

BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT County Attorney

DIVISION

TITLE Revised Intergovernmental Agreement (IGA) with the City of Lafayette regarding acquisition of land for affordable housing (Flatirons Community Church property at 0 120th Street, Lafayette)

DOCUMENT TYPE IGA

SUBTYPE Revised - Lafayette

BUSINESS MEETING DATE 06/29/17

COMMISSIONERS' ACTION

Approved

Denied

Other

ORIGINAL(S) RETURNED TO Ben Doyle

AGENDA ITEM NUMBER

22

COMMENTS

**INTERGOVERNMENTAL AGREEMENT CONCERNING
ACQUISITION OF LAND IN LAFAYETTE FOR
AFFORDABLE HOUSING**

THIS AGREEMENT ("Agreement") is entered into as of the 29th day of June, 2017, between the City of Lafayette, a Colorado home rule municipal corporation ("City" or "Lafayette") and the County of Boulder, Colorado, a public body corporate and politic ("County" and, together with the City, the "Parties").

Recitals

A. Together with Boulder County Housing Authority ("BCHA"), the Parties have worked together successfully for many years to create and preserve a diverse array of high quality affordable housing options in Lafayette. Per previous intergovernmental agreements, the City is within BCHA's jurisdictional boundaries, and BCHA acts as the City's housing authority.

B. Despite these past successful efforts, a significant number of families, seniors, disabled individuals, and others still struggle to attain safe, decent, affordable housing in Lafayette. Creation of additional housing options remains a top priority for the Parties.

C. Most recently, the Parties have been searching for a site on which to develop a mix of deed-restricted affordable rental and for-sale residential units, including some age-restricted and ADA-accessible units, as well as other complementary uses (the "Community").

D. The City negotiated a purchase agreement (the "Purchase Agreement") to buy property owned by Flatirons Community Church, Inc., a Colorado non-profit corporation (the "Seller"), consisting of approximately 24 acres of land located within the municipal boundaries of Lafayette, the legal description of which is provided in Exhibit A, attached hereto and by this reference made a part of this Agreement (the "Property").

E. The purchase price for the Property is \$3,495,150.00 (the "Purchase Price").

F. Lafayette believes that BCHA has demonstrated its capabilities in the development, operation, maintenance, and management of affordable housing in the municipalities of Lafayette, Longmont, Louisville, Lyons, Nederland, and throughout unincorporated Boulder County.

G. The City and the County desire to financially assist BCHA in acquiring the Property. Once the site is acquired, BCHA desires to work with the City to master plan and develop the Property for the Community. The City and the County's assistance to BCHA at this early stage will help offset the costs of construction and facilitate the long-term affordability of the Community.

H. The Parties desire to set forth their agreement concerning allocation of costs incurred in connection with acquisition of the Property; pre-development activities including

planning, design, engineering, permitting, and financing; construction of the Community; and operation of the affordable housing within the Community.

I. Individuals residing in the Community and others visiting those individuals are likely to shop within Lafayette and, thereby, increase the City's sales tax base.

J. Development of the Community is likely to generate incremental additional revenue to Lafayette not now being received.

K. In its present state, the Property is mostly vacant and unimproved. Development of the Community is likely to require extraordinary site development costs, including installation of streets, roads, sidewalks, street lights, water, sewer, storm water drainage and detention, landscaping, and other public and private infrastructure.

L. Lafayette has reviewed BCHA's request for financial assistance in accordance with all relevant provisions of City Code and finds that the potential economic and affordable housing benefits to the City and its residents is sufficient consideration to enter into this Agreement upon the terms and conditions described hereafter.

M. Lafayette finds this Agreement is consistent with the City's past and present policies on economic development and affordable housing incentives.

N. This Agreement is designed to promote broad cooperation between the Parties on affordable housing issues, to ensure the expansion of affordable housing options in the Lafayette area. The Parties find the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and the County and residents and businesses within the City and County's jurisdiction.

O. The Parties are authorized to enter into this Agreement pursuant to applicable law, including the Colorado Constitution, Article XIV, Section 18(2); parts 1, 2 and 5, article 4, title 29, C.R.S.; part 2, article 1, title 29, C.R.S.; and the City Charter.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, promises, covenants, and undertakings hereinafter set forth, the Parties agree as follows:

1. Incorporation of Recitals. The Parties confirm and incorporate the foregoing recitals into this Agreement.

2. Definition of Affordable Housing. For purposes of this Agreement, "affordable housing" means housing for which the total cost of monthly rent payments, or the total cost of monthly payment of principal, interest, taxes, insurance including private mortgage insurance, and homeowner association dues, does not exceed the specified percentage of the Area Median Income and which is intended to not require payment of more than 30% of the gross monthly household income, where Area Median Income ("AMI") is the median annual income for Boulder County area, as adjusted for household size, calculated and published annually by the United States Department of Housing and Urban Development ("HUD").

3. Purchase Agreement. Upon execution of this Agreement, the City agrees to assign all of its rights and obligations under the Purchase Agreement to the County prior to closing,

using a form substantially similar to the one attached hereto as Exhibit B. The City shall receive a credit at closing for the earnest money the City paid into escrow under the Purchase Agreement, as further described in the "Payment of Purchase Price" section below. The City Council authorizes the City Administrator or his designee to execute the Assignment on behalf of the City as Assignor. The Boulder County Board of Commissioners authorizes Frank Alexander or his designee to execute the Assignment on behalf of BCHA as Assignee.

4. Payment of Purchase Price.

a. Prior to or on the day of closing, the City shall fund \$145,150.00 of the Purchase Price, inclusive of earnest money, and Boulder County shall fund the remaining \$3,350,000.00 of the Purchase Price. Subject to annual appropriations by the City Council, Lafayette agrees to reimburse the County over a period of years for the balance of the Purchase Price not funded by the City as of the date of closing, namely \$3,350,000.00. The City may remit these funds to the County at any time after closing, preferably in alignment with the schedule for financial closing on the construction phases. The City intends to fund its contributions to the Community primarily from revenues accumulating in the City's affordable housing fee fund (the "Affordable Housing Fund"), with payments to the County under this Agreement paid prior to any other discretionary expenses paid each fiscal year out of the Affordable Housing Fund; provided, however, that the City may elect to reimburse the County from any source available and deemed appropriate by the City Council.

b. Assuming the City has paid \$145,150.00 towards the Purchase Price as of the date of closing, the Parties anticipate the following schedule of payments from the City to County thereafter: (i) as to fiscal year 2018, the City Administrator shall cause the City Finance Department to include a minimum of \$100,000.00 for the purpose of reimbursing the County as a line item in the 2018 budget request to City Council, so that City Council may consider appropriating that amount after all required public hearings, (ii) for every fiscal year thereafter, until the total amount of reimbursements made to the County equals the full Purchase Price, the City Administrator shall cause the City Finance Department to include a minimum of \$200,000.00 for this purpose as a line item in an annual budget request to City Council, so that City Council may consider appropriating that amount after all required public hearings, with said minimum amount to be adjusted as appropriate in the year the final reimbursement payment is tendered.

c. When City Council in its discretion makes an appropriation for the purposes described in this section, payment will be made to the County by January 31 of the fiscal year for which the appropriation was made.

d. For as long as this Agreement remains in effect, if Lafayette makes a final decision that for a given year it will not appropriate sufficient funds or does not have funds available for any contribution or payment contemplated herein, the City shall provide written notice of this final decision to the County within 30 days. Failure to appropriate funds or have funds available shall not be a breach or default under this Agreement, although such failure by the City may be grounds for modification or termination of the Agreement.

5. Title. The Parties anticipate that the County will take title from the seller at closing, and the County will subsequently convey its title to BCHA per the terms of a separate

intergovernmental agreement between the County and BCHA.

6. Due Diligence Costs. During the period prior to and including closing on the Property, the County agrees to pay for all due diligence expenses and closing costs, including surveys, title insurance, environmental assessments, physical inspections, and third-party reports.

7. Pre-Development Costs. After closing on the Property, the Parties anticipate that BCHA will work with the City to master plan the Community, complete financial feasibility models, conduct community engagement, obtain market studies to refine the design, and secure all necessary entitlements, with all costs incurred during this phase of developing the Community to be paid by BCHA.

8. Construction Costs. City agrees to use good faith efforts to assist BCHA in reducing the costs of construction of the Community, in addition to the City's commitment to purchase the Property. In accordance with longstanding policy supporting City assistance with impact fees and related costs of affordable housing development, and in exchange for BCHA's commitment to provide affordable housing in Lafayette, including age-restricted and accessible units, City agrees to work with BCHA in good faith to reach a mutually satisfactory financial assistance agreement. Such agreement may include a schedule of waived, reduced, or deferred City plan review fees, permit fees, tap fees, impact fees, water rights dedication requirements, or other appropriate financial incentives by the City. Other financial incentives may include, without limitation, sharing the costs of public infrastructure the Property owner is required to construct. Any such proposed agreement shall be subject to separate approval by the governing bodies of BCHA and City.

9. Affordability Mix. Subject to the availability of suitable financing and the outcome of the land use entitlement process required by Lafayette Code, the Parties agree to the following parameters for the Community.

a. Rental. Of the total amount of all affordable residential units developed on the Property, BCHA shall construct or cause to be constructed approximately 80% as deed-restricted units for which the maximum rents and income limits do not exceed those listed for Boulder County in the Colorado Housing and Finance Authority's ("CHFA") Income and Rent Tables, as amended, for tenants earning at or below 60% of the Area Median Income ("AMI"), as adjusted for family size and number of bedrooms. Within such 80%, no less than 10% of the units shall be age-restricted for occupancy by persons fifty-five years of age or older, to the extent permitted by and developed in accordance with the exemption in the Fair Housing Act that concerns housing for older persons and associated HUD regulations at 24 C.F.R. § 100.300 et seq.

b. For-Sale. Of the total amount of all affordable residential units developed on the Property, BCHA shall construct or cause to be constructed approximately 20% as deed-restricted for-sale units for which the maximum income limits do not exceed those listed for Boulder County in the CHFA Income and Rent Tables, as amended, for households earning at or below 120% of the Area Median Income ("AMI"), as adjusted for family size and number of bedrooms.

c. Market-Rate Units. As part of the master planning and community engagement process, and as reflected in any City entitlement approvals and negotiation of the financial assistance agreement described in section 8 above, the Parties agree to explore whether a portion

of the Community should include a mix of market-rate rental and/or for-sale residences. Any such units shall be integrated with the design and master plan for the Community as a whole and intended to complement and support the affordable housing component. The total number of market-rate units on the Property shall not exceed 20% of the total number of residential units on the Property.

10. Operation and Management of the Community.

a. The Parties intend that BCHA will assume sole responsibility for day-to-day management of the Property during the period the Community is in development. Such management duties include obtaining necessary insurance; maintaining appropriate operational procedures and accurate accounting, reporting, auditing, tax, and other financial records; and ensuring ongoing local, state, and federal regulatory compliance as applicable.

b. As the Community is constructed, which may occur in phases, the Parties intend that BCHA retain responsibility for day-to-day management of every portion of the Property in which BCHA or one of its affiliates owns an interest. As a minimum standard, BCHA will be required to ensure the residences it manages within the Community meet City code and HUD's Housing Quality Standards.

c. To the extent the Community ultimately includes a for-sale affordable component, BCHA shall be required to work with Lafayette to develop a mutually beneficial arrangement under which BCHA will become the City's Program Administrator for Lafayette's Community Housing Program, provided that such arrangement can be accomplished in a cost-effective and efficient manner. The City's program may be linked to BCHA's Housing Counseling program.

11. Lafayette's Police Power Reserved. This Agreement embodies the intent of the Parties concerning financial assistance by Lafayette for acquisition of the site for development of the Community only. No promises, terms, conditions, or obligations other than those contained herein exist with respect to the financial assistance. The rights granted herein shall not limit or otherwise restrict the right of Lafayette to exercise its police power with respect to its land use regulatory powers, control of its property, control of its rights-of-way, or otherwise. This agreement shall not be construed as an approval by Lafayette of the Community for the purpose of any land use approvals that are otherwise required. The County acknowledges that any future zoning or rezoning of the Property is subject to the legislative discretion and/or quasi-judicial determination of the City Council. No assurances of zoning have been made or relied upon by the County.

12. Reporting Obligations. The County shall provide or cause BCHA to provide an annual progress update to City Council regarding development of the Community.

13. Termination.

a. Nothing in this Agreement is intended to require the County to take title to the Property, should the County elect not to close for any reason whatsoever, in its sole discretion. If the County does not close on the acquisition of the Property, the City shall be automatically released from all obligations under this Agreement with no further action required by any party, except that the County shall reimburse the City for all earnest money paid by the City.

b. The provisions of this Agreement concerning financial assistance by the City for the Community shall terminate and become void and of no force or effect upon the City if work has not commenced on the Community by December 31, 2027, as evidenced by submission of a complete application for a building permit related to construction under an approved site specific development plan for the Community approved by Lafayette. In such event, the County will reimburse to the City all contributions made to the City towards the purchase price, with interest at the rate of 2% per annum.

14. Conformity with Laws. Design, improvement, construction, development, and use of the Property for the Community shall be in conformance with all applicable City ordinances and resolutions including ordinances and resolutions pertaining to subdivision, zoning, storm drainage, utilities, flood control, and “green” building.

15. No Repeal of Laws. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City’s ordinances or resolutions, or as a waiver of the City’s legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants.

16. Future Cooperation. The Parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of this Agreement, and will execute such additional documents as necessary to effectuate the same. The Chair or any other member of the Boulder County Board of Commissioners and all other appropriate County officers are hereby authorized and directed to execute and deliver, and the Clerk to the Board is hereby authorized and directed to attest and deliver such other agreements and certificates and to take such other County actions as may be necessary or convenient to carry out and give effect to this Agreement. The Mayor or any other member of the Lafayette City Council and all other appropriate City officers are hereby authorized and directed to execute and deliver, and the City Clerk is hereby authorized and directed to attest and deliver such other agreements and certificates and to take such other City actions as may be necessary or convenient to carry out and give effect to this Agreement.

17. No Interest. No interest shall be paid on any amounts City has agreed to remit to the County under this Agreement.

18. Inspection and Disclosure of Records. Each party and its agents shall have the right to inspect and audit the applicable records of the other parties to verify the amount of any payment under this Agreement, and each party shall cooperate and take such actions as may be necessary to allow such inspections and audits.

19. No Multiple Fiscal Year Obligation; Annual Appropriation. Nothing contained in this Agreement shall constitute a debt, indebtedness, or multiple-fiscal year direct or indirect debt or other financial obligation of the City within the meaning of the Constitution or statutes of the State, nor give rise to a pecuniary liability of the City or a charge against their general credit or taxing powers. Notwithstanding any other provision of this Agreement, the obligations under this Agreement are subject to annual appropriation by the City Council of Lafayette, in their sole discretion. The County understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or liability to the City.

20. Restrictive Covenant Running with the Land. As a condition to reimbursement to the County of an amount equal to the Purchase Price, the City requires that the County execute and record a Restrictive Covenant Running with the Land in substantially the form attached hereto as Exhibit C.

a. This Agreement shall be recorded as part of the acquisition closing documentation in the real estate records maintained by the Boulder County Clerk & Recorder. Upon recording, the restrictions therein relating to use of the Property as affordable housing shall run with the land in perpetuity and shall be binding upon, and inure to the benefit of the parties, their respective heirs, successors, assigns, legal representatives, and personal representatives.

b. The City acknowledges that, to the extent that either (i) the result of the Lafayette entitlement process for the Community's master plan results in a designation of a portion of the Property to be developed as market-rate for-sale and/or rental property in an amount beyond that allowed by this Agreement or (ii) the County or its successor cannot obtain suitable financing to implement the intent of this Agreement, the City will consider a reasonable request by the County or its successor to amend this Agreement accordingly.

c. Each and every contract, deed, or other instrument hereafter executed conveying the Property or a portion thereof shall expressly provide that such conveyance is subject to the Covenant; provided, however, the Covenant shall survive and be effective as to successors and/or assigns of all or any portion of the Property, regardless of whether such contract, deed, or other instrument hereafter executed conveying the Property or a portion thereof provides that such conveyance is subject to the Covenant.

d. In the event the use of the Property does not comply with the terms of this Agreement (where compliance shall be deemed to have occurred upon the recording of a restrictive covenant or land use restriction agreement running to the benefit of a governmental entity other than Lafayette, such as the Colorado Housing and Finance Authority, imposing affordability restrictions on the Project for a term of at least 20 years), the County agrees to repay the City a proportionate amount of the City's actual financial contributions to purchase of the Property within 30 days of notice and demand by City to the County. By way of example, if 10% of the use of the Property does not comply with this Agreement, the County shall repay the City 10% of the funds the City contributed to the purchase.

21. No Indemnification. The Parties each assume responsibility for the actions and omissions of their own agents and employees in the performance or failure to perform work under this Agreement. By agreeing to this provision, the Parties do not waive nor intend to waive the limitations on liability, which are provided to the Parties under the Colorado Governmental Immunity Act §§ 24-10-101, et seq., C.R.S., as amended.

22. Severability. If any part of this Agreement is found, decreed, or held to be void or unenforceable such finding, decree, or holding shall not affect the other remaining provisions of this Agreement which shall remain in full force and effect.

23. Governing Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this Agreement shall be initiated and pursued by

the Parties in the Boulder Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts or within courts of the United States District Court for the District of Colorado, if appropriate.

24. Venue. Should any party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Boulder County, Colorado or the federal district court for Colorado.

25. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

If to City:	Lafayette City Hall c/o City Administrator 1290 S. Public Rd. Lafayette, CO 80026 (303) 665-5588
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If to County:	Boulder County c/o Commissioners' Deputy P.O. Box 471 Boulder, CO 80306 (303) 441-3561
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26. Mediation. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving such dispute.

27. Headings. The section headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

29. Legal Challenge; Escrow. The parties covenant that neither will initiate any legal

challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party. Any funds appropriated for payment under this Agreement shall be escrowed in a separate County account or City account, as applicable, in the event there is a legal challenge to this Agreement.

30. Assignment. This Agreement is personal to the Parties. No party may assign any of the obligations, benefits, or provisions of the Agreement in whole or in any part without the expressed written authorization of the other parties, which consent shall not be unreasonably withheld. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

31. Successors and Assigns. This Agreement shall bind successors and assigns of the Parties.

32. Breach. Any waiver of a breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

33. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the Parties. Neither the County nor the City shall be liable or responsible for any debt or obligation of BCHA or its affiliates incurred in connection with development of the Community.

34. Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa. In this Agreement, "including" means "including but not limited to."

35. No Third-Party Beneficiary. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties, and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties that there are no third-party beneficiaries of this Agreement.

36. Defense of Claims by Third Parties. If any person allegedly aggrieved by any provision of this Agreement and who is not a Party to the Agreement should sue any Party concerning such provision, such Party shall, and the other Parties may, defend such claim upon receiving timely and appropriate notice of pendency of such claim. Each Party shall be responsible for its own costs and attorney fees and for the payment of any damages against it.

37. Electronic Signatures and Records. Each of the Parties consents to the use of electronic signatures by each of the other Parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by any of Parties in the manner specified by such signing Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document

bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

38. Ratification. Each Party hereby authorizes, ratifies, confirms, and approves actions taken to date by its agents and employees in furtherance of the purposes of this Agreement.

39. Entire Agreement. This instrument shall constitute the entire agreement between the Parties as to financial assistance from the City and the County for the purchase of the Property for the Community and supersedes any prior agreements between the Parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. This Agreement may only be amended by a written instrument duly executed by each Party.

[Remainder of page intentionally left blank. Signature pages follow.]

Exhibit A

Legal Description of the Property

TRACT A1 COAL PARK, CITY OF LAFAYETTE, COUNTY OF BOULDER, COLORADO.

Also known as 0 120th Street, Lafayette, CO, with Assessor Parcel No: 157502420001

Exhibit B

Form of Assignment of Purchase Agreement

Assignment and Assumption of Purchase Agreement

For value received, effective as of the date below, the undersigned hereby assigns, transfers, and sets over to COUNTY OF BOULDER, COLORADO, a body corporate and politic, the Assignee, that certain purchase agreement dated _____, 2017 between FLATIRONS COMMUNITY CHURCH, INC., a Colorado non-profit corporation, as seller, and CITY OF LAFAYETTE, a Colorado home rule city, as purchaser, for the sale and purchase of the following described real estate, situated in the City of Lafayette, County of Boulder, State of Colorado: TRACT A1 COAL PARK, also known as 0 120th Street, Lafayette, CO, with Assessor Parcel No: 157502420001.

Assignee hereby assumes and agrees to fulfill the conditions of said real estate contract.

Each of the Parties consents to the use of electronic signatures by each of the other Party on this Assignment. The Assignment, and any other documents requiring a signature hereunder, may be signed electronically by any of Parties in the manner specified by such signing Party. The Parties agree not to deny the legal effect or enforceability of the Assignment solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Assignment in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Remainder of page intentionally left blank. Two signature pages follow.]

ASSIGNOR

CITY OF LAFAYETTE, a Colorado home rule city

Name: _____

Title: _____

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017,
by _____, as _____ of
Lafayette, a Colorado home rule City.

Witness my hand and official seal.
My commission expires:

[SEAL]

Notary Public

Exhibit C

Form of Restrictive Covenant

RESTRICTIVE COVENANT RUNNING WITH LAND

This Restrictive Covenant Running with the Land (the "Covenant") is made and entered into to be effective this _____ day of _____, 2017 by the County of Boulder, Colorado, a public body corporate and politic ("Grantor") and the City of Lafayette, a Colorado home rule municipal corporation ("City" or "Lafayette" or "Grantee").

Recitals

A. Grantor is the record owner of the real property legally described on Exhibit A, attached hereto and by this reference made a part of this Covenant (the "Property"). The Property is located southwest of the intersection of Emma Street and N. 120th Street, addressed as 0 120th Street, Lafayette, CO, and identified by the Boulder County Assessor as Parcel No. 157502420001.

B. Grantor desires to grant to City a restrictive covenant running with the land over the Property in exchange for, and in consideration of, the City's commitment to reimburse the County for the full amount of the purchase price of the Property, all as further described in the financial assistance agreement between the City and County executed contemporaneously herewith.

C. By entering into this Covenant, Grantor and Grantee intend to facilitate the expansion of affordable housing options in the Lafayette area. The Parties agree that execution of this Covenant will serve to provide benefit and advance the public interest and welfare of the City and the County and residents and businesses within the City and County's jurisdiction.

NOW THEREFORE, pursuant to, and in consideration of the mutual agreements and obligations contained in this Covenant and, in consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and accepted for, City and Grantor agree as follows:

1. Restriction. For the term of this Covenant, the Property shall be used primarily to provide affordable housing, as follows:

a. Affordable Rental. Of the total amount of all affordable residential units developed on the Property, Grantor shall construct or cause to be constructed approximately 80% as deed-restricted units for which the maximum rents and income limits do not exceed those listed for Boulder County in the Colorado Housing and Finance Authority's ("CHFA") Income and Rent Tables, as amended, for tenants earning at or below 60% of the Area Median Income ("AMI"), as adjusted for family size and number of bedrooms. Within such 80%, no less than 10% of the units shall be age-restricted for occupancy by persons 55 years of age or older, to the extent permitted by and developed in accordance with the exemption in the Fair Housing Act that concerns housing for older persons and associated HUD regulations at 24 C.F.R. § 100.300 et seq.

b. Affordable For-Sale. Of the total amount of all affordable residential units developed on the Property, Grantor shall construct or cause to be constructed approximately 20% as deed-restricted for-sale units for which the maximum income limits do not exceed those listed for Boulder County in the CHFA Income and Rent Tables, as amended, for households earning at or below 120% of the Area Median Income (“AMI”), as adjusted for family size and number of bedrooms.

c. Market-Rate Units. The total number of market-rate rental and/or for-sale residential units on the Property shall not exceed 20% of the total number of residential units on the Property.

2. Definition of Affordable Housing. For purposes of this Covenant, “affordable housing” means housing for which the total cost of monthly rent payments, or the total cost of monthly payment of principal, interest, taxes, insurance including private mortgage insurance, and homeowner association dues, does not exceed the specified percentage of the AMI and which is intended to not require payment of more than 30% of the gross monthly household income, where AMI is the median annual income for Boulder County area, as adjusted for household size, calculated and published annually by HUD. Grantor shall ensure that the residential units constructed on the Property are affordable to households whose income is equal to or less than the current AMI stated above in effect at the time each household initially occupies the unit.

3. Affordability Period. This Covenant shall encumber the Property, without regard to the term of any mortgage or transfer of ownership, in perpetuity from the date of initial occupancy of the first affordable unit constructed on the Property (the “Affordability Period”).

4. Release. Upon satisfaction of the terms of this Covenant, the City will record a release of this Covenant and the Owner, its successors, assignees, heirs, grantees, and lessees shall no longer be bound by its terms.

5. Termination. This Covenant shall terminate upon foreclosure or transfer in lieu of foreclosure, unless the Owner of record or its affiliate, before the foreclosure, obtains an ownership interest in the Property through the foreclosure.

6. Severability. If any provision of this Covenant or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Covenant and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

7. Enforcement. This Covenant shall be fully enforceable by the City, in an action at law or equity or both. Moreover, the City shall be permitted access to, and entrance upon, the Property at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions herein contained. City shall provide Grantor with at least five days advance notice of its intention to enter the Property, except if the City determines there is an immediate need to take emergency action to prevent a violation of this Covenant. Nothing in this provision shall be deemed to limit the City’s regulatory authority over the

Property, including without limitation the right to take enforcement action for any zoning or other municipal code violation.

8. Runs with Land. By execution of this Covenant, Grantor agrees that the restrictions herein shall run with the land for the term stated above and shall be binding upon, and inure to the benefit of the parties, their respective heirs, successors, assigns, legal representatives, and personal representatives. Grantor agrees that any and all requirements of the laws of the State of Colorado to be satisfied in order for the provisions of this Covenant to constitute a restrictive covenant running with the land shall be deemed to be satisfied in full, including without limitation that this Covenant does not constitute an unreasonable restraint on alienation of the Property or any interests therein, and that any requirements of privity of estate are intended to be satisfied or, in the alternative, that an equitable servitude has been created to insure that the covenants, conditions, and restrictions herein run with the land. Each and every contract, deed, or other instrument hereafter executed conveying the Property or a portion thereof shall expressly provide that such conveyance is subject to this Covenant; provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Property, regardless of whether such contract, deed, or other instrument hereafter executed conveying the Property or a portion thereof provides that such conveyance is subject to this Covenant.

9. Recording. This Covenant shall be recorded in the real estate records maintained by the Boulder County Clerk & Recorder.

10. Amendment. This Covenant may only be amended by a written instrument duly executed by Grantor or its successor and the City. The City acknowledges that, to the extent that either (a) the result of the Lafayette entitlement process results in a designation of a portion of the Property to be developed as market-rate for-sale and/or rental property at a level greater than that specified herein or (b) the Grantor or its successor cannot obtain suitable financing to implement the intent of this Covenant, the City will consider a reasonable request by Grantor or its successor to amend this Covenant accordingly.

[Signature pages follow.]

Exhibit A

Legal Description of the Property

TRACT A1 COAL PARK, CITY OF LAFAYETTE, COUNTY OF BOULDER, COLORADO.

Also known as 0 120th Street, Lafayette, CO, with Assessor Parcel No: 157502420001