

City of Cherry Hills Village
Attn: Pamela Broyles
2450 E Quincy Avenue
Cherry Hills Village CO 80113

ORDINANCE NO. 05
Series 2007

February 20, 2007: Introduced as Council Bill 02, Series 2007 by Councilmember Doug Tisdale, seconded by Councilmember Bonnie Blum, and considered by the title only on first reading. Passed unanimously.

March 20, 2007: Considered in full text on second reading. Passed unanimously.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
VACATING THE CITY'S INTEREST, IF ANY, TO AN EASEMENT FOR A NON-
MOTORIZED PUBLIC TRAIL LOCATED BETWEEN LOT 12, CHERRY HILLS
MEADOW AND LOT 14, SOUTH BROADWAY HEIGHTS ADDITION

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village is expressly authorized to own, possess, and hold real property and to sell and dispose of such real property; and

WHEREAS, Colorado state statutes, at Title 43, article 2, part 3, C.R.S., authorize every municipal governing body to divest the municipality's interest in platted or designated public streets, roads and other public ways in accordance with the municipality's charter and laws; and

WHEREAS, the vacation and disposition of municipal interests in public rights-of-way and other public property is identified by the appellate courts of the State of Colorado as a legislative and discretionary function of the local governing body; and

WHEREAS, pursuant to its Home Rule Charter and state law, the City Council holds the power and authority to specify the terms and conditions under which the City will consider and dispose of public interests in rights-of-way, easements, and other property; and

WHEREAS, the vacation of public rights-of-way are governed by Article V of Chapter 11 of the City Code; and

WHEREAS, the owner of properties identified as Lots 12 and 13, Cherry Hills Meadow, and Lot 14, South Broadway Heights Addition, has petitioned the City Council for the City's vacation of an easement for a non-motorized public trail located between Lot 12 and Lot 14, which is 16 feet wide and approximately 285.26 feet in length, for a total area to be vacated of approximately 4,542 square feet, and

WHEREAS, in exchange for such vacation, the owner wishes to (1) dedicate to the City an easement for a substitute non-motorized public trail sixteen feet wide and approximately 590.16 feet, for a total area to be dedicated of approximately 9685 square feet, which shall be located entirely on Lot 14, and (2) construct such substitute non-motorized public trail at petitioner's expense; and

WHEREAS, the vacation of the City's interest in the easement for the non-motorized public trail described in the petition would not decrease the length nor total square footage of non-motorized public trails in the City; and

WHEREAS, the City provided public notice of the proposed vacation in accordance with law; and

WHEREAS, having received a favorable recommendation from the Parks and Trails Committee, the Planning and Zoning Commission considered the petition for vacation, found that the vacation will serve the public interest and recommended the proposed vacation be approved. The Planning and Zoning Commission, finding that certain conditions of approval are necessary or desirable to protect the public health, safety and welfare, conditioned its approval of the petition on the petitioner's dedication of an easement for the substitute non-motorized public trail, on the petitioner's construction and establishment of the proposed substitute non-motorized public trail, including the provision of certain public and private improvements at petitioner's sole expense, and on such improvements mitigating the impact of the substitute non-motorized public trail on those property owners whose property will abut the substitute non-motorized public trail; and

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WHEREAS, the City Code, at Section 17-4-10 and 17-4-20, provides that requirements for public and private improvements be memorialized in a development agreement; and

WHEREAS, the City desires to vacate the easement for the non-motorized public trail identified in the petition and to accept the easement for a substitute non-motorized public trail in accordance with Chapter;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. The City Council finds that the easement for a non-motorized public recreational trail, more particularly described in **Exhibit A** and depicted in **Exhibit B**, below, is no longer necessary for use by the public, that the vacation of the easement for the non-motorized public trail serves the public interest and is in the best interest of the City of Cherry Hills Village. Based upon such findings, the City's title or claim to ownership of the easement for the non-motorized public recreational trail is hereby vacated subject to the conditions stated in Section 3, below.

Section 2. The City Council accepts the dedication by petitioner of the substitute easement for non-motorized public trail, more particularly described in **Exhibit C** and depicted in **Exhibit D**, below, subject to the conditions stated in Section 3, below.

Section 3. In accordance with Section 11-5-30(b) of the City Code for the City of Cherry Hills Village, the City Council conditions the vacation and dedication approved by this Ordinance upon the satisfaction of the following events:

(A) The petitioner shall enter into a development agreement with the City pursuant to Sections 17-4-10 and 17-4-20 of the City Code and in substantially the form of **Exhibit E**, below, which, in addition to meeting the requirements of those Code sections, requires the petitioner to make certain public and private improvements, including:

(1) The construction and installation of a public improvement in the form of three-rail split rail fence, located as depicted on **Exhibit D**, which shall be dedicated to the City and warranted by the petitioner for one year after its completion and which, if acceptable to the City, shall be thereafter accepted and maintained by the City after the one-year warranty period has elapsed;

(2) The installation, establishment and maintenance of private improvements consisting of landscaping to be installed pursuant to the landscaping plan, depicted in **Exhibit F**, below, and a fence segment, which shall consist of a three-rail, white plastic fence, which is identical to the existing fence surrounding the Cherry Hills Meadow subdivision, and shall be located as depicted by the heavy black line on **Exhibit G**, below.

(B) The petitioner shall enter into an easement agreement for non-motorized public trail with the City in substantially the form of **Exhibit H**, below, by which the petitioner dedicates to the City a non-exclusive, permanent and perpetual easement for the non-motorized public trail described and depicted in Exhibits C and D, respectively.

(C) The receipt by the City of letters from the property owners whose property abuts the substitute non-motorized public trail (the Spiegals and the Shpalls) stating that they approve of the landscaping plan depicted in **Exhibit F**.

(D) The acceptance by the City of the public improvement, pursuant to the terms of the development agreement, **Exhibit E**, below.

(E) The non-motorized public trail that currently exists on the easement for non-motorized public trail being vacated by this Ordinance shall not be closed to public use until the substitute non-motorized public trail is properly established and the public and private improvements have been properly constructed and/or installed, as determined by the City in its sole discretion, the easement for the new non-motorized public trail and the public improvement has been accepted by the City and the easement vacated by this Ordinance has been finally approved by the City.

Section 4. Ownership of the City's interest in the portion of the easement for non-motorized public trail vacated by this Ordinance shall vest in accordance with

Section 11-5-60 of the City Code and Section 43-3-302, C.R.S. only upon satisfaction of the conditions of approval. Satisfaction of the conditions of approval shall be deemed conclusive upon (1) the City's recording of the following documents with the Arapahoe County Clerk and Recorder's Office: (a) this Ordinance, (b) the development agreement, (c) the easement for non-motorized public trail; and (2) construction and acceptance of the public improvements.

Section 5. No Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall render the remaining portions or applications of this Ordinance invalid. It is the express intent and declaration of the City Council that the Council would not approve the vacation of the easement vacated hereby without all provisions of this Ordinance being valid and effective.

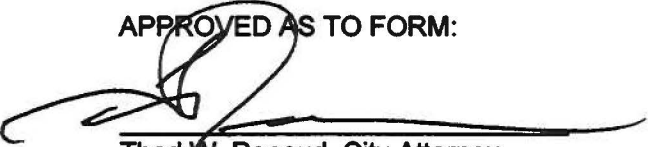
Adopted as Ordinance No. 05 Series 2007, by the City Council of the City of Cherry Hills Village, Colorado this 20th day of March, 2007.


Michael J. Wozniak, Mayor

ATTEST:


Karen C. Losier, City Clerk

APPROVED AS TO FORM:


Thad W. Renaud, City Attorney

Published in the Villager
Published _____
Legal # _____

ABF554



Flatirons, Inc.
 3825 Iris Avenue suite# 395
 Boulder, CO 80301

VACATION DESCRIPTION
 (SHEET 1 OF 2)

Of a 16' wide Public Recreational Trail in Lot 12, Cherry Hills Meadow, located in the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the East line of Lot 12, Cherry Hills Meadow to bear North 00°03'23" West, with all bearings herein being relative thereto.

COMMENCING at the Southeast corner of said Lot 12; thence along the East line of said Lot 12 North 00°03'23" West, a distance of 8.00 feet to the POINT OF BEGINNING; thence continuing along said East line North 00°03'23" West, a distance of 282.50 feet to the Northeast corner of said Lot 12; thence along the Northerly line of said Lot 12 North 81°31'38" West, a distance of 16.18 feet; thence South 00°03'23" East, a distance of 285.26 feet; thence North 88°37'44" East, a distance of 16.00 feet to the POINT OF BEGINNING.

Containing 4,542 square feet, or 0.10 acres, more or less

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Vacation description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or subdivide land in violation of State Statute.

John B. Guyton
 John B. Guyton
 Colorado P.L.S.#16406
 President, Flatirons, Inc.

16406
 16406
 12/25/06
 Date
 Job No. 05-49,554

LOT 13,
CHERRY HILLS MEADOW
(SALISBURY INVESTMENT
HOLDINGS, LLC.)

8' UTILITY EASEMENT
8' UTILITY EASEMENT
NORTH LINE LOT 12

LOT 12,
CHERRY HILLS MEADOW
(SALISBURY INVESTMENT
HOLDINGS, LLC.)

LOT 14
SOUTH BROADWAY
HEIGHTS ADDITION
(OWNER: SALISBURY
INVESTMENT HOLDINGS,
LLC.)

9' PRIVATE RECREATIONAL
TRAIL EASEMENT

16' PUBLIC RECREATIONAL TRAIL
EASEMENT TO BE VACATED BY THIS
DOCUMENT
(4,542 sq. ft. / 0.10 acres ±)

POINT OF
BEGINNING

SE COR., LOT 12
POINT OF COMMENCEMENT

EAST QUINCY AVENUE (60' RIGHT-OF-WAY)



Flatirons, Inc.
3825 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatirons.com



Flatirons, Inc.
 3825 Iris Avenue suite# 395
 Boulder, CO 80301

EASEMENT DESCRIPTION
(SHEET 1 OF 2)

Of a Public Recreational Trail Easement located in part of the South half of Lot 14, South Broadway Heights Addition, and parts of Lots 12 and 13, Cherry Hills Meadow, being a part of the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the West line of the South half of Lot 14, South Broadway Heights Addition to bear North 00°03'23" West, with all bearings herein being relative thereto;

BEGINNING at the Northwest corner of said South half Lot 14; thence South 45°03'23" East, a distance of 5.53 feet; thence along a line 4 feet South of and parallel to the North line of said South half of Lot 14 North 88°37'44" East a distance of 284.16 feet; thence South 00°03'23" East, a distance of 296.08 feet to a point on the South line of said South half Lot 14; thence along said South line South 88°37'44" West, a distance of 35.09 feet; thence departing said South line 30.76 feet along the arc of a non-tangent curve, said arc having a radius of 20.00 feet, an included angle of 88°07'12" and being subtended by a chord bearing North 43°15'15" East a distance of 27.82 feet; thence North 00°03'23" West, a distance of 238.01 feet; thence 36.48 feet along the arc of a tangent curve to the left, said arc having a radius of 20.00 feet, an included angle of 104°29'51" and being subtended by a chord bearing North 46°39'31" West a distance of 31.63 feet; thence along a line 20 feet South of and parallel to said North line, South 88°37'44" West, a distance of 238.00 feet; thence 50.02 feet along the arc of a non-tangent curve to the right, said arc having a radius of 20.00 feet, an included angle of 143°17'19" and being subtended by a chord bearing North 45°34'07" West a distance of 37.96 feet to a point on the West line of an existing 16 foot wide Public Recreational Trail easement; thence along said West line, South 00°03'23" East, a distance of 14.03 feet to a point on the North line of Lot 12 Cherry Hills Meadow; thence along said North line South 81°31'38" East, a distance of 16.18 feet to the Northeast corner of said Lot 12, said point also lying on the West line of the South half of Lot 14, South Broadway Heights Addition; thence along said West line North 00°03'23" West a distance of 9.58 feet to the Northwest corner of said South half Lot 14, said point also being the **POINT OF BEGINNING**.
 Containing 9,465 square feet or 0.22 acres, more or less.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Easement description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or Subdivide land in violation of State Statute. _____

 John B. Guyton
 Colorado P.L.S.#16406
 Chairman & CEO
 Flatirons, Inc.

 Date
 FSI Job No. 05-49,554

OF A PUBLIC RECREATIONAL TRAIL EASEMENT IN PART OF THE SOUTH HALF OF LOT 14, SOUTH BROADWAY HEIGHTS ADDITION, AND PARTS OF LOTS 12 AND 13, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.

(SHEET 2 OF 2)

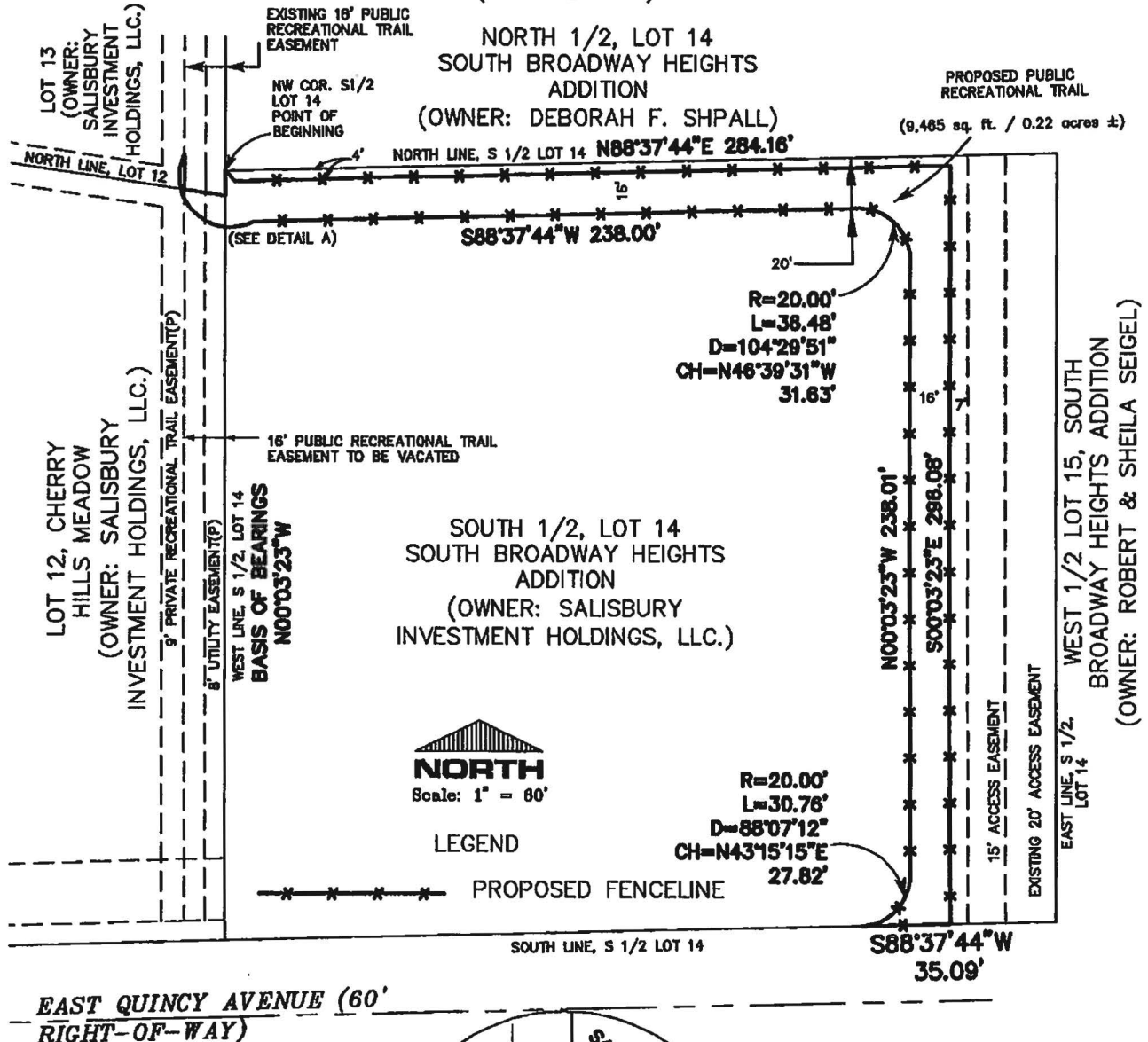


EXHIBIT E

Exhibit E: Development Agreement for Rady Easement Vacation

This document was recorded on June 3, 2008 with the Arapahoe County Clerk and Recorder. Reception #B8062699. Receipt #5404593. 26 pages.

B 8062699

$$87.41\% \cdot \frac{1}{4} = 21.85\%$$


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Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

LOCATION DESCRIPTION
(SHEET 1 OF 2)

A proposed fence to be constructed in a portion of Lot 12, Cherry Hills Meadow, located in the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the East line of Lot 12, Cherry Hills Meadow to bear North 00°03'23" West, with all bearings herein being relative thereto.

BEGINNING at the Southeast corner of said Lot 12; thence 36.74 feet along the arc or a non-tangent curve to the right, said curve having a radius of 43.10 feet, an included angle of 48°50'37" and being subtended by a chord bearing North 67°23'57" West a distance of 35.64 feet; thence 21.99 feet along the arc of a non-tangent curve to the left, said curve having a radius of 26.92 feet, an included angle of 46°48'10" and being subtended by a chord bearing North 68°40'38" West a distance of 21.38 feet; thence South 89°56'37" West a distance of 24.75 feet to a point on an existing fenceline, said point also being the POINT OF TERMINUS.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Location description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or subdivide land in violation of State Statute.

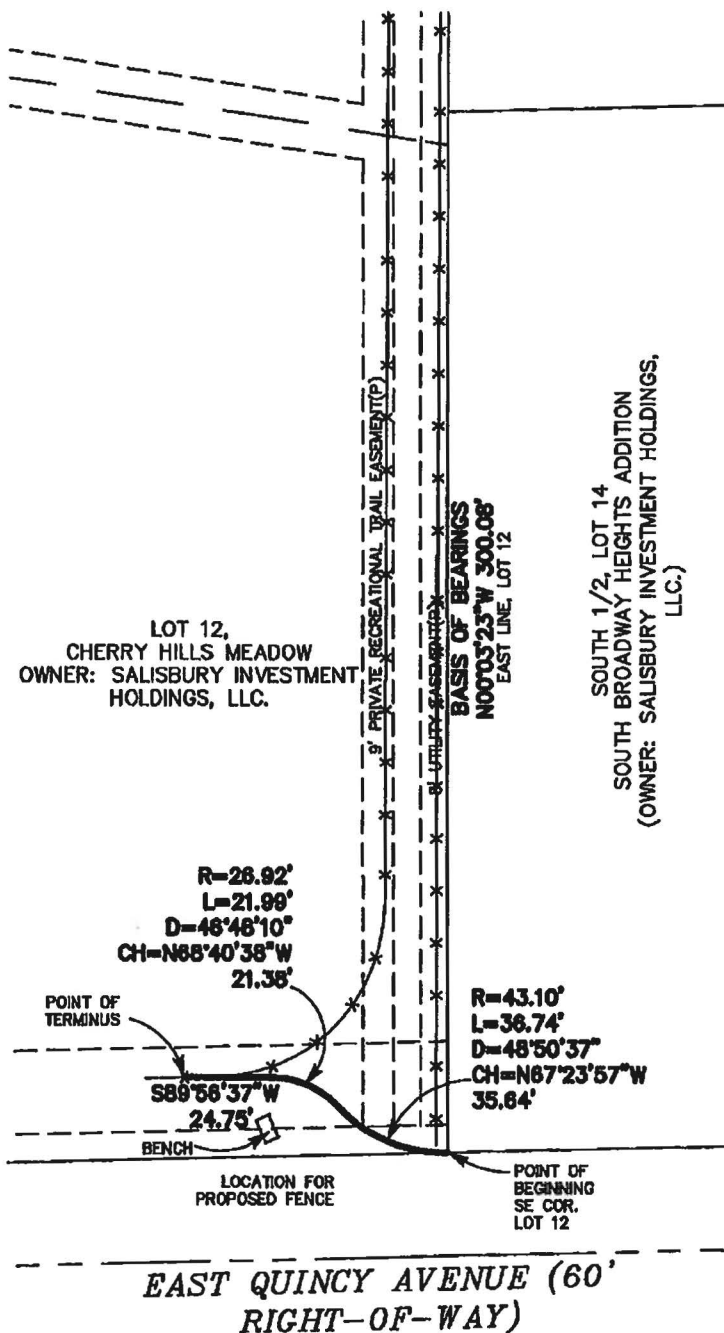
John B. Guyton
Colorado P.L.S.#16406
President, Flatirons, Inc.

Date
FSI Job No. 05-49,554

LOCATION EXHIBIT

OF A PROPOSED FENCE TO BE CONSTRUCTED IN A PORTION OF LOT 12, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.

(SHEET 2 OF 2)



Scale: 1" = 50'

THIS IS NOT A "LAND SURVEY PLAT" OR IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS. RECORD INFORMATION SHOWN HEREON IS BASED ON TITLE DOCUMENTS PROVIDED BY CLIENT.

DATE: 11/21/06
FSI JOB NO. 05-49,554



Flatirons, Inc.
3825 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatirons.com

EXHIBIT H

Exhibit H: Agreement and Easement for a Non-Motorized Public Trail

This document was recorded on June 3, 2008 with the Arapahoe County Clerk and Recorder. Reception #B8062698. Receipt #5404593. 36 pages.

B8062698

City of Cherry Hills Village
Attn: Pamela Broyles
2450 E Quincy Ave
Cherry Hills Village CO 80113

131⁰⁰

1-26

Arapahoe County Clerk & Recorder, Nancy A. Doty
Reception #: B8062699
Receipt #: 5404597
Pages Recorded: 26
Recording Fee: \$131.00
Data Recorded: 6/3/2008 9:17:12 AM


**CITY OF CHERRY HILLS VILLAGE, COLORADO
DEVELOPMENT AGREEMENT
FOR
RADY EASEMENT VACATION**

THIS CITY OF CHERRY HILLS VILLAGE, COLORADO, DEVELOPMENT AGREEMENT FOR THE RADY EASEMENT VACATION (this "Agreement") is entered into and made between **SALISBURY INVESTMENT HOLDINGS, LLC**, which owns the property located at 3 Mockingbird Lane, 4 Mockingbird Lane and 1305 East Quincy Avenue, Cherry Hills Village, Colorado 80110 ("Owner") and the **CITY OF CHERRY HILLS VILLAGE, COLORADO**, a Colorado home rule municipal corporation whose address is 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113 (the "City"). Owner and the City shall collectively be referred to as the "Parties."

This Agreement shall be effective following execution by Owner and immediately upon the date of the authorized execution of this Agreement by the City's Mayor.

RECITALS AND REPRESENTATIONS

WHEREAS, Owner represents that it is the sole owner of 3 Mockingbird Lane, 4 Mockingbird Lane and 1305 East Quincy Avenue, each of which is located within the City of Cherry Hills Village, Colorado, and is more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Owner has requested that a trail easement that is currently located on the Property as described in **Exhibit B** (the "Existing Trail") be relocated to another portion of the Property as described in **Exhibit C** and depicted on **Exhibit D**, each of which is attached hereto and incorporated herein by this reference (the "New Trail"); and

WHEREAS, in order to effect this relocation, Owner has requested that the easement for the Existing Trail be vacated; and

WHEREAS, as a condition of approving the requested trail vacation, the City has required that Owner dedicate a substitute trail easement, construct and establish the New Trail, and provide certain public and private improvements; and

WHEREAS, Owner and the City desire to set forth and confirm certain obligations of Owner for these improvements within the Property, which consist of a three-rail split rail fence, a fence segment and landscaping; and

WHEREAS, agreements regarding public and private improvements are governed by the City's Municipal Code at Sections 17-4-10 and 17-4-20; and

WHEREAS, it is further mutually acknowledged that the City is entitled to other assurance that the matters herein agreed will be performed by Owner, and in that regard, Owner will furnish to the City a Performance Bond, or other security acceptable to the

City, in the amount of \$102,953.06 to cover the estimated cost of constructing the improvements agreed upon herein,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the City of Cherry Hills Village of the Rady Easement Vacation, and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged by the parties, the Parties agree as follows:

1.0 GENERAL.

The Recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2.0 DEFINITIONS.

2.1 *Fence* means the fence to be constructed by Owner pursuant to paragraph 3.1.1 of this Agreement and which shall consist of a three-rail, split rail cedar fence in a form approved by the City.

2.2 *Fence Segment* means the fence to be constructed by Owner pursuant to paragraph 3.1.1 of this Agreement and which shall consist of a three-rail, white plastic fence, which is identical to the existing fence surrounding the Cherry Hills Meadow subdivision and is in a form approved by the City.

2.3 *Landscaping* means the landscaping to be installed by Owner pursuant to paragraph 3.1.3 of this Agreement and which shall consist of the plants indicated in the landscaping plan, attached hereto as **Exhibit E** and incorporated herein by this reference (the "Landscaping Plan").

2.4 *Improvements* means the public and private improvements Owner is required to construct or install pursuant to this Agreement, including the Fence, the Fence Segment and the Landscaping.

3.0 OBLIGATIONS TO CONSTRUCT AND MAINTAIN IMPROVEMENTS.

3.1 Obligation of Owner for Construction of Improvements.

3.1.1. Owner shall construct the Fence in the location shown on Exhibit C.

3.1.2 Owner shall construct the Fence Segment in the location legally described in **Exhibit F** and depicted by the heavy black line on **Exhibit G**, both of which are attached hereto and incorporated herein by this reference.

3.1.3 Owner shall install the Landscaping in the locations shown on the Landscaping Plan.

3.2 It is estimated that the cost of constructing and installing the Improvements will be approximately \$93,593.69 (**Exhibit H**). In order to secure the performance of Owner under Section 3.1.1, 3.1.2 and 3.1.3 of this Agreement, Owner will furnish to the City a Performance Bond or other security acceptable to the City in the amount of \$102,953.06. If said Improvements have not been completed and/or paid for within one (1) year from the date of recordation of the Rady Easement Vacation, then the City may draw upon the Performance Bond such amount as may be necessary to complete the construction and/or installation of said Improvements.

3.3 Existing Trail Closure. The Existing Trail shall not be closed to public use until the New Trail is properly established and the Improvements have been properly constructed and/or installed, as determined by the City in its sole discretion, the New Trail has been accepted by the City, and the vacation of the Existing Trail has been finally approved by City Council.

3.4 Cost of Inspection Services. Owner, or its assigns, agrees to pay for inspection services performed on behalf of the City and made necessary as a result of the desire of Owner to construct or install certain public improvements that may be maintained in the future by the City. The cost of said inspection services is estimated to be \$250.00 (**Exhibit I**) and is to be forthwith deposited with the clerk of the City of Cherry Hills Village to be held in escrow before construction begins on said improvements. Owner gives the City the right and authority to make disbursements from said escrow account for engineering inspection services performed. Any balances remaining in the escrow account at the completion and approval of the necessary improvements shall be returned to Owner without interest. In the event said funds are exhausted before completion of construction inspection, Owner will make a supplemental deposit to said escrow account in an amount determined by the City Manager. Failure to make necessary supplemental deposits shall cause the construction process to cease until the required deposits are made.

3.5 Warranty of Public Improvements. Notwithstanding any provisions to the contrary, the Fence, which shall be dedicated to the City for public use, must remain free from defect for a period of one (1) year from the date that the construction of the Fence is complete as determined by the City. Owner shall deposit with the City cash sufficient to repair or replace the Fence which shall be an amount equal to the cost of the construction of the Fence (as provided in Exhibit H) plus a reasonable amount for contingencies, which shall be no less than ten percent (10%) of such cost. Said cash deposit shall remain with the City pursuant to this Agreement until the first anniversary of the completion of the Fence, at which time, depending upon the condition of the Fence, the City may, in its sole discretion, do what it deems necessary for the public health, safety and welfare, including but not limited to:

3.5.1 Accept the same for maintenance;

3.5.2 Require Owner to correct any defects in the Fence; or

3.5.3 Use the cash to correct any defect in the Fence.

Owner shall be responsible for paying the City for any shortfall in the deposit made pursuant to this Section 3.5. Once the Fence has been finally accepted by the City, the City shall return to Owner, without interest, any remaining cash on deposit with the City pursuant to this Agreement.

3.6 Obligations of Owner for Maintenance of Private Improvements. Owner shall be responsible for maintaining the Fence Segment and the Landscaping. If at any time following the installation of the Landscaping, the City deems that the Landscaping no longer complies with the Landscaping Plan, Owner shall restore such Landscaping to the standards and specifications as shown on the Landscaping Plan. Failure to maintain the Fence Segment or the Landscaping following their installation will result in the City notifying Owner as to the nature of the work required to bring the Fence Segment or the Landscaping into compliance together with a request for the work to be performed in a reasonable time period. If the Fence Segment is not repaired pursuant to the request for work to be performed or the Landscaping is not subsequently brought into compliance with the Landscaping Plan by Owner, or if an emergency situation exists, the City may enter onto the Property, cause the necessary work to be performed and file a lien against the Property to recover any and all costs incurred in connection with such work.

4.0 CITY APPROVAL OF RADY EASEMENT VACATION

Upon execution of this Agreement by the Parties, and provided all other conditions imposed by the City as conditions to the Rady Easement Vacation not contained herein have been met by Owner, the City agrees to execute the Rady Easement Vacation Adjustment and to deliver the same for recordation in the Recorder's Office of Arapahoe County upon payment of recording fees and costs to the City by Owner.

The parties further agree that Owner shall place a restriction on the real property known as 3 Mockingbird Lane that states that if in the future, 3 Mockingbird Lane is ever sold to a third party that does not at the same time own 1305 East Quincy Avenue, the then-current owner of 3 Mockingbird Lane shall offer to dedicate to the City an easement for the Existing Trail, more particularly described in Exhibit B and, if the City, in its sole discretion, chooses to accept such future dedication, the then-current owner of 3 Mockingbird Lane shall take all appropriate actions to re-establish the easement for recreational trail purposes and to reconstruct the fence in a manner consistent with the then-existing fence surrounding the Cherry Hills Meadow subdivision.

5. MISCELLANEOUS PROVISIONS.

5.1 Delays. The Parties have executed this Agreement such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay of construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental

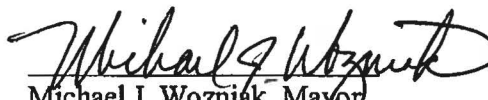
agency, or other delay resulting from events which are beyond the control of the delaying party and which are agreed to by the Parties as justifying delay.

- 5.2 Waiver. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- 5.3 No Waiver Of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City of Cherry Hills Village, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 5.4 Binding Effect. The Parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the Property. To the extent permitted by law, Owner and all its successors, legal representatives, and assigns shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.
- 5.5 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City and Owner that any person other than the City or Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 5.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Arapahoe County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance. In addition to any other available remedies, it is understood and agreed that the City may withhold any permits or certificates requested by Owner, including but not limited to building permits and certificates of occupancy for any structure within the Project Area in the event of a breach of this Agreement by Owner.
- 5.7 Attorney's Fees. If Owner breaches this Agreement, Owner shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

- 5.8 No Assignment. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Owner without the express written consent of the City of Cherry Hills Village which consent may be withheld at the City's discretion for any or no reason.
- 5.9 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 5.10 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 5.11 Integration and Amendment. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.
- 5.12 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Application materials, construction plans, plats, and other documentation referenced in this Agreement are public records on file and available for review at the City of Cherry Hills Village, Village Center, 2450 East Quincy Avenue, Cherry Hills Village, Colorado.
- 5.13 Review of Referenced Documents. Owner hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Cherry Hills Village City Code, were, prior to the execution of this Agreement, and are presently, available for review and inspection at the Cherry Hills Village City Hall, 2450 East Quincy Avenue, Cherry Hills Village, Colorado during regular business hours. Owner have reviewed such documentation, or elected not to review such documentation, prior to execution of this Agreement.
- 5.14 Authority. The undersigned signatories represent that they have the authority to execute this Agreement on behalf of their organizations and contractually bind their respective organizations.

DATED THIS 11TH DAY OF April, 2007.


CITY OF CHERRY HILLS VILLAGE,
a Colorado municipal corporation


Michael J. Wozniak, Mayor

ATTEST:


Kerri Losier, City Clerk

APPROVED AS TO FORM:


Thad Renaud, City Attorney

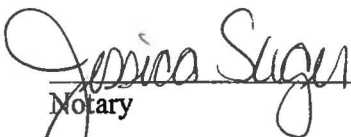
SALISBURY INVESTMENT HOLDINGS,
LLC

By: 
Paul M. Rady
Its: Managing Member

STATE OF COLORADO)

COUNTY OF Arapahoe) ss.

Acknowledged before me this 11th day of April, 2007, by
Paul M. Rady, the Managing Member for Salisbury Investment
Holdings, LLC.


Notary

My Commission Expires: January 31, 2010

[S E A L]

EXHIBIT A
Legal Description of Property

1. **LOT 12**
 CHERRY HILLS MEADOW
 COUNTY OF ARAPAHOE
 STATE OF COLORADO

(ALSO KNOWN AS 3 MOCKINGBIRD LANE, ENGLEWOOD, CO 80113)

2. **LOT 13**
 CHERRY HILLS MEADOW
 COUNTY OF ARAPAHOE
 STATE OF COLORADO

(ALSO KNOWN AS 4 MOCKINGBIRD LANE, ENGLEWOOD, CO 80110)

3. **THE SOUTH ONE-HALF BLOCK 14**
 SOUTH BROADWAY HEIGHTS ADDITION
 COUNTY OF ARAPAHOE
 STATE OF COLORADO
 SUBJECT TO THE EASEMENT DESCRIBED IN THE DEED
 RECORDED MAY 8, 1956 IN BOOK 966 AT PAGE 84

(ALSO KNOWN AS 1305 EAST QUINCY AVENUE, ENGLEWOOD, CO 80113)

EXHIBIT B
Legal Description of Existing Trail



Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

VACATION DESCRIPTION
(SHEET 1 OF 2)

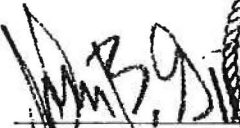
Of a 16' wide Public Recreational Trail in Lot 12, Cherry Hills Meadow, located in the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

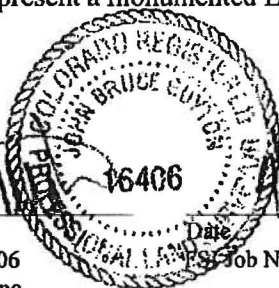
Considering the East line of Lot 12, Cherry Hills Meadow to bear North 00°03'23" West, with all bearings herein being relative thereto.

COMMENCING at the Southeast corner of said Lot 12; thence along the East line of said Lot 12 North 00°03'23" West, a distance of 8.00 feet to the POINT OF BEGINNING; thence continuing along said East line North 00°03'23" West, a distance of 282.50 feet to the Northeast corner of said Lot 12; thence along the Northerly line of said Lot 12 North 81°31'38" West, a distance of 16.18 feet; thence South 00°03'23" East, a distance of 285.26 feet; thence North 88°37'44" East, a distance of 16.00 feet to the POINT OF BEGINNING.

Containing 4,542 square feet, or 0.10 acres, more or less

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Vacation description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or subdivide land in violation of State Statute.

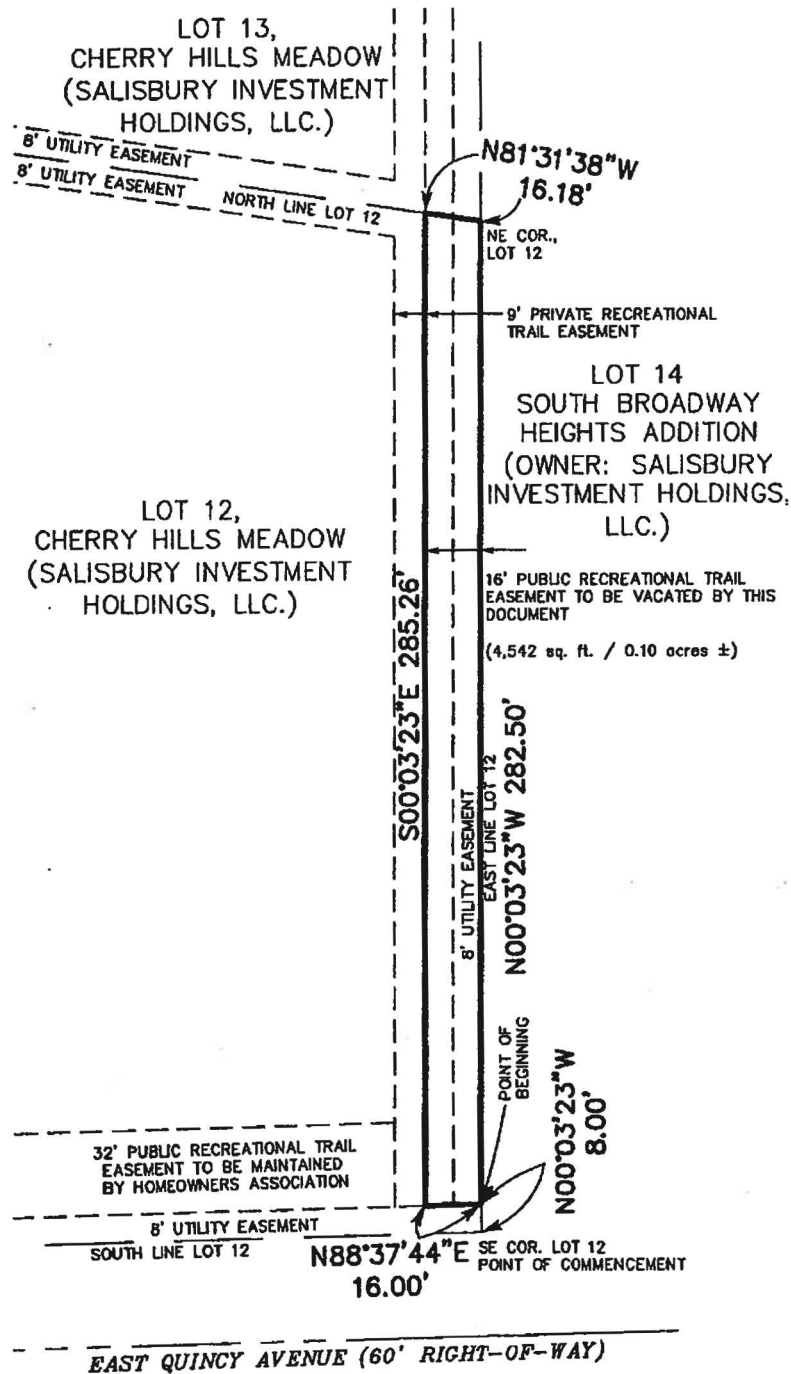

John B. Guyton
Colorado P.L.S.#16406
President, Flatirons, Inc.



Date 12/25/06
Job No. 05-49,554

VACATION EXHIBIT

OF A 16' WIDE PUBLIC RECREATIONAL TRAIL IN LOT 12, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.
(SHEET 2 OF 2)



Scale: 1" = 50'

THIS IS NOT A "LAND SURVEY PLAT" OR IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS. RECORD INFORMATION SHOWN HEREON IS BASED ON TITLE DOCUMENTS PROVIDED BY CLIENT.

DATE:
FSI JOB NO. 05-49,554



Flatirons, Inc.
3825 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatirons.com

EXHIBIT C
Legal Description of New Trail



Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

EASEMENT DESCRIPTION
(SHEET 1 OF 2)

Of a Public Recreational Trail Easement located in part of the South half of Lot 14, South Broadway Heights Addition, and parts of Lots 12 and 13, Cherry Hills Meadow, being a part of the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the West line of the South half of Lot 14, South Broadway Heights Addition to bear North 00°03'23" West, with all bearings herein being relative thereto;

BEGINNING at the Northwest corner of said South half Lot 14; thence South 45°03'23" East, a distance of 5.53 feet; thence along a line 4 feet South of and parallel to the North line of said South half of Lot 14 North 88°37'44" East a distance of 284.16 feet; thence South 00°03'23" East, a distance of 296.08 feet to a point on the South line of said South half Lot 14; thence along said South line South 88°37'44" West, a distance of 35.09 feet; thence departing said South line 30.76 feet along the arc of a non-tangent curve, said arc having a radius of 20.00 feet, an included angle of 88°07'12" and being subtended by a chord bearing North 43°15'15" East a distance of 27.82 feet; thence North 00°03'23" West, a distance of 238.01 feet; thence 36.48 feet along the arc of a tangent curve to the left, said arc having a radius of 20.00 feet, an included angle of 104°29'51" and being subtended by a chord bearing North 46°39'31" West a distance of 31.63 feet; thence along a line 20 feet South of and parallel to said North line, South 88°37'44" West, a distance of 238.00 feet; thence 50.02 feet along the arc of a non-tangent curve to the right, said arc having a radius of 20.00 feet, an included angle of 143°17'19" and being subtended by a chord bearing North 45°34'07" West a distance of 37.96 feet to a point on the West line of an existing 16 foot wide Public Recreational Trail easement; thence along said West line, South 00°03'23" East, a distance of 14.03 feet to a point on the North line of Lot 12 Cherry Hills Meadow; thence along said North line South 81°31'38" East, a distance of 16.18 feet to the Northeast corner of said Lot 12, said point also lying on the West line of the South half of Lot 14, South Broadway Heights Addition; thence along said West line North 00°03'23" West a distance of 9.58 feet to the Northwest corner of said South half Lot 14, said point also being the POINT OF BEGINNING.
Containing 9,465 square feet or 0.22 acres, more or less.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Easement description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or Subdivide land in violation of State Statute.

John B. Guyton
Colorado P.L.S.#16406
Chairman & CEO
Flatirons, Inc.

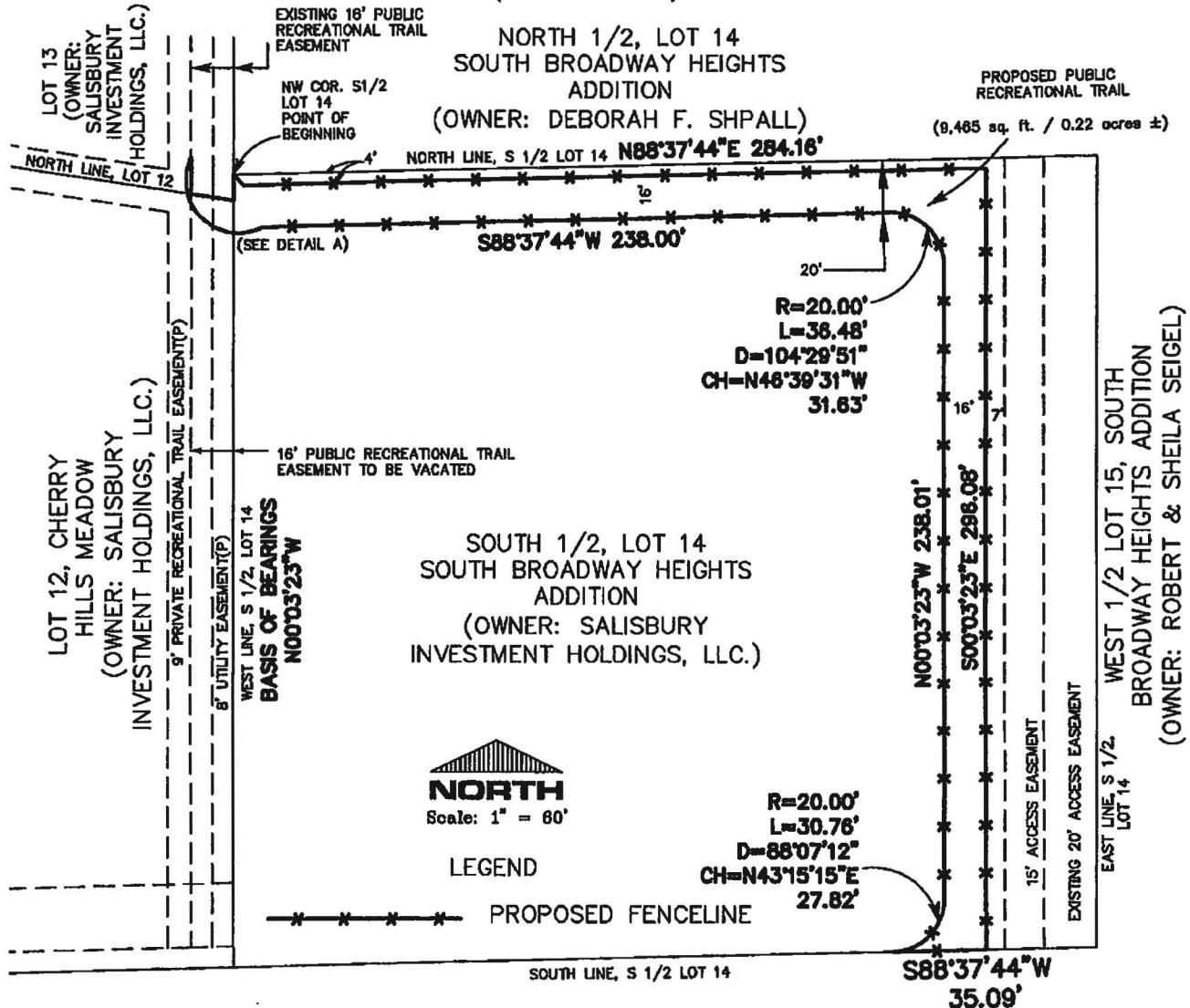
Date
FSI Job No. 05-49,554

EXHIBIT D
Survey of New Trail

EASEMENT EXHIBIT

OF A PUBLIC RECREATIONAL TRAIL EASEMENT IN PART OF THE SOUTH HALF OF LOT 14, SOUTH BROADWAY HEIGHTS ADDITION, AND PARTS OF LOTS 12 AND 13, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.

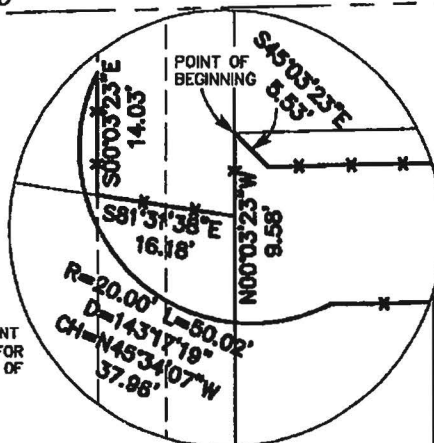
(SHEET 2 OF 2)



EAST QUINCY AVENUE (60' RIGHT-OF-WAY)

REV: 1/26/07
REV: 1/9/07
REV: 11/17/06
REV: 9/1/06
DATE: 6/16/06
FSI JOB NO. 05-49,554

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DETAIL A
SCALE: 1"=20'

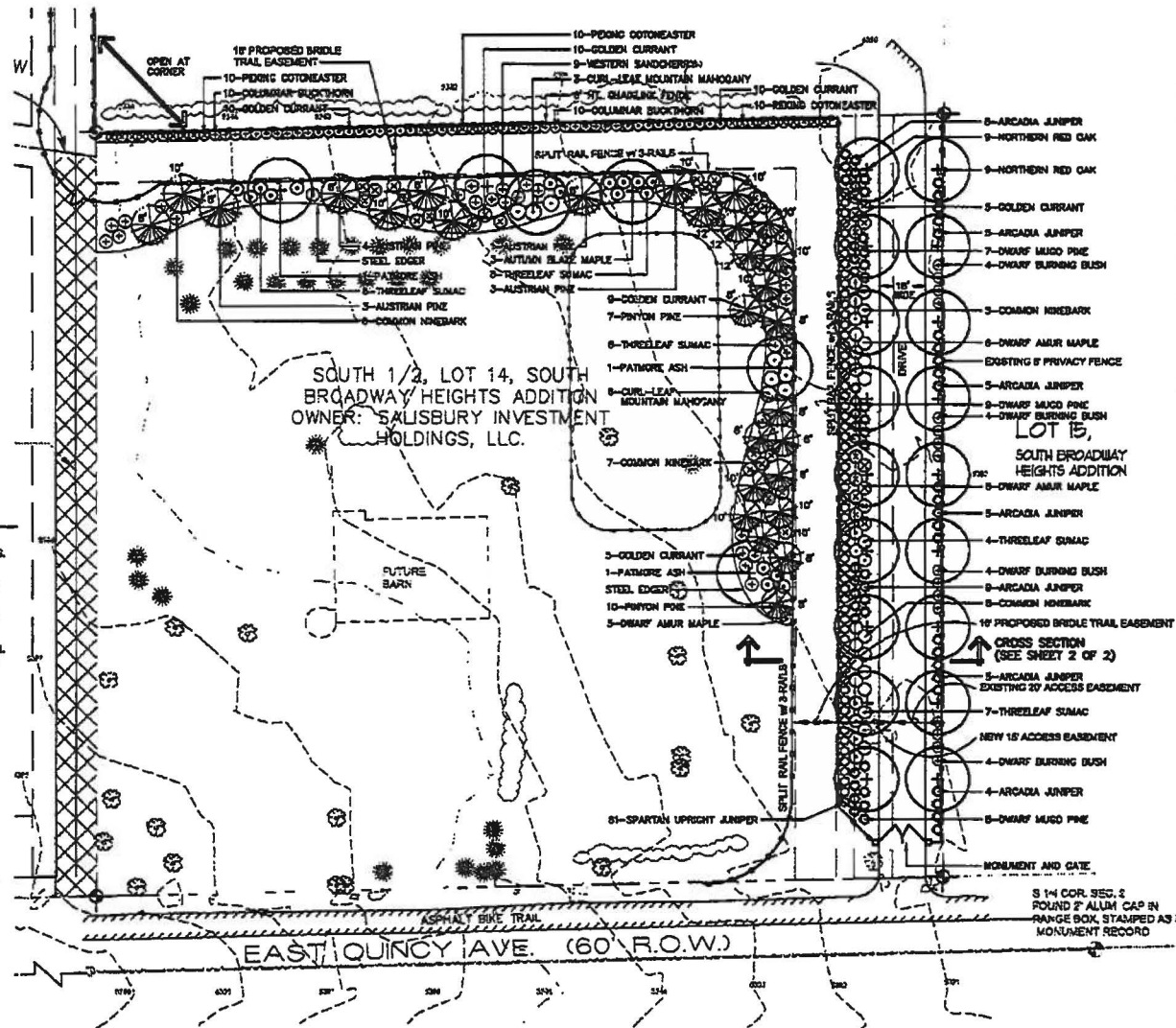


Flatirons, Inc.
3828 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-8830
www.flatirons.com

EXHIBIT E
Landscaping Plan

[illegible]

1. ALL SHRUB BEDS ARE TO BE CONTAINED WITH STEEL EDGER, NOT REQUIRED AT CURB OR WALK. REFER TO SPECIFICATIONS. PROVIDE GAPS IN EDGER AT SWALES TO ALLOW DRAINAGE.
2. ALL SHRUB BED LOCATIONS ARE TO BE STAKED OUT ON THE SITE FOR APPROVAL BY THE OWNER PRIOR TO INSTALLATION.
3. ALL PLANT MATERIALS ARE TO BE APPROVED BY THE OWNER PRIOR TO INSTALLATION.
4. ALL SHRUB BEDS ARE TO BE MULCHED WITH FIBER MULCH. REFER TO SPECIFICATIONS. SUBMIT SAMPLE TO OWNER FOR APPROVAL.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REPAIR OF ANY DAMAGE TO EXISTING UTILITIES, CURB AND WALK, GUTTER, OR WALKWAYS AFTER OTHER STRUCTURES THAT IS A RESULT OF THE WORK. THE REPAIR OF SUCH DAMAGE WILL BE AT NO ADDITIONAL COST TO THE OWNER.
6. THE CONTRACTOR SHALL FINE GRADE ALL AREAS TO BE PLANTED. THE CONTRACTOR SHALL REMOVE REQUIRED DEPTH OF SOIL ALONG WALKWAYS TO ACCOMMODATE SEED OR MULCH DEPTH.
7. THE CONTRACTOR SHALL MAINTAIN POSITIVE DRAINAGE AWAY FROM ALL STRUCTURES AND WALKWAYS. FINE GRADING SHALL BE APPROVED PRIOR TO SCODING.
8. THE CONTRACTOR SHALL PROVIDE A FULLY AUTOMATED IRRIGATION SYSTEM TO WATER ALL TURF AND SHRUB AREAS. ALL TURF AREAS GREATER THAN 25' SHALL HAVE RPO HEADS, ALL AREAS SMALLER THAN 25' SHALL HAVE RPO-UP HEADS. ALL SHRUB BEDS TO HAVE RPO-UP SPRAY HEADS OR ORBITATOR. AUTOMATIC IRRIGATION CONTROLLER LOCATION WITH THE OWNER'S REPRESENTATIVE.



LANDSCAPE ARCHITECTURE
LAND PLANNING
DESIGN GROUP

1310 Lawrence St., Suite 120
Denver, CO 80204 • 303.733.0866

prepared for.

MR. & MRS. PAUL RADY
1/4, LOT 14, SOUTH HIGHLAND ESTATES ADDITION,
COUNTY OF ALPINE, STATE OF CALIFORNIA

1305 EAST CLUNCY AVE.

plan no.
SITE
builder :
Mesa
PROPERTIES
AND TRADING COMPANY
070-070-0700

• LANDSCAPE PLAN

revisions :	
designed by: EN	
drawn by: MZ/TT	
date: 01 / 25 / 01	
sheet 1 of 2	

[illegible]

[illegible]

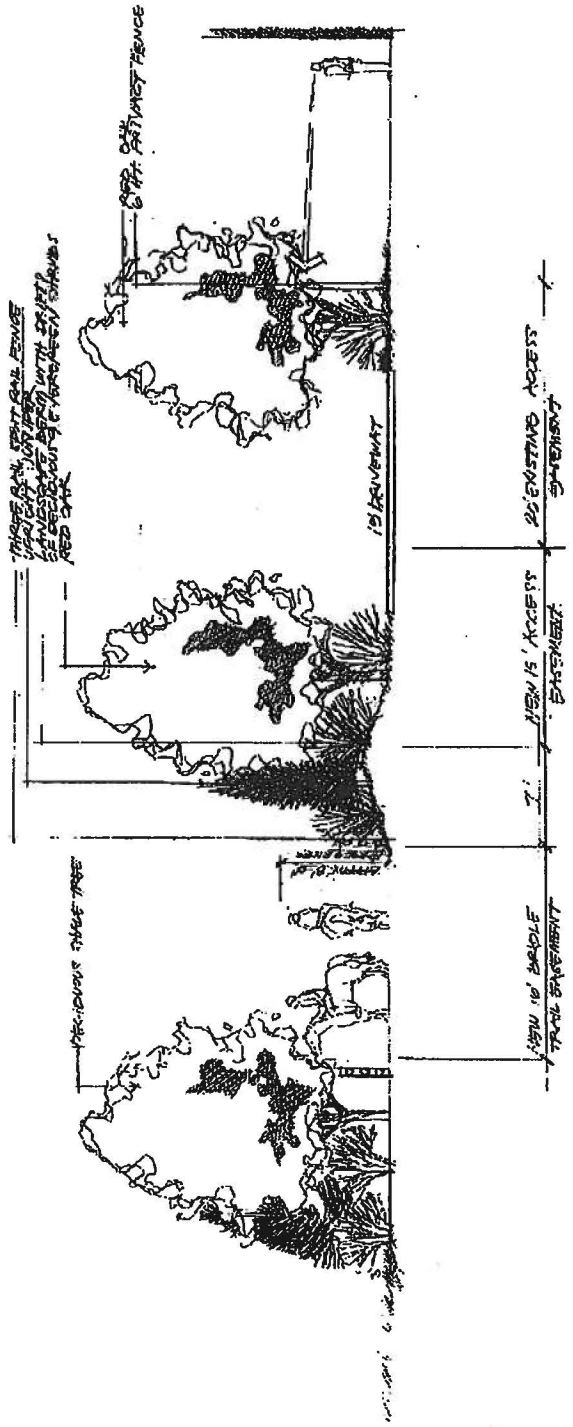
• TYPICAL LANDSCAPE
CROSS SECTION

plan no. **SITE**

builder: **Mesa**
PROPERTIES
commercial, residential, multi-family
1-800-444-4444

MR. & MRS. PAUL RADDY
2 1/2, LOT 14, SOUTH HANOVERLY NORTHERN ALEXANDRIA,
COUNTY OF ARLINGTON, STATE OF VIRGINIA
1805 EAST QUINCY AVE

DESIGN
LANDSCAPE ARCHITECTS
LAND PLANNING
INTERIOR DESIGN
1331 University Road, Suite 120
Denver, CO 80202 | 303.733.6644



SECTION - PROPOSED ADDITIONAL 15' ACCESS TO 16' BRIDGE TRAIL EASEMENT'S
1305 EAST GUNNY - JANUARY 9, 2007
STATION 14+00 TO 15+00

[illegible]

EXHIBIT F
Legal Description of Fence Segment



Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

LOCATION DESCRIPTION

(SHEET 1 OF 2)

A proposed fence to be constructed in a portion of Lot 12, Cherry Hills Meadow, located in the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the East line of Lot 12, Cherry Hills Meadow to bear North 00°03'23" West, with all bearings herein being relative thereto.

BEGINNING at the Southeast corner of said Lot 12; thence 36.74 feet along the arc or a non-tangent curve to the right, said curve having a radius of 43.10 feet, an included angle of 48°50'37" and being subtended by a chord bearing North 67°23'57" West a distance of 35.64 feet; thence 21.99 feet along the arc of a non-tangent curve to the left, said curve having a radius of 26.92 feet, an included angle of 46°48'10" and being subtended by a chord bearing North 68°40'38" West a distance of 21.38 feet; thence South 89°56'37" West a distance of 24.75 feet to a point on an existing fenceline, said point also being the POINT OF TERMINUS.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Location description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or subdivide land in violation of State Statute.

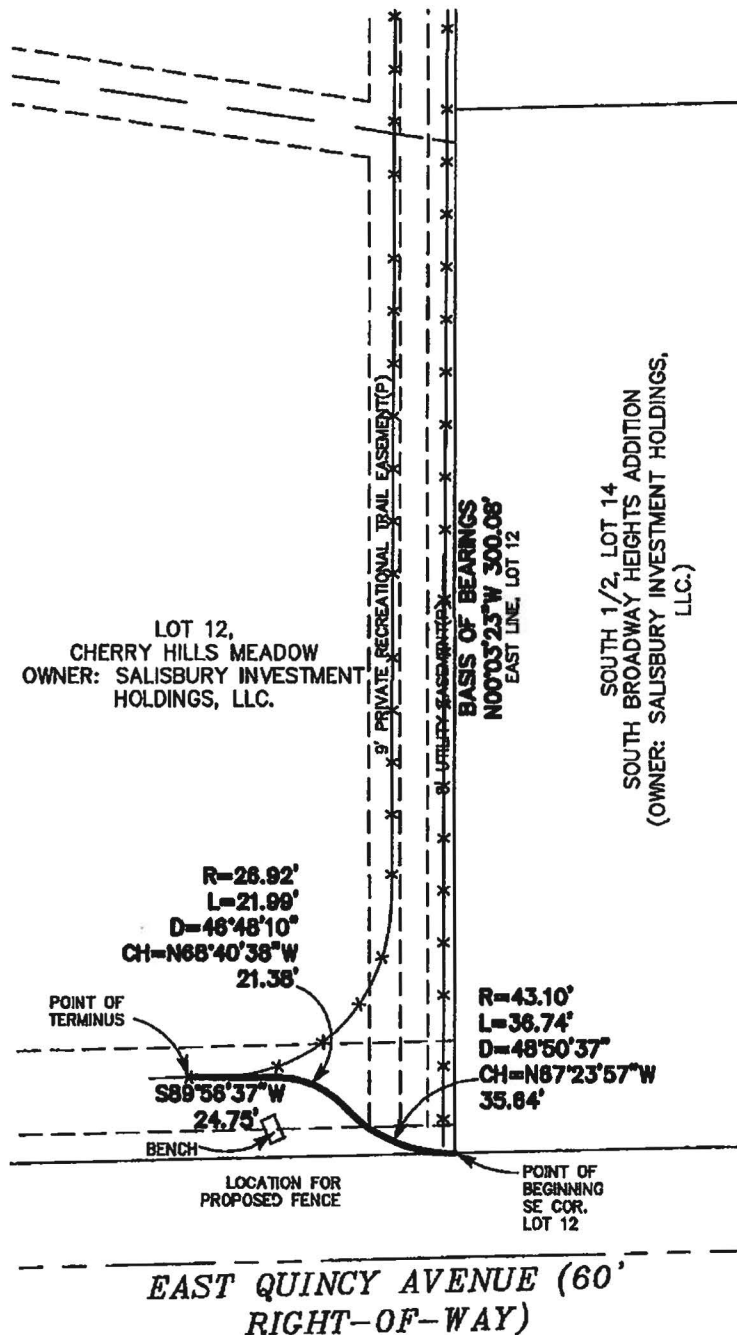
John B. Guyton
Colorado P.L.S.#16406
President, Flatirons, Inc.

Date
FSI Job No. 05-49,554

EXHIBIT G
Survey Depicting Location of Fence Segment

LOCATION EXHIBIT

OF A PROPOSED FENCE TO BE CONSTRUCTED IN A PORTION OF LOT 12, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.
(SHEET 2 OF 2)



Scale: 1" = 50'

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DATE: 11/21/06
FSI JOB NO. 05-49,554



Flatirons, Inc.
3825 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatirons.com

EXHIBIT H
Cost Estimate for Improvements

Rady Residence

1305 East Quincy Ave.

Landscape Plan - Cost Estimate

Prepared by: DHM Design Corporation

Date: February 1, 2007

Landscape Description	Size	Qty.	Unit	Unit Cost	Total
Autumn Blaze Maple	2 1/2" cal.	3	EA	\$560.00	\$1,680.00
Northern Red Oak	2 1/2" cal.	18	EA	\$540.00	\$9,720.00
Patmore Ash	2 1/2" cal.	3	EA	\$460.00	\$1,380.00
Austrian Pine	8' ht.	5	EA	\$570.00	\$2,850.00
Austrian Pine	10' ht.	5	EA	\$780.00	\$3,900.00
Austrian Pine	12' ht.	1	EA	\$970.00	\$970.00
Pinyon Pine	8' ht.	8	EA	\$450.00	\$3,600.00
Pinyon Pine	10' ht.	7	EA	\$525.00	\$3,675.00
Pinyon Pine	12' ht.	2	EA	\$600.00	\$1,200.00
Deciduous Shrubs	5 gal.	211	EA	\$45.00	\$9,495.00
Dwarf Mugo Pine	5 gal.	24	EA	\$100.00	\$2,400.00
Spreading Junipers	5 gal.	41	EA	\$50.00	\$2,050.00
Upright Junipers	B&B	61	EA	\$230.00	\$14,030.00
Shrub bed prep.		11,852	SF	\$0.12	\$1,422.24
Fir Fiber Mulch over Filter Fabric		11,852	SF	\$0.90	\$10,666.80
Steel Edger		424	LF	\$3.75	\$1,590.00
Grade Trail with Crown Drainage		9,395	SF	\$0.35	\$3,288.25
Seeding Trail w/ Native Drought Resistant Seed		9,395	SF	\$0.12	\$1,127.40
Split Rail Fence (Supply and Install)		805	LF	\$12.00	\$9,660.00
Irrigation (shrubs)		11,852	SF	\$0.75	\$8,889.00

TOTAL	\$93,593.69
--------------	--------------------

EXHIBIT I
Inspection Services Estimate

City of Cherry Hills Village		Permit No:	2007-13
Public Right-Of-Way Permit		Date Issued:	2/20/2006
		Permit Fee:	\$250.00
Public Works Department	Phone 303-789-2731	Fax 303-761-9386	www.cherryhillsvillage.com
Applicant:	Paul Rady	Phone:	303-520-5178
Address:	4 Mockingbird Lane	Fax:	
	Cherry Hills Village, Co 80113	Date Submitted	3/16/2006
Contact Name:	Paul Rady		
Location of Work:	3 and 4 Mockingbird Lane and 1305 East Quincy Avenue		
Description of work:	Installation of new trail alignment and all associated landscaping		
Description of Infrastructure that may be affected by work: (Such as street pavement, curb and gutter, sidewalks, utilities)			
Construction of new trail			
City Staff will inspect the project during construction			
Proposed Start Date	TBD	Proposed Completion Date	TBD
Restoration to be performed by:	Applicant will submit	Proposed restoration completion date ↓ ↓ ↓ ↓ ↓ ↓	
Address:			
Phone:		Fax:	
Contact Name:			
Required attachments to permit application: Site plan or engineered drawings showing location and extent of work within the right-of-way Proposed plan for protection of right-of-way and adjacent properties ■ Proposed traffic control plan ■ Storm water quality assurance plan ■ Certificate of Insurance ■ Performance Bond or Letter of Credit if required.			
■ No changes shall be made from that which is stated in this application, or in attached plans and specifications except by submitting a revised application, plans and/or specifications and receiving approval from City staff for such changes. Granting of a permit shall not be construed as a permit for or an approval of any violation of either the Municipal Code or any other federal, state or local laws regulating construction or the performance of construction. Special conditions and/or provisions stated on the Issued Public Right-of-Way Permit supersede any other information provided by the applicant, including information provided on the plans.			
■ All permits are only good through the proposed completion date plus five days unless an extension is requested and approved by the City. Permit applications that are not pursued in good faith are deemed abandoned after proposed completion date plus five days.			
■ I hereby certify that I have read and examined this application and know the same to be true and correct.			
Signature of Applicant:		To review the City of Cherry Hills Village Right of Way Ordinance, please visit our web site at www.cherryhillsvillage.com . You will find the ordinance, excavation and construction standards and the transportation system map.	
Title:			
Date:			

of Cherry Hills Village
Pamela Broyles
150 E Quincy Avenue
Cherry Hills Village CO 80113

1810

1-36

Arapahoe County Clerk & Recorder, Nancy A. Doty

Reception #: B8062698

Receipt #: 5404593

Pages Recorded: 76

Recording Fee: \$101.00

Date Recorded: 6/3/2008 9:37:32 AM



AGREEMENT AND EASEMENT FOR NON-MOTORIZED PUBLIC TRAIL

THIS EASEMENT AGREEMENT FOR NON-MOTORIZED PUBLIC TRAIL, (this "Agreement") is entered into and made between **SALISBURY INVESTMENT HOLDINGS, LLC** ("Grantor"), which is the sole owner of the property located at 3 Mockingbird Lane, 4 Mockingbird Lane and 1305 East Quincy Avenue in Cherry Hills Village, Colorado 80110 ("Grantor's Property"), and the **CITY OF CHERRY HILLS VILLAGE, COLORADO**, a home rule municipal corporation of the State of Colorado, whose address is 2450 East Quincy Avenue, Cherry Hills Village, Colorado, 80110 (the "City"). Grantor and the City may be collectively referred to hereinafter as the "Parties."

WITNESSETH:

WHEREAS, Grantor hereby represents to City that it holds fee interest title to the real property described in this Agreement and has the authority and right to convey to the City the Easement identified in this Agreement; and

WHEREAS, Grantor has requested that the current trail easement that is located on Grantor's Property be relocated to another portion of Grantor's Property; and

WHEREAS, in order to effect this relocation, Grantor has requested that the current trail easement be vacated; and

WHEREAS, as a condition of approving the requested trail vacation, the City has required that Grantor dedicate a substitute trail easement (the "Easement," as defined below); and

WHEREAS, Grantor desires to convey to the City the Easement to advance public recreational opportunities and to enhance the character and quality of life with the City of Cherry Hills Village; and

WHEREAS, the City is desirous of maintaining a non-motorized recreational trail within the Easement.

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the City of Cherry Hills Village of the Rady Easement Vacation, and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, Grantor hereby grants, bargains, sells, and conveys to the City, its successors and assigns, a non-exclusive, permanent and perpetual easement as described in Attachment A and depicted in Attachment B to this Agreement, each of which are incorporated herein by this reference, to be known for purposes of this Agreement as the "Easement."

It is the purpose and intent of this Agreement to permit and facilitate Grantor's

installation, and the City's operation and maintenance, of a public recreational trail for non-motorized use, including but not limited to pedestrian, equestrian, and bicycle uses together with such fencing, surface improvements, landscaping, retaining walls, and directional signage as may be deemed appropriate by the City to support such non-motorized use(s). The Easement granted by Grantor shall be permanent and perpetual so long as the Easement is used by the City for the purposes described in this Agreement.

TO HAVE AND TO HOLD said Easement unto the City and its successors forever, upon the following express terms and conditions:

1. The City, its agents, successors, assigns and contractors shall have and exercise the right of ingress and egress in, to, through, over, under and across the Easement, by motorized vehicle or otherwise, for any purpose necessary for the construction, reconstruction, operation, use, maintenance, repair, replacement and/or removal of improvements within the Easement. All improvements deemed necessary or desirable by the City for such use of the Easement, except for those public and private improvements addressed in the Development Agreement for Rady Easement Vacation (the "Development Agreement"), attached hereto as **Attachment C** and incorporated herein by this reference, shall be borne by the City at no cost of expense to Grantor.
2. Except as otherwise provided in the Development Agreement or in this Agreement, Grantor shall not construct or place any structure or building, street light, power pole, yard light, mailbox or sign, whether temporary or permanent, nor plant or place any shrub or tree, woody plant, nursery stock, garden or other landscaping design feature (collectively referred to as "Additional Improvements") on any part of the Easement. Additional Improvements situated on the Easement as of the date of this Agreement, which are not reflected on the landscaping plan attached to the Development Agreement as Exhibit D (the "Landscaping Plan") shall be removed by and at the sole expense of Grantor. Any Additional Improvements placed on the Easement by Grantor subsequent to the date hereof without the City's consent, or which are not reflected on the Landscaping Plan and which Grantor fails to remove, may be removed by the City at the expense of Grantor without liability to the City. Such expense, if not promptly paid by Grantor, shall entitle the City to place a lien on Grantor's Property.
3. The City shall have the right, upon reasonable notice and subject to Grantor's prior approval, which approval shall not be unreasonably withheld, to use so much of Grantor's Property adjoining the Easement as may be reasonably required during surveying, construction, reconstruction, maintenance, repair, replacement and/or removal of the Additional Improvements or of the public improvements dedicated to the City by Grantor pursuant to the Development Agreement (the "Public Improvements") as may be reasonably required; provided, however, that such activities shall not unreasonably interfere with Grantor's use and enjoyment of such


adjoining property. In the event of any City activities on the adjoining property, the City shall be responsible for the restoration of the adjoining property as nearly as practicable to the condition of the adjoining property prior to the City's use.

4. The City shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the construction, operation, and maintenance of the Easement and any Public Improvements within such Easement. It is specifically agreed between and among the Parties that except as provided in this Agreement, Grantor shall not take any action that would impair the lateral or subjacent support for the Easement or the Public Improvements within the Easement.
5. It is expressly acknowledged and agreed that the City shall have the right and authority to assign the Easement or grant licenses therein to any appropriate governmental entity, including but not limited to all rights to use and all obligations associated with the Easement as are granted to and assumed by the City in this Agreement. In addition, the City shall have the right and authority to grant temporary construction easements or license agreements to any appropriate local governmental entity for purposes of construction, reconstruction, operation, use, maintenance, repair, replacement and/or removal of the Additional Improvements or the Public Improvements in the Easement consistent within this Agreement.
6. The City agrees that at such time and in the event that the Easement described herein is vacated by the City after appropriate action by Council and after written notice to Grantor, such Easement shall terminate and the real property interest represented by such Easement shall revert to Grantor, its successors and/or assigns.
7. Grantor warrants, covenants, grants, bargains and agrees to and with the City that Grantor is well seized of the Easement conveyed hereby and has good, sure, perfect, absolute and indefeasible title to the Easement in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature except those of record. Grantor further promises and agrees to warrant and forever defend the City in the exercise of the City's rights hereunder against any defect in Grantor's title to the Easement and Grantor's right to make the grant herein described. Grantor specifically agrees to indemnify and hold the City harmless from and against any and all loss, costs, damage, expense and liability, including attorneys, officers, employees and insurers, in the event that any beneficiary obtains fee title to the Easement, whether by foreclosure, deed in lieu of foreclosure or other means.
8. Each and every one of the benefits and burdens of the Easement created hereby shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of Grantor and the City.

9. Grantor agrees to indemnify and hold harmless the City, its officers, employees and insurers, from and against all liability, claims and demands on account of injury, loss or damage, including without limitation claims arising from bodily damage or any other loss of any kind whatsoever including attorneys' fees and expenses that might be incurred by the City or asserted against it, which arise out of or are in any manner connected with the Easement, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by Grantor, Grantor's contractor or any subcontractor thereof, or by any officer, employee, representative or agent of Grantor. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss or damage was caused in whole or in part, by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse Grantor for the portion of the judgment attributable to such act, omission or other fault of the City, its officers or employees.
10. This Agreement shall be interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado.
11. This Agreement constitutes the whole agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on the Parties with respect to the subject matter of this Agreement.
12. Nothing in this Agreement is intended to waive any protection afforded to the City, its officials, employees, and agents by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, or any other applicable law providing immunity to the City, its officials, employees, and agents.
13. Each provision of this Agreement is intended to be severable. If any provision of this Agreement is declared illegal or invalid for any reason, such illegality or invalidity shall not affect the remainder of this Agreement.
14. No period of non-use of the Easement by the City shall be deemed or held to constitute abandonment of the City's use rights pursuant to this Agreement and the failure of any Party to enforce any provision of this Agreement shall not operate as a waiver of any such provision or of any other provision of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement, which shall be effective as of the day and year of Grantor's execution, as written below.

GRANTOR:
SALISBURY INVESTMENT HOLDINGS, LLC


By: Paul M. Rady
Its: Managing Member

Date: April 11, 2007

STATE OF COLORADO)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 11th day of April, 2007 by Paul M. Rady.

Witness my hand and official seal.

My commission expires: January 31, 2010..

[SEAL]

Genica Sigel
Notary Public

GRANTEE
CITY OF CHERRY HILLS VILLAGE

Michael J. Abzug
Mayor

ATTEST:

Klosin
City Clerk or Deputy City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTACHMENT A
Legal Description of Easement



Flatirons, Inc.
 3825 Iris Avenue suite# 395
 Boulder, CO 80301

EASEMENT DESCRIPTION
(SHEET 1 OF 2)

Of a Public Recreational Trail Easement located in part of the South half of Lot 14, South Broadway Heights Addition, and parts of Lots 12 and 13, Cherry Hills Meadow, being a part of the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the West line of the South half of Lot 14, South Broadway Heights Addition to bear North 00°03'23" West, with all bearings herein being relative thereto;

BEGINNING at the Northwest corner of said South half Lot 14; thence South 45°03'23" East, a distance of 5.53 feet; thence along a line 4 feet South of and parallel to the North line of said South half of Lot 14 North 88°37'44" East a distance of 284.16 feet; thence South 00°03'23" East, a distance of 296.08 feet to a point on the South line of said South half Lot 14; thence along said South line South 88°37'44" West, a distance of 35.09 feet; thence departing said South line 30.76 feet along the arc of a non-tangent curve, said arc having a radius of 20.00 feet, an included angle of 88°07'12" and being subtended by a chord bearing North 43°15'15" East a distance of 27.82 feet; thence North 00°03'23" West, a distance of 238.01 feet; thence 36.48 feet along the arc of a tangent curve to the left, said arc having a radius of 20.00 feet, an included angle of 104°29'51" and being subtended by a chord bearing North 46°39'31" West a distance of 31.63 feet; thence along a line 20 feet South of and parallel to said North line, South 88°37'44" West, a distance of 238.00 feet; thence 50.02 feet along the arc of a non-tangent curve to the right, said arc having a radius of 20.00 feet, an included angle of 143°17'19" and being subtended by a chord bearing North 45°34'07" West a distance of 37.96 feet to a point on the West line of an existing 16 foot wide Public Recreational Trail easement; thence along said West line, South 00°03'23" East, a distance of 14.03 feet to a point on the North line of Lot 12 Cherry Hills Meadow; thence along said North line South 81°31'38" East, a distance of 16.18 feet to the Northeast corner of said Lot 12, said point also lying on the West line of the South half of Lot 14, South Broadway Heights Addition; thence along said West line North 00°03'23" West a distance of 9.58 feet to the Northwest corner of said South half Lot 14, said point also being the POINT OF BEGINNING. Containing 9,465 square feet or 0.22 acres, more or less.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Easement description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or Subdivide land in violation of State Statute.

John B. Guyton
 Colorado P.L.S.#16406
 Chairman & CEO
 Flatirons, Inc.

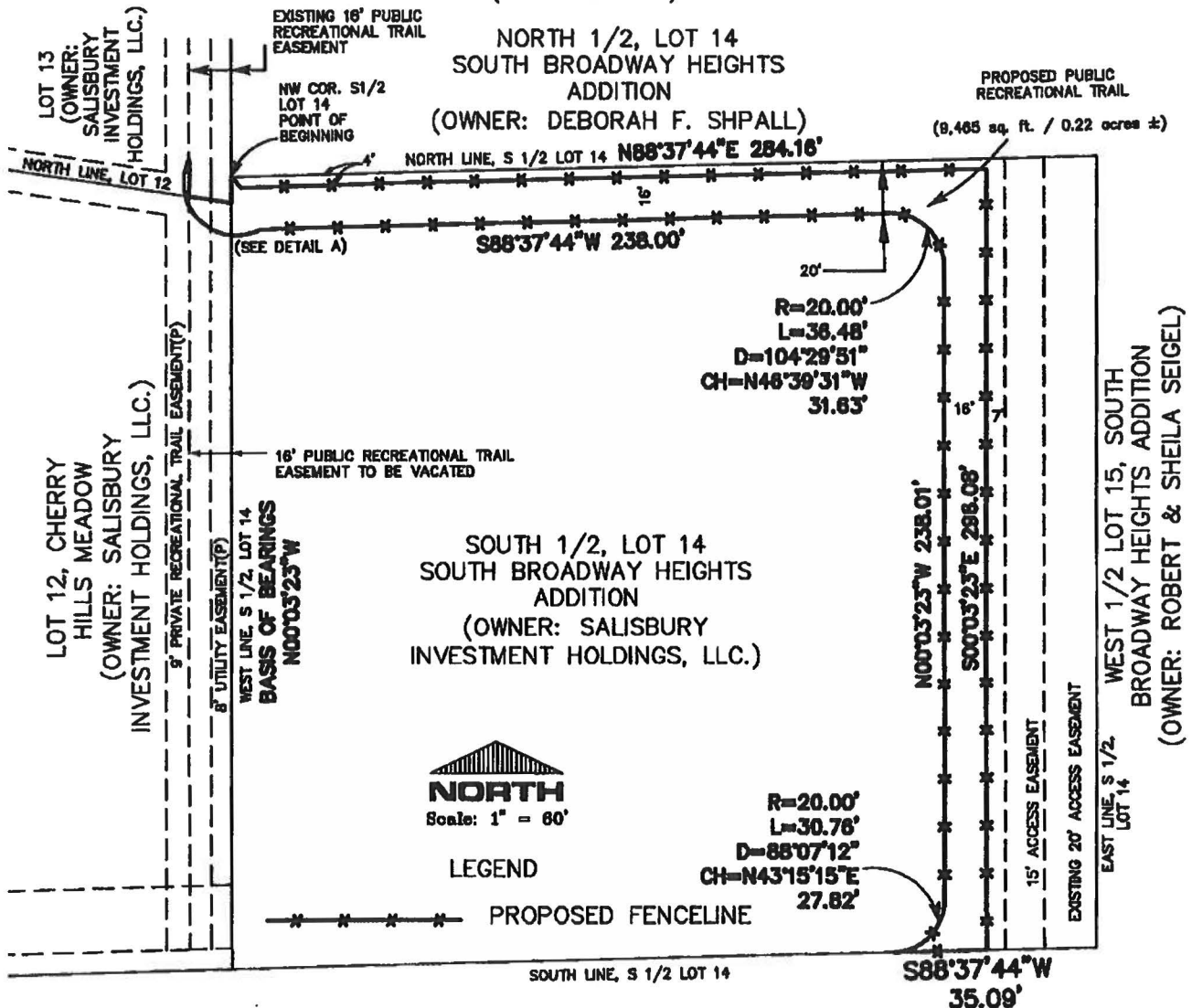
Date
 FSI Job No. 05-49,554

ATTACHMENT B
Depiction of Easement

EASEMENT EXHIBIT

OF A PUBLIC RECREATIONAL TRAIL EASEMENT IN PART OF THE SOUTH HALF OF LOT 14, SOUTH BROADWAY HEIGHTS ADDITION, AND PARTS OF LOTS 12 AND 13, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.

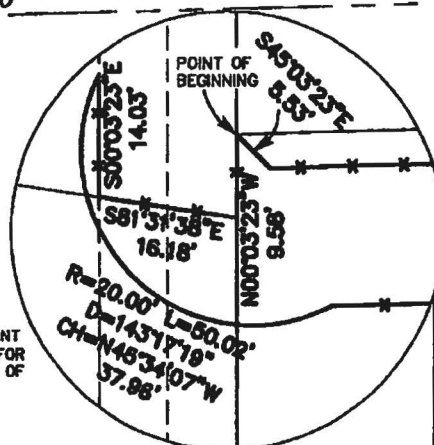
(SHEET 2 OF 2)



**EAST QUINCY AVENUE (60'
RIGHT-OF-WAY)**

REV: 1/26/07
REV: 1/9/07
REV: 11/17/06
REV: 9/1/06
DATE: 6/16/06
FSI JOB NO. 05-49,554

THIS IS NOT A "LAND SURVEY PLAT" OR IMPROVEMENT SURVEY PLAT AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS. RECORD INFORMATION SHOWN HEREON IS BASED ON TITLE DOCUMENTS PROVIDED BY CLIENT.



DETAIL A
SCALE: 1" = 20'



Flatirons, Inc.
3828 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatironsurv.com

ATTACHMENT C
Development Agreement

**CITY OF CHERRY HILLS VILLAGE, COLORADO
DEVELOPMENT AGREEMENT
FOR
RADY EASEMENT VACATION**

THIS CITY OF CHERRY HILLS VILLAGE, COLORADO, DEVELOPMENT AGREEMENT FOR THE RADY EASEMENT VACATION (this "Agreement") is entered into and made between **SALISBURY INVESTMENT HOLDINGS, LLC**, which owns the property located at 3 Mockingbird Lane, 4 Mockingbird Lane and 1305 East Quincy Avenue, Cherry Hills Village, Colorado 80110 ("Owner") and the **CITY OF CHERRY HILLS VILLAGE, COLORADO**, a Colorado home rule municipal corporation whose address is 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113 (the "City"). Owner and the City shall collectively be referred to as the "Parties."

This Agreement shall be effective following execution by Owner and immediately upon the date of the authorized execution of this Agreement by the City's Mayor.

RECITALS AND REPRESENTATIONS

WHEREAS, Owner represents that it is the sole owner of 3 Mockingbird Lane, 4 Mockingbird Lane and 1305 East Quincy Avenue, each of which is located within the City of Cherry Hills Village, Colorado, and is more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Owner has requested that a trail easement that is currently located on the Property as described in **Exhibit B** (the "Existing Trail") be relocated to another portion of the Property as described in **Exhibit C** and depicted on **Exhibit D**, each of which is attached hereto and incorporated herein by this reference (the "New Trail"); and

WHEREAS, in order to effect this relocation, Owner has requested that the easement for the Existing Trail be vacated; and

WHEREAS, as a condition of approving the requested trail vacation, the City has required that Owner dedicate a substitute trail easement, construct and establish the New Trail, and provide certain public and private improvements; and

WHEREAS, Owner and the City desire to set forth and confirm certain obligations of Owner for these improvements within the Property, which consist of a three-rail split rail fence, a fence segment and landscaping; and

WHEREAS, agreements regarding public and private improvements are governed by the City's Municipal Code at Sections 17-4-10 and 17-4-20; and

WHEREAS, it is further mutually acknowledged that the City is entitled to other assurance that the matters herein agreed will be performed by Owner, and in that regard, Owner will furnish to the City a Performance Bond, or other security acceptable to the

City, in the amount of \$102,953.06 to cover the estimated cost of constructing the improvements agreed upon herein,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the City of Cherry Hills Village of the Rady Easement Vacation, and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged by the parties, the Parties agree as follows:

1.0 GENERAL.

The Recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2.0 DEFINITIONS.

2.1 *Fence* means the fence to be constructed by Owner pursuant to paragraph 3.1.1 of this Agreement and which shall consist of a three-rail, split rail cedar fence in a form approved by the City.

2.2 *Fence Segment* means the fence to be constructed by Owner pursuant to paragraph 3.1.1 of this Agreement and which shall consist of a three-rail, white plastic fence, which is identical to the existing fence surrounding the Cherry Hills Meadow subdivision and is in a form approved by the City.

2.3 *Landscaping* means the landscaping to be installed by Owner pursuant to paragraph 3.1.3 of this Agreement and which shall consist of the plants indicated in the landscaping plan, attached hereto as **Exhibit E** and incorporated herein by this reference (the "Landscaping Plan").

2.4 *Improvements* means the public and private improvements Owner is required to construct or install pursuant to this Agreement, including the Fence, the Fence Segment and the Landscaping.

3.0 OBLIGATIONS TO CONSTRUCT AND MAINTAIN IMPROVEMENTS.

3.1 Obligation of Owner for Construction of Improvements.

3.1.1. Owner shall construct the Fence in the location shown on Exhibit C.

3.1.2 Owner shall construct the Fence Segment in the location legally described in **Exhibit F** and depicted by the heavy black line on **Exhibit G**, both of which are attached hereto and incorporated herein by this reference.

3.1.3 Owner shall install the Landscaping in the locations shown on the Landscaping Plan.

3.2 It is estimated that the cost of constructing and installing the Improvements will be approximately \$93,593.69 (Exhibit H). In order to secure the performance of Owner under Section 3.1.1, 3.1.2 and 3.1.3 of this Agreement, Owner will furnish to the City a Performance Bond or other security acceptable to the City in the amount of \$102,953.06. If said Improvements have not been completed and/or paid for within one (1) year from the date of recordation of the Rady Easement Vacation, then the City may draw upon the Performance Bond such amount as may be necessary to complete the construction and/or installation of said Improvements.

3.3 Existing Trail Closure. The Existing Trail shall not be closed to public use until the New Trail is properly established and the Improvements have been properly constructed and/or installed, as determined by the City in its sole discretion, the New Trail has been accepted by the City, and the vacation of the Existing Trail has been finally approved by City Council.

3.4 Cost of Inspection Services. Owner, or its assigns, agrees to pay for inspection services performed on behalf of the City and made necessary as a result of the desire of Owner to construct or install certain public improvements that may be maintained in the future by the City. The cost of said inspection services is estimated to be \$250.00 (Exhibit I) and is to be forthwith deposited with the clerk of the City of Cherry Hills Village to be held in escrow before construction begins on said improvements. Owner gives the City the right and authority to make disbursements from said escrow account for engineering inspection services performed. Any balances remaining in the escrow account at the completion and approval of the necessary improvements shall be returned to Owner without interest. In the event said funds are exhausted before completion of construction inspection, Owner will make a supplemental deposit to said escrow account in an amount determined by the City Manager. Failure to make necessary supplemental deposits shall cause the construction process to cease until the required deposits are made.

3.5 Warranty of Public Improvements. Notwithstanding any provisions to the contrary, the Fence, which shall be dedicated to the City for public use, must remain free from defect for a period of one (1) year from the date that the construction of the Fence is complete as determined by the City. Owner shall deposit with the City cash sufficient to repair or replace the Fence which shall be an amount equal to the cost of the construction of the Fence (as provided in Exhibit H) plus a reasonable amount for contingencies, which shall be no less than ten percent (10%) of such cost. Said cash deposit shall remain with the City pursuant to this Agreement until the first anniversary of the completion of the Fence, at which time, depending upon the condition of the Fence, the City may, in its sole discretion, do what it deems necessary for the public health, safety and welfare, including but not limited to:

3.5.1 Accept the same for maintenance;

3.5.2 Require Owner to correct any defects in the Fence; or

3.5.3 Use the cash to correct any defect in the Fence.

Owner shall be responsible for paying the City for any shortfall in the deposit made pursuant to this Section 3.5. Once the Fence has been finally accepted by the City, the City shall return to Owner, without interest, any remaining cash on deposit with the City pursuant to this Agreement.

3.6 Obligations of Owner for Maintenance of Private Improvements. Owner shall be responsible for maintaining the Fence Segment and the Landscaping. If at any time following the installation of the Landscaping, the City deems that the Landscaping no longer complies with the Landscaping Plan, Owner shall restore such Landscaping to the standards and specifications as shown on the Landscaping Plan. Failure to maintain the Fence Segment or the Landscaping following their installation will result in the City notifying Owner as to the nature of the work required to bring the Fence Segment or the Landscaping into compliance together with a request for the work to be performed in a reasonable time period. If the Fence Segment is not repaired pursuant to the request for work to be performed or the Landscaping is not subsequently brought into compliance with the Landscaping Plan by Owner, or if an emergency situation exists, the City may enter onto the Property, cause the necessary work to be performed and file a lien against the Property to recover any and all costs incurred in connection with such work.

4.0 CITY APPROVAL OF RADY EASEMENT VACATION

Upon execution of this Agreement by the Parties, and provided all other conditions imposed by the City as conditions to the Rady Easement Vacation not contained herein have been met by Owner, the City agrees to execute the Rady Easement Vacation Adjustment and to deliver the same for recordation in the Recorder's Office of Arapahoe County upon payment of recording fees and costs to the City by Owner.

The parties further agree that Owner shall place a restriction on the real property known as 3 Mockingbird Lane that states that if in the future, 3 Mockingbird Lane is ever sold to a third party that does not at the same time own 1305 East Quincy Avenue, the then-current owner of 3 Mockingbird Lane shall offer to dedicate to the City an easement for the Existing Trail, more particularly described in Exhibit B and, if the City, in its sole discretion, chooses to accept such future dedication, the then-current owner of 3 Mockingbird Lane shall take all appropriate actions to re-establish the easement for recreational trail purposes and to reconstruct the fence in a manner consistent with the then-existing fence surrounding the Cherry Hills Meadow subdivision.

5. MISCELLANEOUS PROVISIONS.

- 5.1 Delays.** The Parties have executed this Agreement such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay of construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental


agency, or other delay resulting from events which are beyond the control of the delaying party and which are agreed to by the Parties as justifying delay.

- 5.2 Waiver. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- 5.3 No Waiver Of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City of Cherry Hills Village, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 5.4 Binding Effect. The Parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the Property. To the extent permitted by law, Owner and all its successors, legal representatives, and assigns shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.
- 5.5 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City and Owner that any person other than the City or Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 5.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Arapahoe County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance. In addition to any other available remedies, it is understood and agreed that the City may withhold any permits or certificates requested by Owner, including but not limited to building permits and certificates of occupancy for any structure within the Project Area in the event of a breach of this Agreement by Owner.
- 5.7 Attorney's Fees. If Owner breaches this Agreement, Owner shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

- 5.8 No Assignment. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Owner without the express written consent of the City of Cherry Hills Village which consent may be withheld at the City's discretion for any or no reason.
- 5.9 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 5.10 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 5.11 Integration and Amendment. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.
- 5.12 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Application materials, construction plans, plats, and other documentation referenced in this Agreement are public records on file and available for review at the City of Cherry Hills Village, Village Center, 2450 East Quincy Avenue, Cherry Hills Village, Colorado.
- 5.13 Review of Referenced Documents. Owner hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Cherry Hills Village City Code, were, prior to the execution of this Agreement, and are presently, available for review and inspection at the Cherry Hills Village City Hall, 2450 East Quincy Avenue, Cherry Hills Village, Colorado during regular business hours. Owner have reviewed such documentation, or elected not to review such documentation, prior to execution of this Agreement.
- 5.14 Authority. The undersigned signatories represent that they have the authority to execute this Agreement on behalf of their organizations and contractually bind their respective organizations.

DATED THIS 11th DAY OF April, 2007.

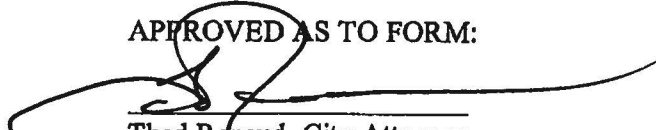
CITY OF CHERRY HILLS VILLAGE,
a Colorado municipal corporation


Michael J. Wozniak, Mayor

ATTEST:


Kerri Losier, City Clerk

APPROVED AS TO FORM:


Thad Renaud, City Attorney

SALISBURY INVESTMENT HOLDINGS,
LLC

By:


Paul M. Rady

Its: Managing Member

STATE OF COLORADO

COUNTY OF Arapahoe

)
) ss.

Acknowledged before me this 11th day of April, 2007, by
Paul M. Rady, the Managing Member for Salisbury Investment
Holdings, LLC.


Notary

My Commission Expires: January 31, 2010

[S E A L]

EXHIBIT A
Legal Description of Property

1. **LOT 12**
 CHERRY HILLS MEADOW
 COUNTY OF ARAPAHOE
 STATE OF COLORADO

(ALSO KNOWN AS 3 MOCKINGBIRD LANE, ENGLEWOOD, CO 80113)

2. **LOT 13**
 CHERRY HILLS MEADOW
 COUNTY OF ARAPAHOE
 STATE OF COLORADO

(ALSO KNOWN AS 4 MOCKINGBIRD LANE, ENGLEWOOD, CO 80110)

3. **THE SOUTH ONE-HALF BLOCK 14**
 SOUTH BROADWAY HEIGHTS ADDITION
 COUNTY OF ARAPAHOE
 STATE OF COLORADO
 SUBJECT TO THE EASEMENT DESCRIBED IN THE DEED
 RECORDED MAY 8, 1956 IN BOOK 966 AT PAGE 84

(ALSO KNOWN AS 1305 EAST QUINCY AVENUE, ENGLEWOOD, CO 80113)

EXHIBIT B
Legal Description of Existing Trail



Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

VACATION DESCRIPTION
(SHEET 1 OF 2)

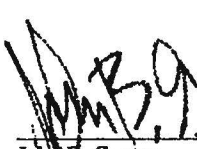
Of a 16' wide Public Recreational Trail in Lot 12, Cherry Hills Meadow, located in the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

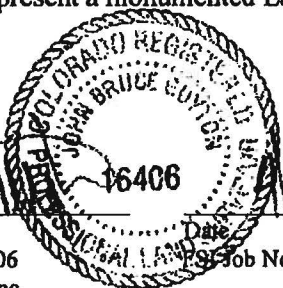
Considering the East line of Lot 12, Cherry Hills Meadow to bear North 00°03'23" West, with all bearings herein being relative thereto.

COMMENCING at the Southeast corner of said Lot 12; thence along the East line of said Lot 12 North 00°03'23" West, a distance of 8.00 feet to the POINT OF BEGINNING; thence continuing along said East line North 00°03'23" West, a distance of 282.50 feet to the Northeast corner of said Lot 12; thence along the Northerly line of said Lot 12 North 81°31'38" West, a distance of 16.18 feet; thence South 00°03'23" East, a distance of 285.26 feet; thence North 88°37'44" East, a distance of 16.00 feet to the POINT OF BEGINNING.

Containing 4,542 square feet, or 0.10 acres, more or less

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Vacation description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or subdivide land in violation of State Statute.

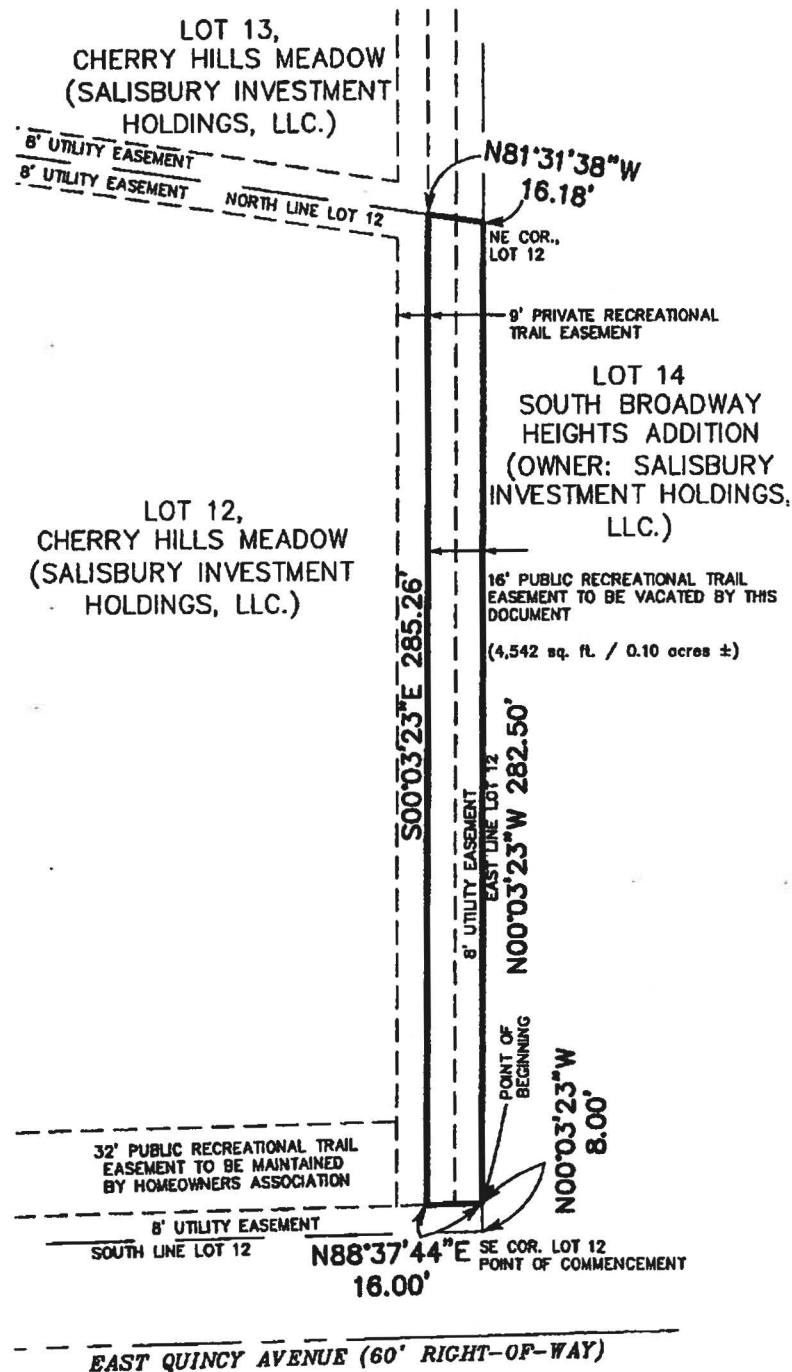

John B. Guyton
Colorado P.L.S.#16406
President, Flatirons, Inc.



Date 25/06
Job No. 05-49,554

VACATION EXHIBIT

OF A 16' WIDE PUBLIC RECREATIONAL TRAIL IN LOT 12, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.
(SHEET 2 OF 2)



Scale: 1" = 50'

THIS IS NOT A "LAND SURVEY PLAT" OR IMPROVEMENT SURVEY PLAT AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS, RECORD INFORMATION SHOWN HEREON IS BASED ON TITLE DOCUMENTS PROVIDED BY CLIENT.

DATE:
FSI JOB NO. 05-49,554



Flatirons, Inc.
3825 IRIS AVENUE, SUITE 100
BOULDER, CO 80301
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatirons.com

EXHIBIT C
Legal Description of New Trail



Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

EASEMENT DESCRIPTION
(SHEET 1 OF 2)

Of a Public Recreational Trail Easement located in part of the South half of Lot 14, South Broadway Heights Addition, and parts of Lots 12 and 13, Cherry Hills Meadow, being a part of the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the West line of the South half of Lot 14, South Broadway Heights Addition to bear North 00°03'23" West, with all bearings herein being relative thereto;

BEGINNING at the Northwest corner of said South half Lot 14; thence South 45°03'23" East, a distance of 5.53 feet; thence along a line 4 feet South of and parallel to the North line of said South half of Lot 14 North 88°37'44" East a distance of 284.16 feet; thence South 00°03'23" East, a distance of 296.08 feet to a point on the South line of said South half Lot 14; thence along said South line South 88°37'44" West, a distance of 35.09 feet; thence departing said South line 30.76 feet along the arc of a non-tangent curve, said arc having a radius of 20.00 feet, an included angle of 88°07'12" and being subtended by a chord bearing North 43°15'15" East a distance of 27.82 feet; thence North 00°03'23" West, a distance of 238.01 feet; thence 36.48 feet along the arc of a tangent curve to the left, said arc having a radius of 20.00 feet, an included angle of 104°29'51" and being subtended by a chord bearing North 46°39'31" West a distance of 31.63 feet; thence along a line 20 feet South of and parallel to said North line, South 88°37'44" West, a distance of 238.00 feet; thence 50.02 feet along the arc of a non-tangent curve to the right, said arc having a radius of 20.00 feet, an included angle of 143°17'19" and being subtended by a chord bearing North 45°34'07" West a distance of 37.96 feet to a point on the West line of an existing 16 foot wide Public Recreational Trail easement; thence along said West line, South 00°03'23" East, a distance of 14.03 feet to a point on the North line of Lot 12 Cherry Hills Meadow; thence along said North line South 81°31'38" East, a distance of 16.18 feet to the Northeast corner of said Lot 12, said point also lying on the West line of the South half of Lot 14, South Broadway Heights Addition; thence along said West line North 00°03'23" West a distance of 9.58 feet to the Northwest corner of said South half Lot 14, said point also being the POINT OF BEGINNING.
Containing 9,465 square feet or 0.22 acres, more or less.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Easement description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or Subdivide land in violation of State Statute.

John B. Guyton
Colorado P.L.S.#16406
Chairman & CEO
Flatirons, Inc.

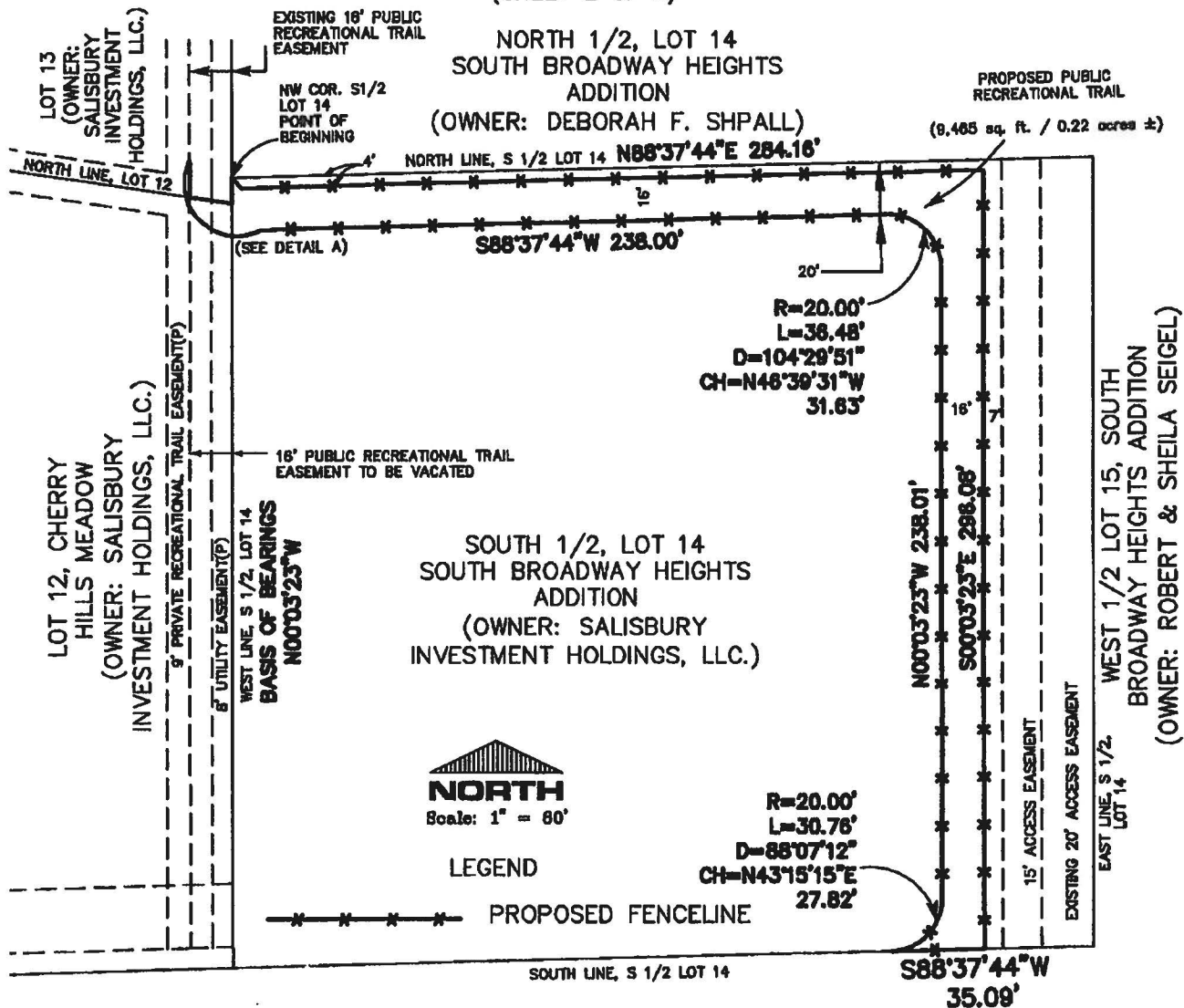
Date
FSI Job No. 05-49,554

EXHIBIT D
Survey of New Trail

EASEMENT EXHIBIT

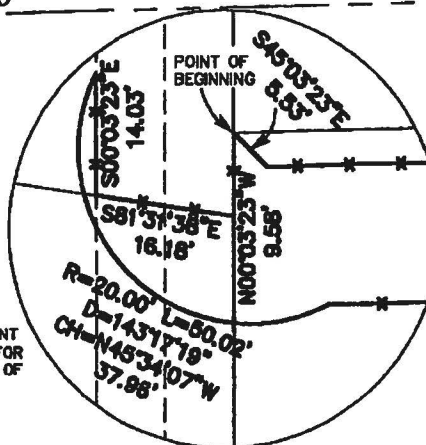
OF A PUBLIC RECREATIONAL TRAIL EASEMENT IN PART OF THE SOUTH HALF OF LOT 14, SOUTH BROADWAY HEIGHTS ADDITION, AND PARTS OF LOTS 12 AND 13, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.

(SHEET 2 OF 2)



REV: 1/26/07
REV: 1/9/07
REV: 11/17/06
REV: 9/1/06
DATE: 6/16/06
FSI JOB NO. 05-49,554

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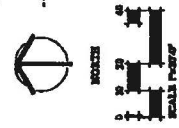


DETAIL A
SCALE: 1" = 20'



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www.flatirons.com

EXHIBIT E
Landscaping Plan

[illegible]

LANDSCAPE NOTES:

1. ALL SOIL BENEATH AND AROUND THE CONTRACTOR SHALL BE EXAMINED WITH TEST EQUIPMENT AND RECORDS TO BE MAINTAINED BY THE CONTRACTOR TO DETERMINE THE PRESENCE OF ANY CONTAMINATION IN ORDER TO PREVENT THE CONTRACTOR FROM ALLOWING CONTAMINATION TO BE INTRODUCED INTO THE SOIL.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR.
4. ALL SOILS SHALL BE TO BE MAINTAINED WITH THE SAME QUALITY AS THE SOILS THAT WERE PRESENT BEFORE THE CONTRACTOR'S WORK.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR.
7. THE CONTRACTOR SHALL MAINTAIN POSITIVE DRAINAGE AWAY FROM THE CONTRACTOR'S WORK AREA AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR.
8. THE CONTRACTOR SHALL MAINTAIN POSITIVE DRAINAGE AWAY FROM THE CONTRACTOR'S WORK AREA AND SHALL BE RESPONSIBLE FOR THE REMEDIATION OF ANY CONTAMINATION DETECTED BY THE CONTRACTOR.

LD / A / 10	2010
LD / A / 10	2010
LD / A / 10	2010

Address :

TYPICAL LANDSCAPE
CROSS SECTION

plan no. SITE

Mesa
VEGETATION

MR. & MRS. PAUL RADDY
1/4 LOT 14, NORTH HENDRICKS HEIGHTS, HENDRICKS,
COUNTY OF HENRICKS, STATE OF OKLAHOMA
1805 EAST QUINCY AVE

Call 800 368-7262 for more information

800 368 7262



SECTION - PROPOSED ADDITIONAL 15' ACCESS to 16' PARKS TRAIL to SEWAGE TREATMENT
1805 EAST SWINY - JANUARY 9, 2007 5:40 - 14:15

EXHIBIT F
Legal Description of Fence Segment



Flatirons, Inc.
3825 Iris Avenue suite# 395
Boulder, CO 80301

LOCATION DESCRIPTION

(SHEET 1 OF 2)

A proposed fence to be constructed in a portion of Lot 12, Cherry Hills Meadow, located in the Southwest Quarter of Section 2, Township 5 South, Range 68 West of the 6th P.M., City of Cherry Hills Village, County of Arapahoe, State of Colorado, being more particularly described as follows:

Considering the East line of Lot 12, Cherry Hills Meadow to bear North 00°03'23" West, with all bearings herein being relative thereto.

BEGINNING at the Southeast corner of said Lot 12; thence 36.74 feet along the arc or a non-tangent curve to the right, said curve having a radius of 43.10 feet, an included angle of 48°50'37" and being subtended by a chord bearing North 67°23'57" West a distance of 35.64 feet; thence 21.99 feet along the arc of a non-tangent curve to the left, said curve having a radius of 26.92 feet, an included angle of 46°48'10" and being subtended by a chord bearing North 68°40'38" West a distance of 21.38 feet; thence South 89°56'37" West a distance of 24.75 feet to a point on an existing fenceline, said point also being the POINT OF TERMINUS.

I, John B. Guyton, a licensed Land Surveyor in the State of Colorado, do hereby state for and on behalf of Flatirons, Inc., that this Location description and attached exhibit, being made a part thereof, were prepared by me or under my responsible charge at the request of the client and is not intended to represent a monumented Land Survey or subdivide land in violation of State Statute.

John B. Guyton
Colorado P.L.S.#16406
President, Flatirons, Inc.

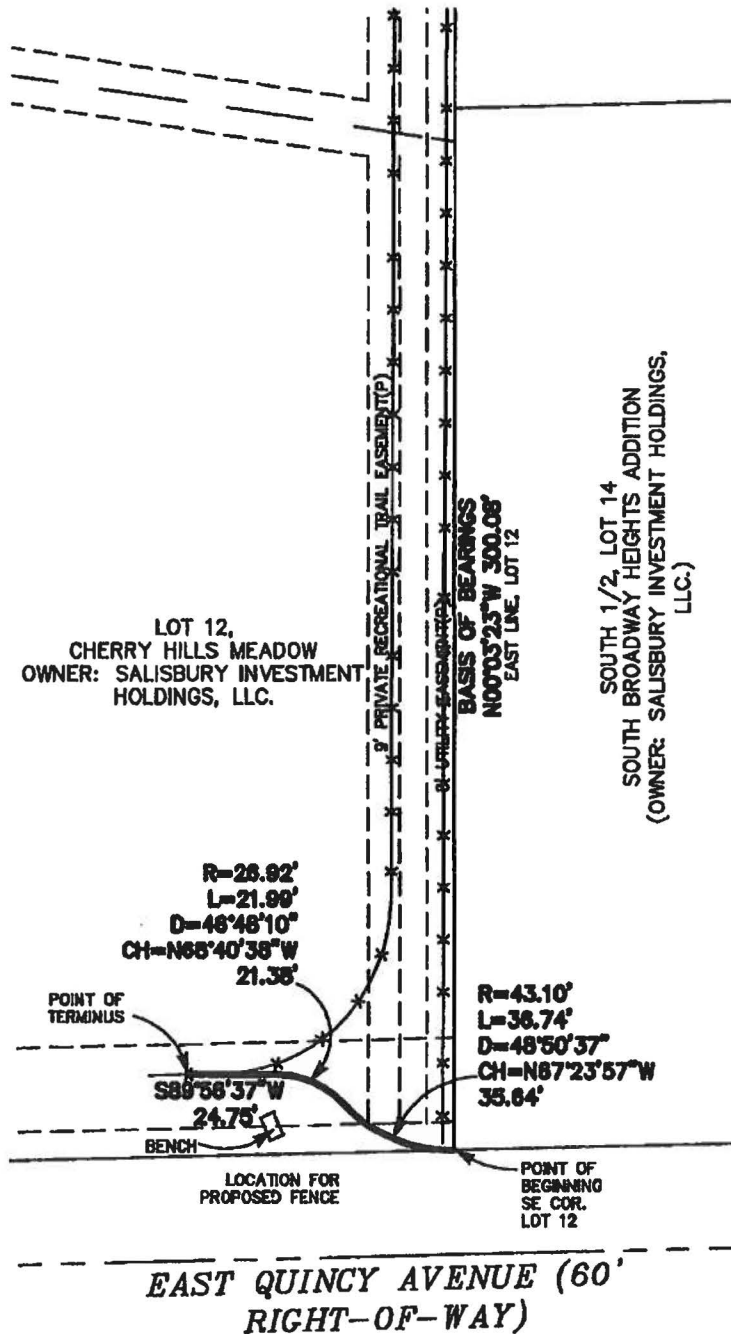
Date
FSI Job No. 05-49,554

EXHIBIT G
Survey Depicting Location of Fence Segment

LOCATION EXHIBIT

OF A PROPOSED FENCE TO BE CONSTRUCTED IN A PORTION OF LOT 12, CHERRY HILLS MEADOW, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO.

(SHEET 2 OF 2)



Scale: 1" = 60'

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DATE: 11/21/06
FSI JOB NO. 05-49,554



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www.flatirons.com

EXHIBIT H
Cost Estimate for Improvements

Rady Residence

1305 East Quincy Ave.

Landscape Plan - Cost Estimate
 Prepared by: DHM Design Corporation
 Date: February 1, 2007

Landscape Description	Size	Qty.	Unit	Unit Cost	Total
Autumn Blaze Maple	2 1/2" cal.	3	EA	\$560.00	\$1,680.00
Northern Red Oak	2 1/2" cal.	18	EA	\$540.00	\$9,720.00
Patmore Ash	2 1/2" cal.	3	EA	\$460.00	\$1,380.00
Austrian Pine	8' ht.	5	EA	\$570.00	\$2,850.00
Austrian Pine	10' ht.	5	EA	\$780.00	\$3,900.00
Austrian Pine	12' ht.	1	EA	\$970.00	\$970.00
Pinyon Pine	8' ht.	8	EA	\$450.00	\$3,600.00
Pinyon Pine	10' ht.	7	EA	\$525.00	\$3,675.00
Pinyon Pine	12' ht.	2	EA	\$600.00	\$1,200.00
Deciduous Shrubs	5 gal.	211	EA	\$45.00	\$9,495.00
Dwarf Mugo Pine	5 gal.	24	EA	\$100.00	\$2,400.00
Spreading Junipers	5 gal.	41	EA	\$50.00	\$2,050.00
Upright Junipers	B&B	61	EA	\$230.00	\$14,030.00
Shrub bed prep.		11,852	SF	\$0.12	\$1,422.24
Fir Fiber Mulch over Filter Fabric		11,852	SF	\$0.90	\$10,666.80
Steel Edger		424	LF	\$3.75	\$1,590.00
Grade Trail with Crown Drainage		9,395	SF	\$0.35	\$3,288.25
Seeding Trail w/ Native Drought Resistant Seed		9,395	SF	\$0.12	\$1,127.40
Split Rail Fence (Supply and Install)		805	LF	\$12.00	\$9,660.00
Irrigation (shrubs)		11,852	SF	\$0.75	\$8,889.00

TOTAL	\$93,593.69
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EXHIBIT I
Inspection Services Estimate

City of Cherry Hills Village		Permit No:		2007-13
Public Right-Of-Way Permit		Date Issued:		2/20/2008
		Permit Fee:		\$250.00
Public Works Department		Phone 303-783-2731 Fax 303-781-9386		www.cherryhillsvillage.com
Applicant:	Paul Rady	Phone:	303-520-5178	
Address:	4 Mockingbird Lane	Fax:		
	Cherry Hills Village, Co 80113	Date Submitted	3/16/2008	
Contact Name:	Paul Rady			
Location of Work:	3 and 4 Mockingbird Lane and 1305 East Quincy Avenue			
Description of work:	Installation of new trail alignment and all associated landscaping			
Description of infrastructure that may be affected by work: (Such as street pavement, curb and gutter, sidewalks, utilities)				
Construction of new trail				
City Staff will inspect the project during construction				
Proposed Start Date	TBD	Proposed Completion Date	TBD	
Restoration to be performed by:	Applicant will submit		Proposed restoration completion date ↓ ↓ ↓ ↓ ↓	
Address:				
Phone:		Fax:		
Contact Name:				
Required attachments to permit application: Site plan or engineered drawings showing location and extent of work within the right-of-way Proposed plan for protection of right-of-way and adjacent properties ■ Proposed traffic control plan ■ Storm water quality assurance plan ■ Certificate of Insurance ■ Performance Bond or Letter of Credit if required.				
■ No changes shall be made from that which is stated in this application, or in attached plans and specifications except by submitting a revised application, plans and/or specifications and receiving approval from City staff for such changes. Granting of a permit shall not be construed as a permit for or an approval of any violation of either the Municipal Code or any other federal, state or local laws regulating construction or the performance of construction. Special conditions and/or provisions stated on the Issued Public Right-of-Way Permit supersede any other information provided by the applicant, including information provided on the plans.				
■ All permits are only good through the proposed completion date plus five days unless an extension is requested and approved by the City. Permit applications that are not perused in good faith are deemed abandoned after proposed completion date plus five days.				
■ I hereby certify that I have read and examined this application and know the same to be true and correct.				
Signature of Applicant:			To review the City of Cherry Hills Village Right of Way Ordinance, please visit our web site at www.cherryhillsvillage.com . You will find the ordinance, excavation and construction standards and the transportation system map.	
Title:				
Date:				