

Attachment B

SECOND AMENDMENT TO AGREEMENT CONCERNING PARK CREDITS FOR SPRINGS RANCH GOLF COURSE

This is a Second Amendment (the "Second Amendment") to that certain Agreement Concerning Park Credits for Springs Ranch Golf Course dated October 12, 1999 (the "Agreement"), by and among the **CITY OF COLORADO SPRINGS**, a home rule city and a Colorado municipal corporation (the "City"), and **BRE/SPRINGS RANCH, L.L.C.**, a Delaware limited liability company ("BRE/SPRINGS"), and **TOM TAUCHE, INC.**, a Colorado corporation ("Tauche"). The Agreement is modified by that certain Amendment to Agreement Concerning Park Credits for Spring Ranch Golf Course dated effective November 30, 2011 (the "First Amendment"). The Agreement and First Amendment are collectively referred to herein as the "Agreement."

Recitals

A. The Agreement was recorded in the real property records of the Clerk and Recorder of El Paso County, Colorado on October 29, 1999, at Reception No. 099167517.

B. The First Amendment was recorded in the real property records of the Clerk and Recorder of El Paso County, Colorado on December 2, 2011, at Reception No. 211119344.

C. The Springs Ranch Golf Course (the "Golf Course") is subject to indebtedness which Tauche desires to pay in full, and to facilitate that payoff, Tauche desires to amend the Agreement to release a certain portion of the real property subject to the Agreement in exchange for a conveyance of land and a certain pedestrian bridge to the City for the benefit of the City Parks Department.

D. The Golf Course is a part of the Springs Ranch development, which was developed by BRE/SPRINGS. Development of Springs Ranch has previously been completed; BRE/SPRINGS is no longer in existence and is not a necessary party to this Second Amendment.

E. The City is willing to release that parcel under the terms of this Second Amendment.

F. Following the release and this Amendment, the Golf Course shall remain an 18-hole golf course open to the public; and as such, the nature of the Golf Course will remain as originally contemplated in the Agreement.

G. Paragraph 6. of the Agreement permits amendment of the Agreement by written instrument signed by all parties.

Agreement

1. The parties hereby agree that the real property consisting of approximately 13.843 acres as described on attached **Exhibit A** to this Amendment (the “Released Property”) and owned by Tauche is hereby released from and shall no longer be subject to the terms and conditions of the Agreement. As such, the Agreement shall not apply to the Released Property, and the Released Property shall not constitute property of the Golf Course for purposes of the Agreement.

2. By virtue of withdrawal of the Released Property, the Agreement requires Tauche to either pay to the City a sum equal to the value of the park credits associated with the Released Property or make a dedication of land to the City consistent with the .314 ratio described in the Agreement. In accordance therewith, the parties hereby agree that the real property consisting of three parcels and totaling approximately 4.7 acres described on attached **Exhibit B** to this Amendment (the “Conveyed Property”) and owned by Tauche shall be conveyed to the City for the benefit of the Parks Department in the form of a special warranty deed attached hereto as **Exhibit C** (the “Deed”). The Conveyed Property is comprised of three separate parcels: Parcel 1, consisting of approximately .261 acres; Parcel 2, consisting of approximately 1.136 acres; and Parcel 3, consisting of approximately 3.303 acres. The parties agree that the total acreage of the Conveyed Property exceeds that required by the Agreement for the withdrawal of the Released Property and satisfies the obligations of Tauche in connection therewith.

3. As additional consideration, Tauche agrees to convey to the City and the City agrees to accept a certain pedestrian bridge which is currently located on the Golf Course (the “Pedestrian Bridge”). The Pedestrian Bridge will be transferred to the City by Bill of Sale in its “as is” condition. At its option and expense, the City may use and relocate the Pedestrian Bridge as the City sees fit to serve the needs of the City and the general public.

4. Portions of the Released Property are currently used by Tauche for utilities and access and Tauche shall reserve in the Deed certain easement rights in the Conveyed Property as more particularly described in the Deed.

5. In consideration of the release of the Released Property, Tauche covenants and agrees to use all of the net proceeds of any sale of the Released Property after payment of costs incurred by Tauche for this action and for the sale, first to pay down or off as possible the outstanding indebtedness of the Golf Course.

6. The City agrees that pursuant to City Code § 7.7.1201, *et seq.*, any park fees owed to the City incidental to any future development of the Released Property shall first be expended by the developer through the cost of construction and completion of the City trail system located adjacent to the Released Property along Tutt Boulevard and the Springs Ranch Golf Course Clubhouse Property. The required construction of the trail shall be memorialized as a condition of development on a Development Plan satisfactory to and approved by the City. The City shall have the right to determine the reasonableness of the costs associated with the construction of the trail. Any park fees required beyond the cost of construction of the trail shall be remitted to the City in accord with City Code § 7.7.1201, *et seq.*

7. The parties agree that the actions taken hereunder shall not constitute a change to the nature or rules of the Golf Course as defined in the Park Credit Agreement, and there shall be no obligation to reimburse the City for any park dedication credits granted pursuant to the Park Credit Agreement.

8. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request in order to carry out the intent and accomplish the purposes of this Second Amendment and the consummation of the transaction contemplated hereby.

9. All other terms and conditions of the Agreement shall remain in effect. The terms of this Second Amendment shall control in the event of a conflict between the terms of this Second Amendment and the Agreement.

[Signature Page Follows]

Dated this _____ day of _____, 2015.

IN WITNESS WHEREOF, the parties have signed this Amendment as of the date indicated above.

TOM TAUCHE, INC.
a Colorado corporation

By: _____
Tom Tauche
Its: President

CITY OF COLORADO SPRINGS
a home rule city and Colorado municipal corporation

By: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

[Notary Blocks on Following Page]

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged to before me this ____ day of _____, 2015, by _____ as _____ and by _____ as [Deputy] City Clerk of the City of Colorado Springs, a home rule city and Colorado municipal corporation.

Witness my hand and official seal.

Notary Public

My Commission Expires:_____.

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged to before me this ____ day of _____, 2015, by Tom Tauche as President of Tom Tauche, Inc., a Colorado corporation.

Witness my hand and official seal.

Notary Public

My Commission Expires:_____.

(SEAL)

EXHIBIT A

Legal - Released Property

EXHIBIT B

Legal - Conveyed Property

Parcel 1

Legal Description

Parcel 2

Legal Description

Parcel 3

Legal Description

Exhibit C

Special Warranty Deed

Exhibit D

Springs Ranch Golf Course Club House Property