
the Leased Premises and that no improvements, changes, alterations, additions, maintenance or repairs
shall be made to the Leased Premises which might be unsafe or hazardous to any person or property.

6.6 No Nuisance, Noxious or Offensive Activity. Lessee covenants and agrees that no
noxious or offensive activity shall be carried on upon the Leased Premises, nor shall anything be done
or kept on the Leased Premises which may be or become a public or private nuisance or which may
cause embarrassment, disturbance, or annoyance to others on adjacent or nearby property.

6.7 No Mechanic's Liens. Lessee covenants and agrees not to permit or suffer, and to cause
to be removed and released, any mechanic's, materialmen's or other lien on account of supplies,
machinery, tools, equipment, labor or material furnished or used in connection with the construction,
alteration, improvement, addition to or repair of the Leased Premises by, through or under Lessee.
Lessee shall have the right to contest, in good faith and with reasonable diligence, the validity of any
such lien or claimed lien, provided that, on final determination of the lien or claim for lien, Lessee shall
immediately pay any judgment rendered, with interests and costs, and will cause the lien to be released
and any judgment satisfied.

6.8 Assignment and Subletting. For purposes of this Lease, a "Transfer by Lessee" shall
include an assignment of this Lease, a sublease of all or any part of the Leased Premises or any assignment, sublease, transfer, mortgage, pledge or encumbrance of all or any part of Lessee’s interest under this Lease or in the Leased Premises, by operation of law or otherwise, or the use or occupancy of all or any part of the Leased Premises by anyone other than Lessee. Lessee shall not have the right to make or permit a Transfer by Lessee without City’s prior written consent, which consent which will not be unreasonably withheld by City. Any such Transfer by Lessee shall not release Lessee of its obligations under this Lease, unless otherwise agreed to by the City in a written assignment approved by the City. At the time the request for a Transfer by Lessee is made, the Lessee must submit the proposed sub-lessee’s or assignee’s financial statements to the City for review and evaluation by the City. The sub-lessee or assignee must show it is committed to maintaining ACCT certification and that it will comply with the terms of this Lease.

6.9 Payment of Income and Other Taxes. Lessee covenants and agrees to pay promptly when due all personal property taxes on personal property of Lessee on the Leased Premises and all federal, state and local income taxes, sales taxes, use taxes, Social Security taxes, unemployment taxes and taxes withheld from wages or salaries paid to Lessee’s employees.

6.10 City Right to Inspect and Leased Premises. Lessee covenants and agrees that City and the authorized representative(s) of City shall have the right to enter the Leased Premises at any reasonable time during ordinary business hours for the purposes of inspection, with limited impact on the customers. For repairing or maintaining the same or performing any obligations of Lessee which Lessee has failed to perform, the City shall provide the Lessee with 48-hour notice. City shall be respectful of any customers present and shall schedule repair or maintenance, showing or inspection with Lessee prior to any such repair, showing or inspection.

6.11 Removal of Lessee’s Equipment. “Lessee’s Equipment” shall mean the Improvements and all equipment, apparatus, machinery, signs, furniture, furnishings and personal property used for the Business Activities. Lessee covenants and agrees to remove all of Lessee’s Equipment and to repair, at its sole cost and expense, within ninety (90) days of the expiration of the Lease Term any injury and damage to the Leased Premises caused by removal of the Lessee’s Equipment in good and workmanlike fashion and to place the Leased Premises in substantially the same condition as the Leased Premises are in as of the Effective Date of this Lease.

6.12 Waiver by Lessee. Lessee waives and releases any claims Lessee may have against City or City’s officers, agents or employees for loss, damage or injury to person or property sustained by Lessee or Lessee’s officers, agents, employees, guests, invitees or anyone claiming by, through or under Lessee resulting from any cause whatsoever other than the negligence or willful misconduct of City.

6.13 Marketing and Advertising. Lessee shall not erect, place or install any signage on the Leased Premises without obtaining written approval in advance by City. Lessee may place temporary signage associated with a special event without prior written approval so long as Lessee removes the temporary signage within seventy-two (72) hours after posting such sign. Lessee is responsible for obtaining all appropriate permits and approvals for signage pursuant to the requirements of the City’s Municipal Code.

6.14 Not Employees. The Lessee shall not be deemed by virtue of this Lease to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and lessee. The City shall not be obligated to secure, and shall not provide, any
insurance coverage or employment benefits of any kind or type to or for the Lessee or for Lessee’s employees, sub-contractors, consultants, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers’ compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions. Lessee’s employees or its contractors are not employed by the City. As a condition of this Lease, Lessee agrees that safety is paramount and all its employees, contractors, and agents will be subject to a driving record check, criminal background check and random drug testing.

6.15 City Review of Records. The Lessee agrees that, upon a reasonable request of the City Manager or his or her designee, at any time during the term of this Lease or three (3) years thereafter, Lessee shall make available for inspection and audit, those records pertaining to Lessee’s Business Activities, conformance with the Operating Plan, or other business records pertaining to this Lease. The Lessee shall maintain such records until the expiration of the three (3) years following the end of the term of this Lease. Such an inspection is limited to once per calendar year unless circumstances arise such that the City’s inspection of Lessee’s records is necessary, as determined by the City.

Section 7. Defaults by Lessee

7.1 Defaults Generally. Each of the following shall constitute a “Default by Lessee” under this Lease:

A. Failure to Pay Rent or Other Amounts. A Default by Lessee shall exist if Lessee fails to pay when due, Rent or any other amounts payable by Lessee under the terms of this Lease, and such failure continues for five (5) days after written notice from City to Lessee of such failure.

B. Deviation from Operating Plan. A Default by Lessee shall exist if Lessee materially deviates from the standards (including but not limited to staff, days and hours of operation, and services to be provided) as set forth in the Operating Plan. In the event such deviation continues for a period of thirty (30) days after the date of written notice from City to Lessee of such deviation during any Lease Year, such deviation shall constitute a Default by Lessee without further notice by City.

C. Violation of Lease Terms. A Default by Lessee shall exist if Lessee breaches or fails to comply with any agreement, term, covenant or condition in this Lease applicable to Lessee, where such breach or failure to comply continues for a period of thirty (30) days after the date of written notice thereof by City to Lessee, or, if such breach or failure to comply cannot be reasonably cured within such 30-day period, if Lessee does not in good faith commence to cure such breach or failure to comply within such 30-day period or does not diligently proceed therewith to completion.

D. Transfer of Interest Without Consent. A Default by Lessee shall exist if Lessee's interest under this Lease or in the Leased Premises shall be transferred to any third party without City's prior written consent.

Section 8. City’s Remedies

8.1 Remedies Generally. Upon the occurrence of any Default by Lessee, City shall have the right, at City's election, then or at any time thereafter, to exercise any of the remedies set forth in
8.2 Cure by City. In the event of a Default by Lessee, City may, at City’s option and without releasing Lessee from any obligations under this Lease, make any payment or take any action as City may reasonably deem necessary or desirable to cure any such Default by Lessee in such manner and to such extent as City may reasonably deem necessary or desirable. City may do so after providing written notice to Lessee, and Lessee’s failure to cure the Default within thirty (30) days after the date of such written notification. Lessee covenants and agrees to pay to City, within thirty (30) days after demand, all reasonable advances, costs and expenses of City in connection with the making of any such payment or the taking of any such action, including reasonable attorney’s fees, together with interest as hereinafter provided, from the date of payment of any such advances, costs and expenses by City. Action taken by City may include commencing, appearing in, defending or otherwise participating in any action or proceeding and paying, purchasing, contesting or compromising any claim, right, encumbrance, charge or lien with respect to the Leased Premises which City, in its reasonable discretion, may deem necessary or desirable to protect its interest in the Leased Premises and under this Lease.

8.3 Termination of Lease and Damages. In the event of a Default by Lessee, City may terminate this Lease, effective at such time as may be specified by written notice, delivered via certified mail, to Lessee, and demand (and, if such demand is refused, recover) possession of the Leased Premises from Lessee. Lessee shall remain liable to City for damages in an amount equal to the Rent for the balance of the term, had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Leased Premises by City subsequent to such termination, after deducting all City’s reasonable expenses in connection with such recovery of possession or reletting. City shall be entitled to collect and receive such damages from Lessee on the days on which the Rent would have been payable if this Lease had not been terminated.

8.4 Repossession and Reletting. In the event of Default by Lessee, City may reenter at a reasonable time of day and take possession of the Leased Premises or any part thereof, without demand or notice, and repossess the same and expel Lessee and any third party claiming possession by, under or through Lessee, and remove the Improvements as may be necessary, without being liable for prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of this Lease. No such reentry or taking possession of the Leased Premises by City shall be construed as an election by City to terminate this Lease unless a written notice, delivered via certified mail, of such intention is given to Lessee. No notice from City hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by City to terminate this Lease unless such notice specifically so states. City reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Lessee such written notice, delivered via certified mail, in which event the Lease will terminate as specified in said notice.

8.5 Suits by City. Upon Default by Lessee, actions or suits for the recovery of amounts and damages payable under this Lease may be brought by City from time to time, at City’s election, and City shall not be required to await the date upon which the Lease Term would have expired to bring any such action or suit.

8.6 Recovery of City Enforcement Costs. Upon Default by Lessee, all costs and expenses incurred by City in connection with collecting any amounts and damages owing by Lessee pursuant
to the provisions of this Lease or to enforce any provision of this Lease, including reasonable attorneys’ fees, whether or not any action is commenced by City, shall be paid by Lessee to City upon demand.

8.7 Late Payment Penalty. Lessee covenants and agrees to pay to City a late payment penalty in the amount of 5% of the amount due of any payment of Rent that Lessee fails to pay within five (5) days of when due.

8.8 Remedies Cumulative. Exercise of any of the remedies of City under this Lease shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to City at law or in equity.

Section 9. Surrender and Holding Over

9.1 Surrender upon Lease Expiration. Upon the expiration or earlier termination of this Lease, or on the date specified in any demand for possession by City after any Default by Lessee, Lessee covenants and agrees to surrender possession of the Leased Premises to City and return the Leased Premises to the same condition as when Lessee first occupied the Leased Premises, ordinary wear and tear excepted.

Section 10. Miscellaneous

10.1 No Implied Waiver. No failure by City to insist upon the strict performance of any term, covenant or agreement contained in this Lease, no failure by City to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any Default by Lessee, shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy, or a waiver of any such Default by Lessee.

10.2 Survival of Provisions. Notwithstanding any termination of this Lease, the same shall continue in force and effect as to any provisions hereof which require observance or performance by City or Lessee subsequent to termination.

10.3 Covenants as Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

10.4 Lessee’s Remedies. Lessee may bring a separate action against City for any claim Lessee may have against City under this Lease, provided Lessee shall first give written notice, via certified mail, thereof to City and shall afford City a period of thirty (30) days to cure any such default, or, if such default cannot be reasonably cured within such 30-day period, then City shall in good faith commence to cure such default within such 30-day period. In addition, Lessee shall send notice of such default by certified or registered mail, postage prepaid, to the holder of any mortgage or deed of trust covering the Leased Premises or any portion thereof of whose address Lessee has been notified in writing, and shall afford such holder a reasonable opportunity to cure any default on City’s behalf. Lessee shall be entitled to remedies under Colorado Law of any default by City hereunder.

10.5 Recording Lease. This Lease shall not be recorded without the express written consent of the City Manager. If the City desires or consents to the recording of this Lease, the parties shall execute a short form lease containing the names of the parties, a description of the Leased Premises and the Lease Term.
10.6 **Notices and Demands.** All notices, demands, billings, and all other notices required or permitted under this Lease shall be made as follows:

To the City: Central City  
Attn: City Manager  
141 Nevada Street  
P.O. Box 249  
Central City, CO 80427  

With a copy to: Michow Cox & McAskin LLP  
City Attorney for Central City  
6530 S. Yosemite St., Ste. 200  
Greenwood Village, CO 80111  

To the Lessee: Denver Adventures, LLC  
12520 W. Auburn Ave.  
Lakewood, CO 80228  

Denver Adventures, LLC  
P.O. Box 16969  
Golden, CO 8040  

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first-class U.S. mail, via FedEx, or other method authorized in writing by the City Manager and Lessee. Mailed notices shall be deemed effective upon receipt or three (3) working days after the date of mailing, whichever is earlier. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

10.7 **Time of the Essence.** Time is of the essence under this Lease, and all provisions herein relating thereto shall be strictly construed.

10.8 **Captions for Convenience.** The headings and captions hereof are for convenience only and shall not be considered in interpreting the provisions hereof.

10.9 **Severability.** If any provision of this Lease shall be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and there shall be deemed substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

10.10 **Governing Law and Venue.** This Lease shall be interpreted and enforced according to the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Gilpin, State of Colorado. The Lessee expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

10.11 ** Entire Agreement.** This Lease and any exhibits referred to herein, constitute the final and complete expression of the parties' agreements with respect to the Leased Premises and Lessee's occupancy thereof. Each party agrees that it has not relied upon or regarded as binding any prior agreements, negotiations, representations, or understandings, whether oral or written, except as
expressly set forth herein.

10.12 No Oral Amendment or Modifications. No amendment or modification of this Lease, and no approvals, consents or waivers by City under this Lease, shall be valid or binding unless in writing and executed by the party to be bound.

10.13 Relationship of City and Lessee. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of City and Lessee.

10.14 Force Majeure. Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Lease if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Lessee’s subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to litigate any impact of the event that triggered the invoking of this Force Majeure clause.

10.15 Authority of Lessee. Each individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to deliver this Lease on behalf of Lessee and that this Lease is binding upon Lessee in accordance with its terms.

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed the day and year first above written.

CITY:

CITY OF CENTRAL, COLORADO

ATTEST:

____________________________  By: ________________________________
Reba Bechtel, City Clerk  Mayor Kathryn A. Heider, authorized pursuant to Ordinance No. 18-02

APPROVED AS TO FORM (Excluding Exhibits)  Date of execution: ________________, 2018

____________________________
City Attorney
LESSEE:

DENVER ADVENTURES, LLC, a Colorado limited liability company

By: ________________________________

Printed name: ________________________

Its: ________________________________

STATE OF COLORADO  

) ss.

COUNTY OF ____________  

The foregoing Lease Agreement was acknowledged before me this ____ day of _______________, 2018, by ______________________ as ______________________ of Denver Adventures, LLC, a Colorado limited liability company. Witness my hand and official seal.

My commission expires: ______________

______________________________
Notary Public

[SEAL]

Exhibits attached:

Exhibit A – Leased Premises
Exhibit B – Operating Plan
Exhibit C – Access Road
AGENDA ITEM #8
CITY COUNCIL COMMUNICATION FORM

FROM: Daniel Miera, City Manager
THROUGH: Marcus McAskin, City Attorney
DATE: March 15, 2018 (for March 20, 2018 regular meeting)
ITEM: Ordinance 18-03 Conditionally Authorizing the Sale and Transfer of City-Owned Property

X ORDINANCE

I. REQUEST OR ISSUE: Ordinance No. 18-03 ("Ordinance") conditionally approves the sale of certain City-owned real property to Whispering Pines LLC, a Colorado limited liability company DBA Central City KOA ("Whispering Pines").

Whispering Pines submitted a written request to the City dated February 23, 2018 to purchase approximately 1.54 acres of land located south of and adjacent to the Central City KOA (the "Property"). The Property is situated between the Central City KOA and Lake Gulch Road. The written request submitted to the City by Whispering Pines was accompanied by a 49-page value appraisal.

This Communication Form incorporates and includes the City Manager’s written evaluation, as required by Sec. 4-6-20(b)(1) of the Municipal Code.

A proposed draft of the Contract for Purchase and Sale of Real Estate ("Purchase Contract") is incorporated as Exhibit B to the proposed Ordinance. If the Ordinance is approved by City Council, the City would enter into the Purchase Contract with Whispering Pines.

Following review and discussion at the March 20th meeting, Council is asked to adopt Ordinance 18-03 on first reading and schedule second reading and public hearing on Tuesday, April 3, 2018.
II. **RECOMMENDED ACTION / NEXT STEP:** Approve Ordinance No. 18-03 on first reading and schedule a public hearing and second reading of the Ordinance on a time and date certain. Currently, it is anticipated that second reading of the Ordinance will occur on Tuesday, April 3, 2018.

III. **FISCAL IMPACTS:** In accordance with Sec. 4-6-30(b) of the Municipal Code, the proceeds from the sale of the Property, if the proposed transaction is ultimately closed, will be deposited in the City's Public Property and Development Trust Fund ("Property Fund"). Per Sec. 4-6-30(c) of the Code, funds in the Property Fund may only be appropriated and expended for the acquisition or real property to be owned or traded by the City for a public purpose, or for the improvement of City-owned property, or for related legal or administrative expenses.

IV. **BACKGROUND INFORMATION:**

Staff has reviewed the written request of Whispering Pines to acquire the Property. In accordance with Sec. 4-6-20(b)(1) of the Code, the City Manager’s written evaluation follows:

1. The proposed purchase price has been determined through an appraisal, a copy of which is on file with the City.

2. The Property is surplus property and is not currently subject to a development proposal, and is not adjacent to any property subject to a development proposal.

3. There is no current or future need for public use of the Property.

Staff recommends that City Council approve the conveyance of the Property to Whispering Pines. The City Manager and City Attorney are recommending that certain conditions be satisfied prior to the conveyance of the Property to Whispering Pines, specifically:

(a) Whispering Pines shall be required to obtain an ALTA survey of the Property in a form acceptable to the Central City Zoning Administrator, or designee ("Administrator"), prior to submitting a site plan or final plat for review by the Administrator; and

(b) The closing of the sale of the Property and execution of documents shall not occur prior to the final approval of the City of a final plat, site plan and other documents or approvals required by the Central City Land Development Code ("LDC"), including but not limited to Whispering Pines' satisfaction of all limited or conditional use standards required by the LDC applicable to the Limited Community Commercial (LCC) zone district.

In addition, Staff is recommending that the sale of the Property to Whispering Pines be subject to a Right of First Refusal to Repurchase the Property ("Right of First Refusal"). The Right of First Refusal is incorporated into the form of quit claim deed conveying the
City of Central
Ordinance 18-03
Page 3

Property to Whispering Pines. The conditions set forth are incorporated into the Ordinance.

V. **LEGAL ISSUES:** None. City Council is authorized pursuant to C.R.S. § 31-15-713(1)(b) to dispose of City-owned property upon such terms and conditions as the City Council deems appropriate. Section 14.3 of the Home Rule Charter requires the adoption of an ordinance to sell or dispose of any City-owned real property.

V. **CONFLICTS OR ENVIRONMENTAL ISSUES:** N/A

VI. **SUMMARY AND ALTERNATIVES:** City Council has the following options:

1. Adopt Ordinance No. 18-03 on first reading, as may or may not be amended;

2. Direct staff to make revisions to the Ordinance and schedule consideration of the Ordinance on a future City Council agenda for first reading; or

3. Reject or deny the Ordinance.

**RECOMMENDED MOTION:** "I MOVE TO APPROVE ORDINANCE NO. 18-03, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO CONDITIONALLY AUTHORIZING THE SALE AND TRANSFER OF CITY OWNED PROPERTY ON FIRST READING, AND FURTHER MOVE THAT SECOND READING AND PUBLIC HEARING ON THE ORDINANCE BE SCHEDULED FOR TUESDAY, APRIL 3, 2018, AT 7:00 PM TO BE HELD IN THESE COUNCIL CHAMBERS."

**Attachments:**

- Ordinance 18-03 (for first reading)
CITY OF CENTRAL, COLORADO
ORDINANCE 18-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO CONDITIONALLY AUTHORIZING THE SALE AND TRANSFER OF CITY OWNED PROPERTY

WHEREAS, the City of Central ("City") is a home rule municipality with all powers granted by Article XX of the Colorado Constitution and the City's Home Rule Charter; and

WHEREAS, C.R.S. § 31-15-713(1)(b) authorizes the City to dispose of City-owned property upon such terms and conditions as the City Council deems appropriate; and

WHEREAS, § 14.3 of the Home Rule Charter requires the adoption of an ordinance to sell or dispose of any City-owned real property; and

WHEREAS, Whispering Pines LLC, a Colorado limited liability company, DBA Central City KOA ("Whispering Pines") desires to purchase certain property owned by the City, as more particularly described in Exhibit A attached hereto (the "Property"), adjacent to property owned by Whispering Pines and used as the KOA Campground; and

WHEREAS, the City has obtained and reviewed an appraisal prepared by Gregory M. Owen, MAI, EquiReal Appraisal Services dated January 3, 2018 (the "Appraisal"), and the City Council has reviewed the Appraisal; and

WHEREAS, at a regularly scheduled City Council meeting on March 20, 2018, in open session, the City Council approved this Ordinance on first reading, authorizing the sale of the Property to Whispering Pines for the sum of Twenty-Seven Thousand Dollars ($27,000.00), subject to the Reservation of the Right of First Refusal to Repurchase the Property and the following conditions:

(a) The closing of the sale of the Property and execution of documents related thereto shall not occur prior to the Effective Date of this Ordinance set forth in Section 5 below; and

(b) Whispering Pines shall be required to obtain an ALTA survey of the Property in a form acceptable to the Central City Zoning Administrator, or designee ("Administrator"), prior to submitting a site plan or final plat for review by the Administrator; and

(c) The closing of the sale of the Property and execution of documents shall not occur prior to the final approval of the City of a final plat, site plan and other documents or approvals required by the Central City Land Development Code ("LDC"), including but not limited to Whispering Pines' satisfaction of all limited or conditional use standards required by the LDC applicable to the Limited Community Commercial (LCC) zone district.
WHEREAS, the City Council has determined that the sale of the Property in accordance with the conditions set forth above is in the best interests of the City of Central and its citizens because the sale of the Property will promote the ownership and investment in a private business operating in the City and that the sale of the Property is on equitable and fair terms which will promote the health, safety and general welfare of the Central City community; and

WHEREAS, City Council conducted a public hearing, with proper notice provided, to consider adoption of this Ordinance as required by law.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO THAT:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Sale of Property Authorized. The City Council hereby approves the sale of the Property to Whispering Pines for the sum of Twenty-Seven Thousand Dollars ($27,000.00) in accordance with the terms of the Contract for Purchase and Sale of Real Estate attached as Exhibit B (the “Purchase Contract”), which sale shall be subject to the Reservation of a Right of First Refusal to Repurchase the Property should the Property cease to be utilized as part of the KOA Campground operations. The Mayor and City Clerk are hereby authorized to execute the Purchase Contract and the Quitclaim Deed with a Reservation of a Right of First Refusal to Repurchase the Property in substantially the form set forth in Exhibit B, provided that such authorization shall be subject to the following conditions:

(a) The closing of the sale of the Property and execution of documents related thereto shall not occur prior to the Effective Date of this Ordinance set forth in Section 5 below; and

(b) Whispering Pines shall be required to obtain an ALTA survey of the Property in a form acceptable to the Central City Zoning Administrator, or designee (“Administrator”), prior to submitting a site plan or final plat for review by the Administrator; and

(c) The closing of the sale of the Property and execution of documents shall not occur prior to the final approval of the City of a final plat, site plan and other documents or approvals required by the Central City Land Development Code (“LDC”), including but not limited to Whispering Pines’ satisfaction of all limited or conditional use standards required by the LDC applicable to the Limited Community Commercial (LCC) zone district.

Section 3. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions
or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. Safety Clause. The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

Section 5. Effective Date. This Ordinance shall become effective immediately following publication, public hearing and the approval of City Council following second reading in accordance with Sections 5.9 and 5.10 of the City Charter.

INTRODUCED AND READ by title only on first reading at the regular meeting of the City Council of the City of Central on the ____ day of _____________, 2018, at Central City, Colorado.

CITY OF CENTRAL, COLORADO

Kathryn A. Heider, Mayor

Approved as to form:

Marcus McAskin, City Attorney

ATTEST:

Reba Bechtel, City Clerk
PASSED AND ADOPTED on second reading, at the regular meeting of the City Council of the City of Central on the ___ day of ____________________, 2018.

CITY OF CENTRAL, COLORADO

________________________________________
Kathryn A. Heider, Mayor

ATTEST:

________________________________________
Reba Bechtel, City Clerk

POSTED IN FULL AND PUBLISHED BY TITLE AND SUMMARY in the Weekly Register Call newspaper on _____________, 2018.

POSTED AND PUBLISHED BY TITLE [AND SUMMARY IF AMENDED ON SECOND READING] in the Weekly Register Call newspaper on ________________, 2018.
Exhibit A

Subject Property

The subject property consists of approximately 1.54 acres of land adjacent south of the Denver West/Central City KOA Campground, located south of the City of Central City, Colorado. The subject site is a parcel of land between the campground and Lake Gulch Road.

The approximate boundaries of the subject property are shown below:
Exhibit B

Contract for Purchase and Sale of Real Estate
CONTRACT FOR PURCHASE
AND SALE OF REAL ESTATE

1. PARTIES. This Contract for Purchase and Sale of Real Estate ("Contract") is entered into between the CITY OF CENTRAL, a home rule municipality of the State of Colorado ("Seller" or "City") and WHISPERING PINES L.L.C., a Colorado limited liability company, DBA Central City KOA, whose legal address is 7471 East Windwood Way, Parker, Colorado 80134 ("Buyer").

2. PROPERTY DESCRIPTION. The Seller is selling and the Buyer is purchasing the property as generally described in Exhibit 1 attached hereto ("Property").

3. SURVEY AND APPRAISAL. Within forty-five (45) days of the date of mutual execution of this Contract ("Effective Date"), Buyer shall obtain an ALTA survey ("Survey") of the Property at Buyer's cost and provide a copy of the Survey to Seller. An appraisal of the Property was obtained by the Buyer and supplied to the Seller. Once the Survey has been completed, the Parties agree that Exhibit 1 shall be updated to reference the legal description of the Property, as set forth in the Survey.

4. ESCROW AGENT AND TITLE COMPANY. The title and escrow company for this transaction Mountain Land Title, 972 Golden Gate Canyon Road, Black Hawk, CO 80422 [Ph: 303-582-0603] (the "Title Company").

5. PURCHASE PRICE. The purchase price and consideration for the sale of the Property is TWENTY-SEVEN THOUSAND DOLLARS ($27,000.00) ("Purchase Price"). The Purchase Price shall be paid by the Buyer at Closing in cash, certified funds, or by wire transfer of other immediately available funds.

6. INSPECTION. City and the Buyer expressly covenant and agree that the Buyer's satisfaction upon the inspection provided for herein is a specific condition precedent to the obligation of the Buyer to purchase the Property. The period of inspection (the "Inspection Period") shall begin on the Effective Date and shall terminate on the earlier of: (i) receipt by the City of written notice from the Buyer that the Property is suitable for purchase; or (ii) forty-five (45) calendar days after the Effective Date. During the Inspection Period, and upon reasonable advance written notice to and approval from the City Manager, such approval not to be unreasonably withheld or delayed, the Buyer may enter the Property to make such reasonable inspections, reviews, studies, evaluations, or surveys, at the Buyer's sole cost and expense, required to satisfy itself as to the acceptability and suitability of the Property for purchase, including, without limitation, a Phase I environmental inspection.

7. CLOSING. The closing of this Contract ("Closing") shall be held at the office of the Title Company or closed in escrow on the earlier of (a) thirty (30) days following the expiration of the Inspection Period, (b) Tuesday, July 31, 2018, or on such other date
as the Parties may agree to in writing. At the Closing, the City shall deliver to the Buyer a Quit Claim Deed in accordance with Paragraph 11 below.

8. **DEPOSIT.** Within five (5) business days following the Effective Date, the Buyer shall deposit the sum of Five Thousand Dollars ($5,000.00) ("Deposit") with the Title Company identified in Paragraph 4 above. Title Company will hold the Deposit in escrow by promptly placing the Deposit in a segregated non-interest-bearing account. Title Company will provide the Parties with all specific information concerning this account, including account number, etc. The Deposit shall be applied to the Purchase Price at Closing. The Buyer shall pay the City the unpaid balance of the Purchase Price on the date of Closing.

9. **DEFAULT AND REMEDIES.** In the event of default by Buyer or Seller, the non-defaulting party may terminate this Contract and shall have the right to receive back all things of value tendered. Neither the Buyer nor the Seller shall have any right of specific performance against the other party.

10. **POSSESSION AND WARRANTIES.** Except as otherwise provided for herein, Buyer is purchasing the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS" and "WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED", including, without limitation, the physical condition of the Property (including whether the Property lies within a flood zone, any sinkholes, drainage, whether surface or underground or other damages, the presence or absence of hazardous materials, access to the Property, zoning, set-back and other ordinances, codes, regulations, rules, requirements and orders affecting the Property).

11. **CONVEYANCE BY QUITCLAIM DEED.** Seller shall convey the Property at Closing by Quit Claim Deed to the Buyer in the form attached hereto as **Exhibit 2.**

12. **ASSIGNMENT.** This Contract may not be assigned by either party without the written consent of the other party. This Contract shall be binding upon the successors in interest or heirs of either party.

13. **LEGAL REPRESENTATION.** Buyer and Seller acknowledge and understand that this Contract has numerous legal provisions and that both Buyer and Seller and advised to obtain independent legal representation to review this Contract and advise them as to their respective rights and obligations hereunder. Furthermore, Buyer and Seller acknowledge that this Contract is not in a standard form approved by the Colorado Real Estate Commission.

14. **ORDINANCE 18-03.** Buyer acknowledges that this Contract is subject to the terms and conditions set forth in City of Central Ordinance 18-03.

15. **TITLE INSURANCE.** Seller is not providing any title insurance with the sale and purchase of the Property. If Buyer desires a title insurance policy, in favor of the Buyer in the amount of the Purchase Price or other amount selected by Buyer (the
“Owner’s Policy”), the premium for the Owner’s Policy shall be paid by Buyer. Buyer shall have the obligation to order a title commitment from the Title Company, if Buyer desires an Owner’s Policy. The cost of deletions from the Owner’s Policy of any standard exceptions in Schedule B-2 of the Title Commitment, as well as the cost of any other affirmative coverages or endorsements and the amount of any coverage exceeding the Purchase Price, shall be borne by Buyer.

16. COSTS AND FEES. Closing fees and escrow fees shall be shared equally by the City and Buyer. Per page recording costs shall be paid by the Buyer. The City and the Buyer shall each pay the fees and expenses of their respective legal counsel, and other consultants or advisors incurred in connection with the transaction contemplated by this Contract.

17. NOTICES. Any notices required by this Contract shall be effective if made in writing and either delivered directly; sent by certified or registered mail, return receipt requested; sent by USPS Express Mail, or via email with return-receipt verification addressed to the following:

City: City of Central
    Attention: City Manager
    141 Nevada Street
    Central City, CO 80427
    manager@CITYOFCENTRAL.CO

With a copy to: Michow Cox & McAskin LLP
    Attention: Marcus McAskin
    6530 S. Yosemite Street, Suite 200
    Greenwood Village, CO 80111
    Marcus@mcm-legal.com

Buyer: Whispering Pines L.L.C.
    Attn: Charles “Chuck” Spencer Jr.
    7471 East Windwood Way
    Parker, CO 80134
    Chuck_spencer@comcast.net

All notices shall be deemed received on the date of the return receipt or acknowledgment of delivery.

18. GOVERNMENTAL IMMUNITY. Nothing in this Contract shall be construed as a waiver of the rights and privileges of Seller pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as the same may be amended from time to time.

19. BROKER(S). City represents that there is no Listing Broker for this transaction. The Buyer represents that there is no Selling (Cooperating) Broker for this transaction.
The Parties agree that no commissions will be paid to any Broker(s) or any other persons related to the transaction contemplated by this Contract.

20. **NO THIRD-PARTY BENEFICIARIES.** There are no intended third-party beneficiaries to this Contract.

21. **CLOSING CONDITIONED ON FUTURE LEGISLATIVE ACTION.** Pursuant to C.R.S. § 31-15-713(1)(b) and § 14.3 of the City’s Home Rule Charter, any sale of a fee interest in real property must be approved by an ordinance duly considered and adopted by the City Council. Closing shall be scheduled on a date following the effective date of the ordinance authorizing the conveyance of the Property, but not later than July 31, 2018 unless otherwise agreed to by the Parties in writing.

22. **COLORADO LAW GOVERNS.** The parties expressly agree that the terms and conditions of this Contract shall be construed and controlled by the laws of the State of Colorado.

23. **COUNTERPARTS.** This Contract may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

[SIGNATURE PAGE(S) FOLLOW]
SELLER:

CITY OF CENTRAL, a Colorado home rule municipality

___________________________
Kathryn A. Heider, Mayor

Date of execution: ____________, 2018

REVIEWED BY:

___________________________
By: City Attorney

ATTEST:

___________________________
By: City Clerk

BUYER:

WHISPERING PINES L.L.C., a Colorado limited liability company

___________________________
Name: ______________________
Title: _______________________

Date of execution: ____________, 2018
EXHIBIT 1

DESCRIPTION OF SUBJECT PROPERTY

The subject property consists of approximately 1.54 acres of land adjacent south of the Denver West/Central City KOA Campground, located south of the City of Central City, Colorado. The subject site is a parcel of land between the campground and Lake Gulch Road.

The approximate boundaries of the subject property are shown below:
EXHIBIT 2

FORM OF QUIT CLAIM DEED

NO DOCUMENTARY FEE REQUIRED PER C.R.S. § 39-13-104(1)(a)

QUIT CLAIM DEED

This Quitclaim Deed is made by and between the CITY OF CENTRAL, a home rule municipal corporation of the State of Colorado, whose address is 141 Nevada Street, Central City, Colorado 80427 ("Grantor"), and WHISPERING PINES L.L.C., a Colorado limited liability company, whose address is 7471 East Windwood Way, Parker, Colorado 80134 (the "Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of Twenty Seven Thousand Dollars ($27,000.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto Grantee and Grantee’s successors, and assigns, forever, all right, title, interest, claim and demand which Grantor has in and to the real property, together with improvements, if any situate, lying and being in the City of Central, County of Gilpin, State of Colorado, described as follows:

that certain property described in Exhibit A attached hereto (the “Subject Property”), EXCEPT AND RESERVING TO GRANTOR all easements and right-of-way of whatsoever nature and EXCEPT AND RESERVING TO GRANTOR a right of first refusal to repurchase the Subject Property, as set forth in Exhibit B: Reservation of Right of First Refusal to Repurchase the Subject Property, attached hereto and incorporated in this Deed by reference.

TO HAVE AND TO HOLD the Subject Property, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of Grantor, either in law or equity, to the only proper use and benefit of Grantee and Grantee’s successors, and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed on the date set forth below.
GRANTOR:

CITY OF CENTRAL, a home rule municipal Corporation of the State of Colorado

By:

________________________________________________________________________
Kathryn A. Heider, Mayor
(Pursuant to the authority granted by
Ordinance 18-03)

STATE OF COLORADO )
) ss.
COUNTY OF _____________ )

The foregoing instrument was acknowledged before me this ___ day of
______________, 2018, by Kathryn A. Heider, in her capacity as the Mayor of the City of
Central, a home rule municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires: ________________________________

[SEAL]

________________________________
Notary Public
Exhibit A to QCD

Legal Description of Subject Property

[insert]
Exhibit B to QCD

Reservation of Right of First Refusal to Repurchase the Subject Property

RIGHT OF FIRST REFUSAL TO REPURCHASE PROPERTY

This Right of First Refusal to Repurchase Property ("Right of First Refusal") is reserved to the CITY OF CENTRAL, a home rule municipal corporation of the State of Colorado, whose address is 141 Nevada Street, Central City, Colorado 80427 ("City"), as a reservation in the conveyance of the Property by Quit Claim Deed to WHISPERING PINES L.L.C., a Colorado limited liability company, whose address is 7471 East Windwood Way, Parker, Colorado 80134 DBA Central City KOA ("Owner") and the Right of First Refusal shall be subject to the terms and obligations set forth below.

1. **Grant of Right of First Refusal.** Owner hereby acknowledges the reservation of City’s Right of First Refusal and grants the same to the extent such Right of First Refusal is not reserved. The Right of First Refusal includes the exclusive and irrevocable right of the City to repurchase that certain real property described with particularly in Exhibit A to the Quit Claim Deed: Legal Description of Subject Property (the “Property”).

2. **Exercise of Option.** City may exercise the Right of First Refusal at any time that the use of the Property as a campground cases for ninety (90) consecutive days. Evidence that the Property has ceased to be used as a campground shall include the failure of the Owner or its successor or assigns (collectively, “Central City KOA”) to be open for business to the general public, or the failure of Central City KOA to pay sales taxes and/or special assessments when due to the City for ninety (90) consecutive days. The City shall provide written notice via certified or registered U.S. Mail to Owner of City’s election to repurchase the Property ("Notice of Election").

3. **Terms of Repurchase.** Owner shall execute a special warranty deed or bargain and sale deed ("Conveyance Deed") to the City conveying the Owner’s right, title and interest in the Property to the City within forty-five (45) days of the Owner’s delivery of the Notice of Election. The repurchase price for the Property shall be Twenty-Seven Thousand Dollars ($27,000.00), subject to adjustment as set forth below ("Repurchase Price"). The Repurchase Price shall be adjusted for inflation on January 1, 2020, and on January 1 of each year thereafter based on the annual


percentage change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index (the “CPI”). If the CPI indicates a zero or negative adjustment, the Repurchase Price shall not be adjusted but shall remain fixed at the Repurchase Price applicable in the immediately preceding calendar year. City and Owner shall close on the repurchase and conveyance of the Property to the City (“Closing”) at a time and place mutually acceptable to the City and Owner, provided that both parties shall exercise reasonable, diligent and good-faith efforts to cooperate in all respects related to the Closing. The City and Owner shall each pay one-half of the Closing costs. If the City fails to pay the Repurchase Price to the Owner upon Owner tendering the Conveyance Deed to the City, then this Right of First Refusal shall automatically terminate and have no further force or effect.

4. Term. This Right of First Refusal shall expire on December 31, 2029, and shall thereafter terminate and have no further force or effect.

5. Restriction on Encumbrances. The Owner shall not encumber the Property with mortgages, deeds of trust, liens, easements or other encumbrances without the prior written consent of the City Manager. Owner agrees that any mortgage, deed of trust, or other encumbrance placed on the Property shall be subordinate to the City’s Right of First Refusal. Owner shall pay all taxes due on the Property. To the extent that any mortgage, deed of trust, lien, tax liability or other encumbrance exists on the Property at the time of the City exercising the Right of First Refusal, the City shall have the absolute right to reduce the Repurchase Price by the amount of such encumbrance.

6. Possession. City shall be entitled to possession of the Property at Closing, including all improvements and fixtures located on the Property at the date and time of Closing.

7. Successor and Assigns. This Right of First Refusal shall be binding on the successors, heirs and assigns of Owner and shall run with and burden the Property.

8. Governing Law; Venue. This Right of First Refusal shall be governed by the laws of the State of Colorado. Venue for any dispute shall be in Gilpin County, Colorado.

9. Default and Remedies. In the event of a default or breach of this Right of First Refusal by either party, the non-defaulting party shall be entitled to direct damages or specific performance, but shall not be entitled to indirect or consequential damages.
10. **Attorney Fees and Costs.** In the event of any legal action between the parties (including the successors, heirs or assigns of Owner) arising from this Right of First Refusal, the substantially prevailing party shall be entitled to collect and recover its reasonable attorney fees and costs.

11. **Counterparts.** This Right of First Refusal may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

12. **Signatures.** The City and Owner represent that they are authorized to execute this Right of First Refusal and hereby provide their signatures as follows:

**CITY:**

**CITY OF CENTRAL,** a Colorado home rule municipality

________________________________________
Mayor

Date of execution: _____________, 201__

**ATTEST:**

By: __________________________________
City Clerk

**REVIEWED BY:**

By: __________________________________
City Attorney
OWNER:

WHISPERING PINES L.L.C., a Colorado limited liability company

__________________________
Name: ______________________
Title: ______________________

Date of execution: __________, 201__

STATE OF COLORADO
COUNTY OF ________________

)ss.

The foregoing Right of First Refusal to Repurchase Property was acknowledged before me this ___ day of ____________, 201__, by __________________ as __________________ of Whispering Pines L.L.C., a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: ______________________

[SEAL]

Notary Public
AGENDA ITEM # 9

CITY COUNCIL COMMUNICATION FORM

FROM: Zeke Keeler, Community Development Director

THROUGH: Christiana McCormick, Assistant City Attorney

DATE: March 15, 2018 (for March 20, 2018 meeting)

ITEM: Resolution No. 18-08 - A Resolution of the City Council of the City of Central, Colorado, Approving a Memorandum of Agreement with the Colorado Department of Labor and Employment, Division of Oil and Public Safety, Related to the Regulation of Conveyances

___ ORDINANCE
__ MOTION/RESOLUTION
___ INFORMATION

I. REQUEST OR ISSUE:

Resolution 18-08 (the “Resolution”) approves a memorandum of agreement (the “MOA”) with the Colorado Department of Labor and Employment, Division of Oil and Public Safety (“OPS”) for the regulation of “conveyances” (e.g. elevators and escalators) within the City and authorizes the City Manager to execute the MOA when finalized.

II. RECOMMENDED ACTION / NEXT STEP:

Approve Resolution No. 18-08.

III. FISCAL IMPACTS:

None. The City already regulates conveyances and has an existing MOA with OPS.
IV. **BACKGROUND INFORMATION:**

Article 5.5 of Title 9 of the Colorado Revised Statutes makes regulation of conveyances, as defined by the statute\(^1\), a matter of statewide concern\(^2\) but allows local jurisdictions to regulate conveyances within its boundaries as long as the local regulations meet or exceed state standards.\(^3\)

However, if a local jurisdiction decides to regulate conveyances within its boundaries, OPS must determine whether those local regulations are equal to or more stringent than the state standards.\(^4\) If the local regulations are sufficient, then OPS must enter into an MOA reflecting the approval by OPS of the local jurisdiction’s regulations.\(^5\)

The City has an existing memorandum of agreement with OPS, which is set to expire on June 30, 2018. City staff recommends entering into a new MOA with OPS no later than June 30, 2018 so it may receive continued approval of its standards from OPS and continue to regulate conveyances within Central City. The proposed MOA is virtually identical to the existing agreement, so there will be no major changes to the City’s regulation of conveyances pursuant to the new MOA.

Resolution 18-09 approves the MOA in substantially the form attached to the Resolution, allows the City Attorney to make changes that do not increase the obligations of the City, and authorizes the City Manager to execute the MOA when it is finalized.

V. **LEGAL ISSUES:**

None.

VI. **CONFLICTS OR ENVIRONMENTAL ISSUES:**

None.

VII. **SUMMARY AND ALTERNATIVES:**

City Council has the following options:

---

\(^1\) § 9-5.5-103(11) and -104, C.R.S.
\(^2\) § 9-5.5-102, C.R.S.
\(^3\) § 9-5.5-104(3), C.R.S.
\(^4\) § 9-5.5-104(3), C.R.S.
\(^5\) Id.
(1) Adopt Resolution No. 18-08, as may or may not be amended;

(2) Direct staff to make revisions to the Resolution and schedule consideration of the Resolution on a future City Council agenda; or

(3) Reject or deny the Resolution.

RECOMMENDED MOTION: “I MOVE TO APPROVE RESOLUTION NO. 18-08, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO, APPROVING A MEMORANDUM OF AGREEMENT WITH THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF OIL AND PUBLIC SAFETY, RELATED TO THE REGULATION OF CONVEYANCES.”
CITY OF CENTRAL, COLORADO
RESOLUTION NO. 18-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO, APPROVING A MEMORANDUM OF AGREEMENT WITH THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF OIL AND PUBLIC SAFETY, RELATED TO THE REGULATION OF CONVEYANCES

WHEREAS, the City of Central City previously entered into a memorandum of agreement with the Colorado Department of Labor and Employment, Division of Oil and Public Safety ("OPS") having an effective date of July 1, 2013 (the "Previous MOA"); and

WHEREAS, the Previous MOA is scheduled to terminate on June 30, 2018; and

WHEREAS, the Elevator and Escalator Certification Act, C.R.S. §§ 9-5.5-101 et seq. (the "Act") authorizes the City and OPS to enter into a memorandum of agreement to regulate "conveyances" that are located within the City’s territory; and

WHEREAS, the term "conveyances" is defined in the Act and includes elevators, escalators and other moving walkways; and

WHEREAS, the City Council desires to approve a memorandum of agreement with OPS related to the regulation of conveyances located within the City; and

WHEREAS, a copy of the memorandum of agreement (the "MOA") is attached and incorporated into this Resolution as Exhibit A; and

WHEREAS, the City and OPS have agreed upon the substantive terms of the MOA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO, THAT:

Section 1. The City Council hereby (a) approves the MOA, in substantially the form attached hereto as Exhibit A; (b) authorizes the City Attorney to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the MOA as may be appropriate that do not substantially increase the obligations of the City, and (c) authorizes the City Manager to execute the same on behalf of the City with the approval of the City Attorney.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the City Council.

ADOPTED THIS 20TH DAY OF MARCH, 2018.
CITY OF CENTRAL, COLORADO

By: __________________________
    Kathryn A. Heider, Mayor

ATTEST:

By: __________________________
    Reba Bechtel, City Clerk

APPROVED TO FORM:

By: __________________________
    Marcus A. McAskir, City Attorney

Resolution Exhibits:

Exhibit A – Memorandum of Agreement (MOA)
EXHIBIT A

COLORADO
Department of
Labor and Employment

MEMORANDUM OF AGREEMENT-CMS #
FOR LOCAL JURISDICTION REGULATION OF CONVEYANCES
Pursuant to the Elevator and Escalator Certification Act
Title 9 Article 5.5, Colorado Revised Statutes

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by the Colorado Department of Labor and Employment,
Division of Oil and Public Safety ("OPS"), 633 17th Street, Suite 500, Denver, Colorado 80202-3610 and ("Authority
Having Jurisdiction" or "AHJ"), located at (collectively referred to as the "Parties").

I. BACKGROUND

The Elevator and Escalator Certification Act (the "Act"), Title 9, Article 5.5, Sections 101 through 120, Colorado Revised
Statutes (C.R.S.), declares that "in order to ensure minimum safety standards throughout Colorado, the regulation of
conveyances is a matter of statewide concern". Conveyance Regulations, 7 Colorado Code of Regulations (CCR) 1101-8,
have been promulgated to implement the requirements in the Act, and associated policies and guidance have been
developed to further clarify requirements in regulations.

The Act allows a local authority having jurisdiction (AHJ) to enter into an MOA with OPS to regulate conveyances that are
located within its territory (city, county or city and county) of authority. Following OPS's approval of the AHJ's conveyance
standards and execution of this MOA, the AHJ will be considered an Approved AHJ.

Any reference in this MOA to a statute, regulation, or other authority shall be interpreted to refer to such authority then
current, or as may have been changed or amended since the execution of this MOA. Documents incorporated herein and
by reference to this MOA may be viewed on the OPS website at www.colorado.gov/ops.

II. AUTHORITY AND PURPOSE

The principle authority for this MOA is contained in §9-5.5-112 (2), C.R.S. The Parties have entered into this MOA to:

• Identify the responsibilities of each party for ensuring the safety of conveyances within the State of Colorado
  through compliance with the Act, regulations, and associated policies and guidance;
• Formalize the cooperative working relationships between the Parties; and
• To provide procedures for communications, exchange of information, and resolution of problems as necessary to
  carry out the provisions of the Act and regulations.

III. EFFECTIVE DATE AND TERM

This MOA shall be effective upon the satisfaction of OPS that the AHJ has developed a program that can
adequately regulate conveyances within its territory. This MOA will terminate on , unless terminated sooner as
specified herein.

IV. RESPONSIBILITIES OF OPS

A. OPS shall approve the AHJ entering into this MOA.
B. OPS shall adopt nationally recognized conveyance safety standards.
C. OPS shall require that all newly installed and existing conveyances in the State of Colorado are registered with
   OPS. This process will include the collection of a one-time registration fee from the conveyance owner.
D. OPS shall require that all conveyance contractors, mechanics, temporary mechanics and inspectors conducting
   work in the State of Colorado are licensed through OPS.

V. RESPONSIBILITIES OF THE AHJ

A. The AHJ shall operate and enforce a conveyance regulation program within its territory of authority with
   standards equal to or more stringent than those within current OPS statute and regulation.
B. The AHJ shall relay information regarding conveyances within its territory to the OPS on an annual frequency.
   This information shall be submitted to OPS no later than February 28th of each calendar year and shall include
information from the previous calendar year. The information and information format shall be determined by
the OPS and shall be incorporated by reference herein to this MOA.

C. The AHJ shall, in cooperation with OPS, establish a schedule for the AHJ to initially adopt standards listed in §9-
5.5-112 (1), C.R.S. Following this initial adoption, the AHJ shall remain current in adoption of future standard
versions within 12 months from the date at which OPS adopts the standard.

D. The AHJ shall ensure that all new and existing conveyances regulated by OPS within the territory of the AHJ are
registered with OPS prior to issuing a Certificate of Operation for those conveyances.

E. The AHJ shall be responsible for ensuring that all conveyances within the AHJ territory are operating under a
current Certificate of Operation.

F. The AHJ shall ensure that all entities described in IV. D. above are licensed with OPS prior to conducting work in
its territory. Information regarding unlicensed entities shall be reported to OPS immediately in order that OPS
enforcement be initiated.

G. Within 24 hours of notification received by the AHJ, the AHJ shall notify OPS of any accident resulting in injury to
an individual.

H. If the AHJ utilizes a subcontractor in the performance of its responsibilities under this MOA, the AHJ shall ensure
that the subcontractor holds all required licenses and/or certification to perform their responsibilities, and
maintains adequate insurance coverage at all times while performing their responsibilities.

I. The AHJ shall issue a construction permit to the conveyance owner or conveyance contractor prior to the
installation or alteration of a regulated conveyance.

J. If allowed per AHJ regulations, the AHJ shall review and make determination of approval or denial for all
Alternate Materials and Methods Requests (AMMR - code variances) submitted by conveyance owners or
contractors. The AHJ must notify the OPS on all AMMR determinations.

VI. ACCESS TO INFORMATION

A. To the extent allowed by law, each party shall make available to each to the other party, at no cost, information
regarding conveyances within its territory. Requests for information shall not impose an unreasonable resource
burden on the other party.

B. Upon reasonable notice to the AHJ during the term of this MOA, OPS may inspect and review AHJ’s records with
regard to this MOA.

VII. TERMINATION

The Parties may terminate this MOA for their convenience by notifying the other party in writing, as described in
Section VIII C of this MOA, of their intent to terminate this MOA. Such termination shall be effective thirty (30)
calendar days following notice. Notwithstanding the above, OPS may terminate this MOA immediately if the AHJ fails
to satisfactorily perform its responsibilities hereunder during the term of this MOA.

VIII. GENERAL PROVISIONS

A. Legal Authority

The parties warrant that each possesses actual, legal authority to enter into this MOA. The parties further warrant
that each has taken all actions required by its applicable law, procedures, rules, or by-laws to exercise that authority,
and to lawfully authorize its undersigned signatory to execute this MOA and bind that party to its terms. The person
or persons signing this MOA, or any attachments or amendments hereto, also warrant(s) that such person(s)
possesses actual, legal authority to execute this MOA, and any attachments or amendments hereto, on behalf of that
party.

B. Notice of Pending Litigation

Unless otherwise provided for in this MOA, the AHJ shall notify the OPS individuals, as listed below in C, within five (5)
working days after being served with a summons, complaint, or other pleading in a case which involves any services
provided under this MOA and which has been filed in any federal or state court or administrative agency.

C. Notice Procedure

All notices required to be given under this MOA shall be in writing and shall be deemed given when personally served
or three (3) days after deposit in the United States Mail, certified mail, return receipt requested, and addressed to the
following parties or to such other addressee(s) as may be designated by a notice complying with the foregoing
requirements. If sent by facsimile, notice shall be deemed given at the time of completion of the transmission of the
facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.

For the AHJ:

<table>
<thead>
<tr>
<th>Name &amp; Title:</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Address:</td>
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<tr>
<td></td>
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<tr>
<td>Phone/Fax:</td>
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<td></td>
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</tbody>
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For OPS:

<table>
<thead>
<tr>
<th>Name &amp; Title:</th>
<th>Lisa Eze, Purchasing Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Colorado Department of Labor &amp; Employment</td>
</tr>
<tr>
<td></td>
<td>633 17th Street, Suite 1100, Denver CO 80202</td>
</tr>
<tr>
<td>Phone/Fax:</td>
<td>303-318-8054, 303-318-8068</td>
</tr>
</tbody>
</table>

With a copy to:

<table>
<thead>
<tr>
<th>Name &amp; Title:</th>
<th>Greg Johnson, Conveyance Section Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Colorado Department of Labor &amp; Employment</td>
</tr>
<tr>
<td></td>
<td>Oil &amp; Public Safety Division</td>
</tr>
<tr>
<td></td>
<td>633 17th Street, Suite 500, Denver CO 80202</td>
</tr>
<tr>
<td>Phone/Fax:</td>
<td>303-318-8536, 303-318-8534</td>
</tr>
</tbody>
</table>

D. Independent Contractor
Neither AHJ nor any agent or employee of AHJ shall be or shall be deemed to be an agent or employee of OPS.

E. Third-Party Claims
Only to the extent that indemnification is consistent with any constitutional or statutory limitations on the AHJ's ability to indemnify others, to the extent permitted by law, the AHJ shall indemnify and hold OPS harmless against any third party claims that may arise under this MOA as a direct result of the AHJ's performance or non-performance of its responsibilities hereunder.

F. Adherence To Applicable Laws.
At all times during the term of this MOA, both parties shall comply with all applicable federal and state laws, regulations, rules, or procedures, as these provisions currently exist or may hereafter be amended, all of which are incorporated herein by reference and made a part of the terms and conditions of this MOA.

G. Venue.
The Parties agree that exclusive venue for any action related to this MOA shall be filed in the City and County of Denver, Colorado.

H. Governmental Immunity Act
No term or condition of this MOA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

I. Entire Understanding
This MOA is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever, unless embodied in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written contract executed and approved by the Parties.
IX. APPROVALS

The Parties hereto have executed this MOA.

<table>
<thead>
<tr>
<th>By:</th>
<th>Colorado Department of Labor and Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Division of Oil and Public Safety</td>
</tr>
<tr>
<td>Date:</td>
<td>By:</td>
</tr>
<tr>
<td></td>
<td>Mahesh Albuquerque, Director</td>
</tr>
<tr>
<td></td>
<td>Date:</td>
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</table>
## Building

<table>
<thead>
<tr>
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<tr>
<td>Permits</td>
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<tr>
<td>Elevator Inspections</td>
<td>Draft MOU from State under review</td>
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</tbody>
</table>

## Planning

- Various Initial Development/Building Inquires addressed
- Growth IGA – Update and Discussion Started – Jan. 2018

**Planning Commission**

- Last meeting – January 2018
- Topic: LDC changes – Parking Fee In-Lieu

## Economic Development

- Northwest Colorado Enterprise Zone
  - Local Business pursuing tax credit for Qualified Work
  - Central City Opera – Contribution Project Status Obtained
  - Belvidere Theater – Contribution Project Status being pursued

- Urban Land Institute
  - T.A.P. Program: $15,000
  - Parking Fee In-Lieu: Other jurisdiction information being obtained

  - $5,000 from CC BID & $5,000 from DRCOG (grant application made March 15th)

## Historic Preservation

- Belvidere Theater
  - Owner Representative Search Underway
  - Consultant hired to find and obtain outside grant funding
  - Formal donation program being considered

- Washington Hall
  - Heat Installation: Heat is operational, project closeout is underway

## Historic Preservation Commission

- Vacancy Filled
  - Last Meeting – February 2018
  - Topic: Change of Roof design

- 2018 cases: 2
- Training: Saving Places Conference (3 members) Jan./Feb. 2018

## Visitor Center

- New items being pursued to sell

## Code Enforcement

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
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<tbody>
<tr>
<td></td>
<td>35</td>
<td>33</td>
<td>11</td>
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- Respond to complaints made -
<table>
<thead>
<tr>
<th>Staff</th>
<th>Wellness Program</th>
<th>Training at UC Denver</th>
<th>Managing Consultants</th>
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</thead>
<tbody>
<tr>
<td>Sipa Grant</td>
<td>$6,500 Request made - Denied</td>
<td>Youtube.com</td>
<td>Livestreaming of City Council Meetings and Opening Issues Work with Consultant and Cable Company Continue</td>
</tr>
<tr>
<td>Public Access Cable Channel</td>
<td>Administration, Promotion, and Monitoring Continue</td>
<td>Website/Social Media</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Audio Visual / Website / Information Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concept ideas planned to be discussed with council on March 6th</td>
</tr>
<tr>
<td>Hot Rod Hill Climb</td>
</tr>
<tr>
<td>Saving Places Conference 2018 – Copper</td>
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<td>Mountain Adventure Print</td>
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<tr>
<td>Ads running for 2018</td>
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<td>Print/digital ads</td>
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<td>Fall 2018 Rock Card</td>
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<td>Direct City Marketing &amp; Promotion</td>
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<td>Employment Opportunities</td>
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<td>VISTA Program</td>
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<td>Self-Funding</td>
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<tr>
<td>Merchandise</td>
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<tr>
<td>Shirts, books, and post cards for sale</td>
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<td>February 2018</td>
</tr>
<tr>
<td>Last Meeting</td>
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<table>
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<th>Main Street Central City</th>
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<tr>
<td>In the Planning Stages</td>
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<td>Combination of all three</td>
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<td>Video #4</td>
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<td>Video #3</td>
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<tr>
<td>Video #2</td>
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<table>
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<th>Promotional Videos</th>
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<tbody>
<tr>
<td>Tour</td>
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<td>Interactive Walking</td>
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<tr>
<td>Mobile Town Guide developed „Mobile Town Guide Central City“</td>
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<tr>
<td>Lease have been determined</td>
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<tr>
<td>Billboard</td>
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To: Mayor Heider, City Council, and City Manager
From: Sam Hoover, Public Works Director
Date: March 15, 2018
Re: Bi-weekly Report

Since our last council update, public works staff has performed the following activities:

- Continued anchoring the buck and pole fence near the cemetery's
- Swept the main arterials
- Reviewed the RFP’s for the Central City 2018 Chip Seal Program
- Patched streets
- Cleaned reflectors on the Parkway
To: City Manager, Daniel Miera
From: Jack Beard
Date: March, 2018
Re: Bi-Monthly Report

- Over the past three weeks the department has been responding to frozen water service lines. Department staff has assisted in thawing out the service lines with the “Steam Chief” which is essentially a propane fired boiler that creates steam to indirectly thaw lines from the meter pit. The tool has been very useful and the only damaged caused by freezing was a cracked meter freeze plate.
- On March 1st department staff responded to calls of a water main line break, staff tested the water for chlorine and determined that it was leaking from the water main and not ground water. Water staff partnered with Public Works staff to excavate and repair the broken water main.
- The UTV/Side by Side that the department ordered was built and delivered in the first week of March. The vehicle will allow staff to access the raw water diversion structures and raw water reservoirs throughout all seasons to monitor security and flows.
- On Saturday March 3rd the department saw an increase in raw water turbidity and had trouble treating the water. Numerous chemical doing changes occurred and backwash times were reduced. Eventually it was determined that the department was seeing the effects of a mini spring runoff due to the abnormally warm weather. This has caused staff to begin preparing the water treatment plant for the start of spring runoff. Staff does not believe that spring runoff to begin anytime soon. Snow pack is being monitored and hopes for some additional snowfall would be ideal, although there is still two heavy snow months to come.
## GILPIN COUNTY SHERIFF OFFICE

Central City Stats

Dates and time: 2/1/18 00:00:00 to 2/28/18 23:59:59

Month of February

<table>
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<th>Offense</th>
<th>Citation only</th>
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<th>Arrest</th>
<th>Casino related</th>
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| totals        | 6             | 38     | 7      | 18             |          |

### Other Calls of Interest

- Animal 3
- Business checks 466
- Camping 0
- Parking citations 10