

WHEN RECORDED, RETURN TO:

Brownstein Hyatt & Farber, P.C.  
Attn: Carolynne C. White  
410 Seventeenth Street, 22nd Floor  
Denver, Colorado 80202

### **PARKING EASEMENT AGREEMENT**

This Parking Easement Agreement (this "Easement Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Effective Date") by and between the GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado ("Grantor") and EILEEN BANKS ("Grantee"). Grantee and Grantor shall be referred to collectively herein as the "Parties".

#### **RECITALS:**

A. Grantor is the owner of certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Parking Structure Property"), upon which Grantor operates a multi-level parking garage ("Parking Garage").

B. Grantee is the owner of certain real property more particularly described on Exhibit B attached hereto and incorporated herein by this reference, which is adjacent to the Parking Structure Property ("Grantee Property").

C. Pursuant to the terms of that certain Agreement to Exchange Real Property between Grantor and Grantee dated December 8, 2005, as amended, Grantee conveyed to Grantor a portion of the Grantee Property in connection with Grantor's construction of the Parking Garage, in exchange for Grantor's agreement to grant to Grantee of an exclusive easement for the use by Grantee of five (5) parking spaces, each having a minimum width of eight feet six inches, within the Parking Garage. The five parking spaces to be used by Grantee in the Parking Garage are more particularly identified on Exhibit C attached hereto and incorporated herein by this reference (the "Parking Easement Area").

D. The Parties desire to confirm the rights and obligations of the Parties with respect to the Parking Easement (as defined below).

#### **AGREEMENT:**

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and incorporated herein.
2. Grant of Parking Easement by Grantor. Grantor hereby grants, sells, bargains and conveys to Grantee an exclusive easement on, over and across the Parking Easement Area ("Parking Easement") solely for the purpose of the parking of motor vehicles on the Parking Easement Area by Grantee and its occupants, tenants, invitees, customers, guests, employees, successors and assigns. Grantee shall not pay to Grantor any parking fees or charges of any kind for its use of the Parking Easement, and may use the Parking Easement during all times that the parking structure is open to the public for business.
3. Access. In connection with its use of the Parking Easement, Grantor shall have the exclusive right to use that certain private pedestrian access door ("Access Door") situated at the northwest corner of the Parking Garage.
4. Maintenance of Parking Easement. Grantor and its successors and assigns shall be responsible for all maintenance, repair and replacement, if necessary, of the Parking Easement Area, at its sole cost and expense.
5. Signage. Grantor shall install, at Grantor's sole cost and expense, signage in front of the five parking spaces that comprise the Parking Easement Area stating that such parking spaces are exclusively for the use of Grantee and its occupants, tenants, invitees, customers, guests, employees, successors and assigns. Grantor shall maintain such signage at its sole cost and expense. Any change in the signage by Grantee shall be subject to the prior written approval of Grantor, which approval shall not be unreasonably withheld, conditioned or delayed.
6. Easement to Run with Land. This Easement Agreement and all other covenants, agreements, rights and obligations created hereby, shall run with the Parking Easement Area and the Grantee Property, and shall be binding on and inure to the benefit of all persons having or acquiring fee title to the Parking Easement Area or the Grantee Property, all upon the terms, provisions and conditions set forth herein. The Parking Easement and all the rights and obligations of the Grantor and Grantee with respect to the Parking Easement set forth herein will commence as of the Effective Date and shall continue in perpetuity.
7. Rules and Regulations. In connection with its use of the Parking Easement Area, Grantee and its occupants, tenants, invitees, customers, guests, employees, successors and assigns shall comply with all reasonable rules and regulations promulgated by Grantor relating to the use by all occupants of the Parking Garage.
8. Insurance. Grantor shall maintain a commercial general liability insurance policy ("Policy") for the Parking Structure Property in an amount equal to \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and Grantee shall be named as an additional insured on such Policy.
9. Limitation on Liability. Grantee agrees that, notwithstanding any provision of this Easement Agreement to the contrary, neither Grantor nor any of Grantor's employees, agents, representatives or assigns shall be personally liable for any breach of or other action related to this Easement Agreement, but rather Grantee shall look solely to Grantor's interest in the

Parking Easement Area. Notwithstanding the foregoing, Grantee acknowledges and agrees that this Section does not grant Grantee any lien or similar rights with respect to the Parking Structure Property or other assets of Grantor.

10. Indemnification. Grantor shall indemnify, defend and hold Grantee harmless from and against any liability or expense, including reasonable attorneys' fees, incurred by Grantee in connection with the failure of Grantor to maintain or repair the Parking Easement Area as required by this Easement Agreement. Grantee shall indemnify, defend and hold Grantor harmless from and against any and all liability, loss, cost, damage or expense, including reasonable attorneys' fees, incurred by Grantor in connection with the use by Grantee or its occupants, tenants, invitees, customers, guests, employees, successors and assigns of the Parking Easement Area.

11. Damage or Destruction; Condemnation. In the event the entire Parking Garage or any portion thereof is damaged or destroyed by any cause whatsoever, whether insured or uninsured, other than damage caused by ordinary use or wear and tear, the Grantor shall have no obligation to restore the Parking Garage to its condition prior to such damage or destruction. If Grantor elects not to restore or repair the Parking Garage in the event of such damage or destruction, then Grantor shall provide Grantee with five alternate parking spaces for the exclusive use of Grantee, which alternate parking spaces shall be located on property in the vicinity of the Grantee Property and shall be reasonably acceptable to Grantee. If Grantor provides alternate parking spaces to the Grantee, then this Parking Easement Agreement shall terminate and Grantee shall execute a termination of this Easement Agreement within 10 days after request therefore by Grantor, and Grantor may record such termination with the Jefferson County Clerk and Recorder at its sole cost and expense.

12. Miscellaneous.

(a) Counterparts. This Easement Agreement may be executed in several counterparts, and each counterpart shall constitute one Easement Agreement binding on all parties hereto, notwithstanding that all of the parties are not signatories to an original or same counterpart.

(b) Successors and Assigns. This Easement Agreement shall be binding on Grantor's and Grantee's respective successors and assigns; provided, however, that Grantee may not assign this Easement Agreement, or its rights hereunder, or delegate its obligations hereunder without Grantor's prior written consent, which consent may be withheld in Grantor's sole and arbitrary discretion.

(c) Section Headings. The Section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Easement Agreement.

(d) Entire Agreement. This Easement Agreement, together with the exhibits attached hereto, contain the entire agreement of the parties hereto with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the parties hereto.

(e) No Rights in Public. Nothing contained herein is intended to dedicate, grant, or reserve to the general public or the public at large or for any public purpose whatsoever, or to permit any member of the general public to acquire any right, by adverse possession, prescription, grant, dedication or otherwise, to possess, use or occupy the Parking Structure Property, or any portion thereof, said grant, dedication, reservation, or prescriptive rights being expressly denied.

(f) Governing Law. The terms and provisions of this Easement Agreement shall be construed under and governed by the laws of the State of Colorado and venue for judicial resolution of any dispute relating to the Easement Agreement shall be the District Court in and for the County of Jefferson, State of Colorado.

(g) Waivers. No provision of this Easement Agreement shall be deemed waived except by a writing executed by the party against whom the waiver is sought to be enforced. No waiver of any provision of this Easement Agreement shall be deemed a continuing waiver of such provision or deemed a waiver of any other provision of this Easement Agreement.

(h) Notices. All notices, requests, consents and other formal communication between the parties that are required or permitted under this Easement Agreement ("Notices") shall be in writing and shall be sent to the address for the respective addressee provided in the preamble to this Easement Agreement (each a "Notice Address"), with a copy, in the case of Grantor, to Carolynne C. White, Esq., Brownstein Hyatt & Farber, P.C., 410 17<sup>th</sup> Street, Suite 2200, Denver, CO 80202 and a copy, in the case of Grantee, to \_\_\_\_\_. Notices shall be (i) delivered personally with a written receipt of delivery, (ii) on the next business day after Notice is sent by a recognized overnight delivery service requiring a written acknowledgment of receipt or providing a certification of delivery or attempted delivery, or (iii) four business days after deposit in the United States mail by certified or registered mail, postage prepaid, return receipt requested. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its Notice Address from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of Notices.

(i) Amendment. This Easement Agreement may not be amended or terminated except by a written instrument signed by the then-fee-owner of the Parking Easement Area and the Grantee.

(j) Default. If any party hereto breaches any provision of this Easement Agreement and fails to cure such breach within 10 days after receipt of written notice thereof, the non-defaulting party shall have the right to enforce the terms and provisions of this Agreement by any proceeding at law or in equity. The failure by any Party to enforce this Agreement or any term or provision hereof shall in no event be deemed a waiver of the right to do so thereafter.

(k) Attorney Fees. The substantially prevailing party in any action or arbitration brought to enforce or interpret this Easement Agreement shall be awarded its costs and reasonable attorney's fees (including those of in-house counsel), including for any appellate review.

(l) Usage of Terms. When the context in which words are used herein indicates that such is the intent, words in the singular number shall include the plural and vice versa. All pronouns and any variations thereof shall be deemed to refer to all genders.

(m) Waiver of Jury Trial. In connection with any action brought to enforce or interpret this Easement Agreement, both parties waive the right to a jury trial.

(n) Authority to Execute. Each person executing this Easement Agreement represents and warrants that it is duly authorized to execute this Easement Agreement by the party on whose behalf it is so executing.

(o) Recordation. Grantee may record this Easement Agreement, at Grantee's sole cost and expense, against the Parking Structure Property in the records of the Jefferson County Clerk and Recorder. Notwithstanding the foregoing, in the event this Easement Agreement is terminated and either party desires to record an instrument evidencing such termination, the parties shall prepare, execute and record, at the shared expense of both parties, any reasonable instrument necessary to release this Easement Agreement of record.

(p) Disclaimer of Joint Venture. This Easement Agreement is not intended to create a joint venture, partnership or agency relationship between Grantor and Grantee, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

(q) Survival. All terms, covenants, releases, and indemnities which are intended to survive termination or expiration of this Easement Agreement shall survive such termination or expiration. Under no circumstances, however, shall the easements granted to Grantee pursuant to this Easement Agreement survive any such termination or expiration.

(r) Construction. The parties hereto have participated jointly in the negotiation and drafting of this Easement Agreement. In the event an ambiguity or question of intent or interpretation arises, this Easement Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Easement Agreement.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**GRANTOR:**

**GOLDEN URBAN RENEWAL AUTHORITY, a  
body corporate and politic of the State of  
Colorado**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE:**

\_\_\_\_\_  
**EILEEN BANKS**

STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Mark Heller, as Executive Director of the Golden Urban Renewal Authority, a body corporate and politic of the state of Colorado.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Eileen Banks.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PARKING STRUCTURE PROPERTY**

**EXHIBIT B**

**LEGAL DESCRIPTION OF GRANTEE'S PROPERTY**

**EXHIBIT C**  
**DEPICTION OF PARKING EASEMENT AREA**  
[TO BE INSERTED]