

RATIFICATION OF AGREEMENT  
Rood Avenue Parking Structure

This Ratification of Agreement is made on October 31, 2006, by and between the City of Grand Junction, a Colorado home rule municipality, for itself and for the Grand Junction Downtown Development Authority ("City") and HR Adventures, LLC, a Colorado limited liability company ("HR").

Recitals.

A. On October 31, 2006 the City and HR Adventures closed that certain agreement between the Parties dated September 27, 2006 known as the Contract to Exchange Interests in Real Property ("Exchange Agreement.") A copy of the Exchange Agreement is attached hereto and incorporated by this reference as if fully set forth.

B. Under the Exchange Agreement the City agreed to convey to HR fee title to twenty-one (21) contiguous covered parking spaces in a new parking garage to be constructed by the City on Lots 13 and 14, Block 103 in the City of Grand Junction ("Parking Spaces.")

C. The Parking Spaces will be conveyed upon completion of the construction and condominiumization of the parking garage. The Parking Spaces to be conveyed to HR shall generally be located in the area identified on Exhibit A attached hereto. Conveyance of the Parking Spaces upon completion of construction shall be by general warranty deed. The Parking Spaces, for the purpose of this Agreement, have a gross valuation of \$189,000. The Parking Spaces will be conveyed subject to no liens or encumbrances.

IN CONSIDERATION of the Recitals, the mutual covenants set forth herein and the consideration heretofore exchanged by the Parties which supports the making of this and the other agreements, the City does hereby ratify its obligations under the Exchange Agreement to convey 21 parking spaces to HR Adventures upon completion of the construction and condominiumization of the parking structure, all of which is subject to the terms of the Exchange Agreement and full performance by HR of its obligations in closing the Exchange Agreement.

This Ratification of Agreement does not serve to amend, nor shall either party claim that it does amend the prior agreements of the Parties and accordingly are prior agreements remain in full force and effect.



Exhibit A

Map identifying parking spaces  
to be conveyed to  
HR Adventures, LLC  
not provided to City Clerk's Office

## APPROVAL OF PLANS

Pursuant to the provisions of Paragraph 6(d)(ii) of the Contract to Exchange Interests in Real Property, **H. R. ADVENTURES, LLC** hereby approves the plans for the parking garage identified in that Contract, dated August 30, 2006, Pages C-02 - Site Plan; A1-1 - Floor Plan; A2-1 - Exterior Elevations; and A4-1 - Wall sections and details.

Dated this 31<sup>st</sup> day of October, 2006.

H. R. ADVENTURES, LLC

By:  \_\_\_\_\_

Manager

## CONTRACT TO EXCHANGE INTERESTS IN REAL PROPERTY

This CONTRACT TO EXCHANGE INTERESTS IN REAL PROPERTY ("Agreement") is made and entered into this 27<sup>th</sup> day of September, 2006, by and between **H. R. ADVENTURES, LLC**, a Colorado limited liability company, hereafter referred to as "HR" and the **CITY OF GRAND JUNCTION**, a Colorado home rule municipality, for itself and for the Grand Junction Downtown Development Authority hereafter referred to as "City."

1. **Conveyance to City.** Subject to the terms of this Agreement, HR agrees to convey to City the following described interest in real property located in the County of Mesa, State of Colorado, to-wit:

All rights held by HR under the Lease And Option Agreement dated February 1, 1999 with Community Office Investors, Inc. ("COI") to acquire the following real property: Lots 13 and 14, Block 103, City of Grand Junction.

The two lots are hereafter referred to as the "Property," and the rights to acquire the Property under the Lease And Option Agreement are hereafter referred to as the "Option Rights." Conveyance shall be by good and sufficient assignment. The Option Rights, for the purpose of this Agreement, have a gross valuation of \$189,000. The Option Rights will be conveyed subject to the following encumbrances: None.

The conveyance of the Property follows notice from the City to HR to the effect that if the Property is not voluntarily conveyed, the City will exercise its powers of eminent domain and condemn the Property for a public purpose to wit the Parking Garage identified below.

2. **Conveyance To HR.** The City agrees to convey to HR the following described improvements to be constructed as set forth hereafter, in the County of Mesa, State of Colorado, to-wit:

a. Fee title to twenty-one (21) contiguous covered parking spaces in a new Parking Garage to be constructed by the City on Lots 13 and 14, Block 103 in the City of Grand Junction ("Parking Spaces"). The Parking Spaces to be conveyed will be identified upon completion of the construction and condominiumization of the parking garage as further discussed in Paragraphs 3 and 4 below. The Parking Spaces to be conveyed to HR shall generally be located in the area identified in the map attached hereto as Exhibit A along the eastern side of the garage or near the exit door or elevator closest to the eastern side of the garage.

b. Conveyance of the Parking Spaces shall be by general warranty deed. The Parking Spaces, for the purpose of this Agreement, have a gross valuation of \$189,000. The Parking Spaces will be conveyed subject to the following encumbrances: None.



3. **Creation of Parking Spaces.** The Parking Garage identified in Paragraph 2 has not been constructed as of the date of this Agreement. With respect to the construction of the Parking Garage the following terms apply:

a. **Construction Responsibilities.** HR shall cooperate with the City as reasonably necessary at all stages of the pre-construction and construction activities to allow the City to use the Property for the purpose of constructing the Parking Garage, including performing any and all work, inspections, survey and other matters necessary or required in anticipation of construction. Specifically, the City shall have the right to test, research and confirm the physical and environmental condition of the Property. Furthermore, the City may excavate and demolish the improvements on Lots 13 and 14 and begin construction phase activities prior to Closing. The City shall manage construction of the Parking Garage; however, the City may consider input from HR about the means and methods of construction, but the City shall not be bound to act on the same.

The City shall manage the construction project by providing construction management and engineering oversight by a Colorado licensed professional engineer in good standing. The construction management and engineering review and oversight will be in accordance with the construction plans, generally accepted engineering practices and if applicable, the standards set by the City.

The City will ensure that no portion of the Parking Garage encroaches upon Lots 15 and 16.

The City, by and through its project management personnel, shall be responsible for directing means and methods of construction and supervision of the work. HR may observe, monitor and examine construction means and methods, but final construction decisions are the responsibility of and shall be made by the City.

The City will make available for inspection by HR, upon HR's written request, all solicitations, bids and/or correspondence between the City and project contractor(s), professional service providers and/or agents.

b. **Commencement of Project.** The City will diligently prosecute construction and condominiumization of the Parking Garage. The City agrees that it will commence construction promptly after issuance of a building permit. The City agrees to complete the parking garage within 500 days from the date of issuance of the building permit, save and except delays occasioned by acts of God or failure to obtain appropriate materials and supplies necessary for incorporation into the Parking Garage. Delays occasioned by any matter set forth in the preceding sentence shall serve to extend the completion period by the amount of time equivalent to the time loss. The condominiumization of the Parking Garage will be completed on or before December 31<sup>st</sup>, 2007.

c. **Quality of Work and Materials.** The City agrees that all work performed by it, or by its contractors, shall be of workmanlike quality and in accordance with the contract documents for the Project. All materials, fixtures and systems placed in the improvements by the City or its subcontractors are to be new, of good quality and free from known defects.

The City agrees with HR to utilize its best skill, efforts and judgment in executing the entire work described in the contract documents; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials, and to perform the work in the best way and most expeditious and economical manner.

d. **Mechanic's Lien Provisions.** The City covenants and agrees that it shall save and hold and indemnify HR free and clear of any and all claims that may be filed against the Property pursuant to the terms and provisions of the Colorado Mechanic's Lien Act, and further agrees to pay any and all expenses that HR may incur as a result of such claims being filed. The City agrees that it will require its contractors and materialmen to provide HR with a full and complete release of any claim which they may possess at or before time of final payment of the sums due them.

e. **Responsibility for Those Performing the Work.** The City shall be responsible for the acts and omissions of all of its employees and contractors and their agents and employees and all other persons performing any of the work under the contract documents.

f. **Protection of Persons and Property.** The City shall be responsible for initiating, maintaining and supervising reasonable safety precautions and programs in connection with the work to prevent damage, injury or loss to employees or other persons, the work and other property beside or adjacent thereto.

g. **Default.** If the City or its contractor fails to perform the work diligently, or abandons or ceases work for a period of forty-five (45) or more days, except for reasons beyond the City's control, or fails in any way to perform the conditions hereof, or fails to pay laborers, mechanics, materialmen, and suppliers when due, or shall become insolvent, or unable to meet its obligations as they become due, or shall make an assignment for the benefit of creditors, HR may, and without prejudice to any other rights it may have, obtain specific performance of this Agreement by order of a court of competent jurisdiction, remove all improvements constructed on the Property and restore the Property to its previous condition, with the right to recover its costs of removal and restoration from the City, and/or terminate this Agreement, and by giving fourteen (14) days written notice of its election to the City.

4. **Closing.** HR and the City agree that the terms of this Agreement shall survive Closing. Closing of the conveyance of the Option Rights by HR shall occur if at all on or before October 31st, 2006. Closing of the conveyance of the Parking Spaces shall occur as set forth in Paragraph 5. If Closing does not occur on or before that date the agreement may be cancelled or



the Closing may be extended to a date mutually agreeable to HR and the City. Each party agrees to execute and deliver the property conveyed to the other party, free and clear of all taxes, except general taxes for the year of closing which the other party assumes and agrees to pay subject to the adjustment to the date of closing. The hour and place of closing shall be designated by mutual agreement.

5. **Condominiumization of Parking Garage.** The City and HR agree to reasonably cooperate to condominiumize the Parking Garage. Condominiumization of the Parking Garage shall occur as soon as regulatory approvals allow. The City and HR's interests, as well as other condominium owners' interests, will be reflected in the condominium declarations, covenants, conditions and restrictions. The declarations will include terms that apportion (on a proportionate share of ownership base) the annual maintenance cost of the parking garage. In addition, the declarations will establish common and general elements and address other aspects of operation and maintenance, as follows:

a. **Limitation on Assessments.** The City and HR shall stipulate and agree that the annual assessment to be paid by HR for its 21 parking spaces under the declarations shall not exceed \$100.00/year/space for a period of seven (7) years from the date that the Certificate of Occupancy is issued for the parking garage. This provision shall not apply to any special assessment. Commencing with the eighth (8<sup>th</sup>) year and for every year thereafter, HR shall pay annual assessments at the prevailing rate. The covenants shall preclude amendment of these terms without the consent of HR or its successor. HR and its successor, if any, shall be responsible for the payment of any and all ad valorem property taxes, possessory interest taxes and other assessments of whatever kind made against its interest in the Parking Garage.

b. **Approval of Covenants.** HR reserves the right to review and approve the covenants, conditions and restrictions and condominium documents for the Parking Garage to ensure that its provisions are consistent with the terms of this Agreement. If the covenants, conditions and restrictions and condominium documents are consistent with the terms of this Agreement, then HR shall approve the same.

c. **Closing – Parking Spaces.** The Closing of the sale of the Parking Spaces shall occur within thirty days after issuance of a Certificate of Occupancy by the city for the Parking Garage, and the recording of both the declaration and condominium map for the Parking Spaces.

6. **Development of Lots 15 and 16.** Due to the anticipated construction of the Parking Garage on Lots 13 and 14, HR (or its successors) expect that Lots 15 and 16 will be developed at some point in the future and has requested and received the following assurances:

a. **Development.** HR shall have sole discretion and control over the development of Lots 15 and 16, in accordance with the requirements of then applicable law, rule or regulation of any entity having jurisdiction over HR and/or Lots 15 and 16.



b. **Compliance With City Codes.** Subject to the Zoning and Development Code in effect at the time, any development of Lots 15 and 16 shall be subject to the City's review and approval of HR's application. All reviews will be conducted by the City in good faith and in the ordinary course of business.

c. **Abutment To Parking Garage.** Notwithstanding the foregoing, the City has expressly agreed that HR's improvements may physically adjoin the Parking Garage, in accordance with applicable codes, laws, rules and regulations in effect at the time.

d. **Conditions To Closing.** All of HR's obligations to close this exchange are expressly made subject to:

i. A written acknowledgment from the City's Chief Building Official that HR's improvements may be constructed so that the west wall/side of HR's structure will physically adjoin the east wall/side of the parking garage without requiring physical separation of HR's improvements from the Parking Garage;

ii. HR's approval, in its sole discretion, of the plans for the east side and walls of the Parking Garage showing the feasibility of the anticipated physical joinder of HR's improvements to the east side and walls of the parking garage. Notwithstanding any provision of this Agreement to the contrary, the plans must show that the east wall/side of the parking garage will be constructed along the boundary line separating Lots 14 and 15 in Block 103 so that HR's improvements may abut the east wall/side without encroachment onto Lot 14. The City agrees that no changes which would materially affect HR's ability to physically join its improvements to the parking garage, and construct direct access to the second and third levels, will be made to the plans without HR's written consent following HR's approval of the plans.

iii. The City has acquired COI, subject to the Lease And Option Agreement with HR, and the City and HR have agreed to an amendment of the Lease and Option Agreement which allows HR to assign its rights to acquire Lots 13 and 14 under the Agreement to the City, and to retain the option to separately acquire Lots 15 and 16 under the original terms of the Agreement.

e. **Fire Wall.** The City may, but is not obligated to, construct, in its sole discretion and at its expense, a fire wall on the east side of the Parking Garage in a manner which will allow the physical joinder of HR's (or its successors') improvements to the east wall of the garage without the necessity of building another fire wall as a part of HR's (or its successors') improvements. If the City constructs a fire wall in this location, if the structure built by HR adjoins the Parking Garage, and if HR is not required to construct a fire wall as a part of its improvements in order to physically adjoin the east wall of the Parking Garage, HR (or its successors) shall pay to the City the sum of \$125,000, plus simple interest at the rate of 5% per annum from the date of completion of the Parking Garage to the date of payment, at the time of issuance of a building permit to HR for construction of improvements on Lots 15 and 16. For purposes of this

subparagraph, the terms “improvements” means an office building or some similar permanent structure on Lots 15 and 16 as allowed by zoning in effect at the time of improvements.

**7. Environmental Conditions.**

a. **Existing Environmental Reports.** COI retained at its expense STTI Environmental and Engineering Consultants, a qualified independent consultant, to evaluate the environmental condition of the Property, and to remediate and monitor the hazardous materials found on the Property. The City acknowledges receipt of, or access to, STTI’s records with respect to the contamination of the Property and its current level of remediation.

b. **“As Is” Nature of Sale to City.** The City acknowledges and agrees that COI and HR have not made, do not make, and specifically negate and disclaim any representations, warranties, promises, covenants, agreements, or guarantees of any kind or character whatsoever, whether express or implied, verbal or written, concerning:

- i. The value, nature, quality, or condition of the Property;
- ii. The suitability of the Property for any and all activities and uses which the City may conduct thereon;
- iii. The compliance of the Property with any laws, rules, ordinances, or regulations of any applicable governmental authority or body; and
- iv. Any other matter with respect to the Property, including compliance with environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including solid waste, and the disposal or existence in or on the Property of asbestos or any hazardous substance.

The City further agrees that, having been given the opportunity to inspect the Property, the City is relying solely on the City’s own investigation of the Property, and not on any information provided by HR. The City further acknowledges and agrees that, to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an “AS IS” condition and “WITH ALL FAULTS.” The City and anyone claiming by, through, or under the City hereby fully and irrevocably releases HR, HR’s members, managers employees, representatives, and agents from any and all claims that the City may now have or hereafter acquire against HR, HR’s members, managers employees, representatives and agents, for any cost, loss, liability, damage, expense, demand, action, or cause of action arising from or related to any defects, errors, omissions, or other conditions, including environmental matters, affecting the Property, or any portion thereof. It is understood and agreed that the values have been adjusted by prior negotiation to reflect that the Option Rights to the Property are exchanged by HR and acquired by the City subject to the foregoing.



8. **Title.** Title to the interests in real property to be exchanged between the parties shall be merchantable in the respective parties hereto.

9. **Possession.** Possession of the premises shall be delivered to each party as follows:

a. **Possession of Lots 13 and 14/Substitute Parking.** The City shall be entitled to possession of Lots 13 and 14 prior to Closing at such time as it reasonably requires use of these lots for construction purposes without further notice to HR. HR agrees to allow the City to take possession of the Property effective September 27, 2006 for the purpose of site preparation, including the removal of asphalt and to begin construction phase activities. If this Agreement is terminated prior to Closing, the City shall restore the Property to its current condition as a parking lot, and each party shall bear 50% of the cost of such restoration. As a condition of its right to take possession, the City has provided at no cost to HR, 23 free parking passes for the displaced users of the Property until the City delivers possession of the 21 parking spaces in the Parking Garage to HR. At the request of HR, the City shall designate by appropriate signage up to 23 parking spaces for the exclusive use of the displaced users in the public parking lot between at the 3<sup>rd</sup> & Main Sts. lot, if requested by HR. Other permits not assigned to this lot, may be used at any 10 hour parking space. Substitute parking rights shall expire when the Parking Garage is open for occupancy.

b. **Cooperation By HR.** As the holder of the Option Rights, HR agrees to sign any development application and otherwise cooperate as reasonably necessary to allow the City to construct the Parking Garage on Lots 13 and 14.

c. **Possession of Parking Spaces.** HR shall be entitled to possession of the Parking Spaces in the Parking Garage when the Parking Garage is open for occupancy.

d. **Temporary Possession of Lots 15 and 16.** HR agrees to reasonably cooperate with the City during construction of the Parking Garage. Reasonable cooperation shall include but not be limited to occasional interference from construction equipment, including noise and dust generated there from and as needed for temporary construction access and easements.

10. **Casualty.** In the event that any of the real property interests to be exchanged is damaged by fire or other casualty prior to time of closing in an amount of not more than twenty percent of the value of the interest, the seller of the damaged interest shall be obligated to repair the same before the closing. In the event such damage shall exceed such value, this contract may be canceled at the option of the other party. Should the other party elect to carry out this agreement despite such damage, such other party shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total value.

11. **No Brokers.** It is agreed that no brokers are acting on behalf of either party of this transaction, and that neither has incurred an obligation to pay a commission to any broker as a result of this transaction.

12. **Default.** Time is of the essence hereof, and if any payment or other condition hereof is not made, tendered or performed by either of the parties hereto as herein provided, the non-defaulting party may elect to terminate this Agreement, or to treat this contract as being in full force and effect, and the non-defaulting party shall have the right to an action for specific performance and damages. HR's rights to specific performance expressly include, without limitation, the right to require the City to complete construction of the parking garage once construction has commenced on the Property, the right to compel the City to convey the 21 parking spaces, and the right to develop and acquire improvements constructed on Lots 15 and 16. In the event the Agreement is terminated before completion of the parking garage, HR's remedies shall include the right to require the City to remove any improvements constructed on the Property at the sole expense of the City, and to restore the Property to its previous condition. In the event that either party files an action in the courts to enforce this Agreement, the prevailing party, in the court's opinion, shall be entitled to recover its attorney fees and costs incurred therein.

13. **Assignment.** HR may assign any or all of its rights under this Agreement, before or after Closing. However, sale of the 21 condominiumized parking spaces will be restricted to owners or tenants of the Dalby Wendland Building, and this block of parking will be granted one common vote on any condominium association or property owners group charged with the management of the Parking Garage.

14. **Option To Acquire Lots 15 and 16.** In consideration of the benefits received under this Agreement, the sufficiency of which is acknowledged, HR grants to the City the option to purchase Lots 15 and 16 if and only if all of the conditions set forth below are satisfied.

a. **Conditions Precedent.** The option granted herein may only be exercised on or after October 1, 2013 if HR (or its successors and assigns) has not commenced the development of Lots 15 and 16 by that date. For purposes of this Agreement, "commenced the development of Lots 15 and 16" means that HR has submitted a bona fide development application to the City Community Development Department for construction of an office building or similar structure in good faith, and thereafter exercises reasonable diligence in prosecuting the application. HR may amend, withdraw and re-submit, and/or submit new applications following any denial of an application, and shall still be deemed to have commenced the development of Lots 15 and 16. The option granted herein shall expire, and may no longer be exercised, once HR (or its successors and assigns) has received approval of its development application and has been issued a building permit.

b. **Duration.** If HR has not commenced development of Lots 15 and 16 by October 1, 2013, the City may exercise its option by delivering two duly signed contracts in the form attached hereto as Exhibit B on or before September 30, 2014. HR shall thereupon sign and return one copy of the contract.

c. **Purchase Price and Payment.** The purchase price shall be the fair market value of the property at its highest and best use as of the date of exercise. If the



parties cannot agree on the fair market value of the lots, they shall mutually select an independent appraiser to perform an appraisal, and the result of the appraisal shall be binding on both parties. If the parties are unable to agree on an appraiser, the Chief Judge of the Twenty-First Judicial District, or his designee, shall make the selection from names and resumes submitted by the parties. The purchase price, as finally determined, will be paid to HR in certified funds at the Closing.

d. **Closing.** The Closing shall take place at a time and place as determined by the parties within thirty days from the date the purchase price is determined.

e. **Expiration.** If the conditions to exercise of this option do not occur, or if the City fails to exercise the option within the period allowed, or if the City defaults in the closing of the option after exercise, this option shall automatically expire and terminate, and neither party shall have any further rights hereunder, without the necessity of further action or documentation by either party.

15. **Survival.** All representations and covenants of the parties shall survive the closing hereof. This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors, and assigns.

16. **Additional provisions:**

a. **Section 1031 Exchange.** This transaction is intended by both parties to qualify as a tax deferred exchange of like kind property under §1031 of the Internal Revenue Code. All terms and provisions of this Agreement shall be interpreted, if possible, to accomplish this purpose.

b. **Continued Existence of COI.** The City shall continue COI in existence as a Colorado limited liability company in good standing until HR either exercises and closes its option to purchase Lots 15 and 16, or the option expires.

**H. R. ADVENTURES, LLC, a  
Colorado limited liability company**

By: \_\_\_\_\_

Manager

**CITY OF GRAND JUNCTION, COLORADO,  
a Colorado home rule municipality**

By: \_\_\_\_\_

City Manager

Exhibit A

Map identifying parking spaces  
to be conveyed to  
HR Adventures, LLC  
not provided to City Clerk's Office