


REQUEST FOR ORDINANCE TO RELINQUISH AN EASEMENT

TO: Ivone Avila-Ponce, City Attorney's Office

FROM: Matt R. Bryner, PE, Director, Right of Way Services 
Matt R. Bryner (Sep 2, 2022 11:16 MDT)

PROJECT NO: 2022-RELINQ-0000014

DATE: August 24, 2022

SUBJECT: Request for an Ordinance to relinquish the easement in its entirety as established in the Easement and Indemnity Agreement, Recordation No. 9900183115. Located at 5301 Leetsdale Dr.

It is requested that the above subject item be placed on the next available Mayor Council Agenda.

This office has investigated the request of Jarrett Grant, dated May 23, 2022 on behalf of 226 Monroe St. LLC for the relinquishment of the subject easement(s).

This matter has been coordinated with City Councilperson Sawyer, District 5; Asset Management; Emergency Management; Community Planning & Development: Planning Services; Historic Preservation/Landmark; Denver Water; Denver Fire Department; City Forester; Parks and Recreation; DOTI: ER Transportation and Wastewater, DES Transportation & Wastewater, Construction Engineering, Policy and Planning, TES Signing and Striping, Survey; Colorado Department of Transportation; Regional Transportation District; Comcast; Metro Wastewater Reclamation District; CenturyLink; and Xcel Energy, all of whom have indicated no objection to the proposed easement relinquishment(s).

As a result of these investigations, it has been determined that there is no objection to relinquishing the subject easement(s).

A vicinity map of the subject easement area(s) and a copy of the document(s) creating the easement(s) are attached.

MB:bw

cc: City Councilperson & Aides
City Council Staff – Zach Rothmier
Department of Law – Bradley Beck
Department of Law – Deanne Durfee
Department of Law – Maureen McGuire
Department of Law – Martin Plate
DOTI, Manager's Office – Alba Castro
DOTI, Legislative Services – Jason Gallardo
DOTI, Survey – Paul Rogalla

City and County of Denver Department of Transportation & Infrastructure
Right-of-Way Services | Engineering & Regulatory
201 W Colfax Ave, Dept 507 | Denver, CO 80202
www.denvergov.org/doti
Phone: 720-865-3003

ORDINANCE/RESOLUTION REQUEST

Please email requests to Jason Gallardo
at Jason.Gallardo@denvergov.org by **12:00pm on Monday**. Contact him with questions.

Date of Request: **August 24, 2022**

Please mark one: Bill Request or Resolution Request

1. Type of Request:

- Contract/Grant Agreement Intergovernmental Agreement (IGA) Rezoning/Text Amendment
 Dedication/Vacation Appropriation/Supplemental DRMC Change
 Other: Easement Relinquishment

2. Title: (Start with *approves, amends, dedicates*, etc., include name of company or contractor and indicate the type of request: grant acceptance, contract execution, contract amendment, municipal code change, supplemental request, etc.)

Request for an Ordinance to relinquish the easement in its entirety as established in the Easement and Indemnity Agreement, Recordation No. 9900183115. Located at 5301 Leetsdale Dr.

3. Requesting Agency:

4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution	Contact person to present item at Mayor-Council and Council
Name: Brianne White	Name: Jason Gallardo
Email: Brianne.white@denvergov.org	Email: Jason.Gallardo@denvergov.org

5. General description or background of proposed request. Attach executive summary if more space needed:

Request for an Ordinance to relinquish the easement in its entirety as established in the Easement and Indemnity Agreement, Recordation No. 9900183115. Located at 5301 Leetsdale Dr.

6. City Attorney assigned to this request (if applicable): Martin Plate

7. City Council District: Councilperson Sawyer, District 5

8. ****For all contracts, fill out and submit accompanying Key Contract Terms worksheet****

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: _____

Date Entered: _____

Key Contract Terms

Type of Contract: (e.g. Professional Services > \$500K; IGA/Grant Agreement, Sale or Lease of Real Property):

Vendor/Contractor Name:

Contract control number:

Location:

Is this a new contract? Yes No Is this an Amendment? Yes No If yes, how many? _____

Contract Term/Duration (for amended contracts, include existing term dates and amended dates):

Contract Amount (indicate existing amount, amended amount and new contract total):

<i>Current Contract Amount</i> (A)	<i>Additional Funds</i> (B)	<i>Total Contract Amount</i> (A+B)

<i>Current Contract Term</i>	<i>Added Time</i>	<i>New Ending Date</i>

Scope of work:

Was this contractor selected by competitive process?

If not, why not?

Has this contractor provided these services to the City before? Yes No

Source of funds:

Is this contract subject to: W/MBE DBE SBE XO101 ACDBE N/A

WBE/MBE/DBE commitments (construction, design, Airport concession contracts):

Who are the subcontractors to this contract?

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: _____

Date Entered: _____

EASEMENT RELINQUISHMENT EXECUTIVE SUMMARY

Project Title: 2022-RELINQ-0000014, Leetsdale Apartments, 5301 Leetsdale Dr.

Property Owner: 226 Monroe St. LLC c/o Grant Nelson

Description of Proposed Project: Request for an Ordinance to relinquish the easement in its entirety as established in the Easement and Indemnity Agreement, Recordation No. 9900183115. Located at 5301 Leetsdale Dr. The applicant is proposing to redevelop site into a multifamily residential building.

Background: The original easement was granted in connection with an obsolete planned building group. The existing easement does not cover any existing utilities. There are two distinct recorded easements for the same purpose. This is the first of two.

Location Map:



City and County of Denver Department of Transportation & Infrastructure
Right-of-Way Services / Engineering & Regulatory
201 W Colfax Ave, Dept 507 | Denver, CO 80202
www.denvergov.org/doti
Phone: 720-865-3003

99-743

EASEMENT AND INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of August, 1999, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", Party of the First Part, and VITAMIN COTTAGE CHALET, L.L.C., a Colorado limited liability company, hereinafter referred to as "Owner(s)", Party of the Second Part.

WITNESSETH:

WHEREAS, the Owner(s) is about to develop, under a Planned Development premises situated in the City and County of Denver, State of Colorado, which property is to be known as 5231 Leetsdale Drive, is referred to herein as the "Development", and is more particularly described as set out on Exhibit "A" attached hereto, and by reference made a part hereof; and

WHEREAS, the Owner(s) will cause to be recorded a Planned Development Plan pertaining to a planned development constructed within the Development, which Planned Development Plan will show thereon private streets, drives, alleys, roadways, sewers and drainage facilities and otherwise conform to Standards approved by the City Development Review Committee; and

WHEREAS, Owner(s) is charged with the maintenance of the common areas and private streets, drives, alleys, roadways, sewers, and drainage facilities within the Development; and

WHEREAS, the City is a municipal corporation within which the Development is located and which currently provides emergency and other municipal services to premises within the City using the public streets; and

WHEREAS, the streets, drives, alleys and roadways within the Development are private roadways; and

WHEREAS, Owner(s) is desirous of providing ingress and egress to the City on such private streets, drives, alleys and roadways, and to such sewers and drainage facilities, to enable the City to provide emergency and other municipal services in, to, and over the Development;

NOW, THEREFORE, in consideration of the premises and in consideration of the Owner(s) receiving the benefits of emergency and other municipal services from the City, the Parties hereto agree as follows:

SECTION ONE. CONVEYANCE OF EASEMENT.

1. The Owner(s) hereby grants and conveys a non-exclusive easement to the City, for

VITAMIN.EIA

gives city easement over private improvements for the purposes of safety

ingress and egress over all private streets, drives, alleys or roadways shown on the Plan of Planned Development above referred to, for purposes of providing in such areas of the Development public safety and other normal and usual municipal services to the citizens of the City and County of Denver, together with any and all rights-of-ways, easements or rights of ingress and egress, necessary or convenient to the City to accomplish such purposes, PROVIDED, HOWEVER, that in non-dedicated streets, drives, alleys, roadways or other privately maintained ways and places existing within the Development, the City shall not be obligated or expected to perform any construction, re-construction, maintenance, repair, cleaning, snow removal, street lighting, traffic control or regulation or any other services on such private streets, drives, alleys, or roadways or property of the Development which it does not or cannot perform on any other private street, drive, alley, roadway or other property within the City and County of Denver.

2. It is the desire of the Owner(s) that the City use these private streets, drives, alleys or roadways to provide emergency and other municipal services within the Development for so long as the City provides such services generally in the City.

3. The term Owner(s) as used herein shall be deemed to include the heirs, successors, and assigns of the original Owner(s). All duties and liabilities of the Owner(s) hereunder shall be joint and several as among such original owner(s), and their heirs, successors, and assigns; provided that if an occurrence giving rise to a claim hereunder is proven to be proximately caused by a defined action or omission by Owner(s), its agents, servants or employees which occurred during a specific period of time only those Owner(s) holding fee title to the Development or any portion thereof during such specific period of time shall be jointly and severally liable hereunder.

SECTION TWO. CONSTRUCTION AND MAINTENANCE.

4. It shall be the duty of the Owner(s) to construct, reconstruct, repair and maintain all private streets, drives, alleys or roadways within the Development in such condition so as to be usable by the City for provision of services as set out herein.

5. If, in the sole opinion of the City, the private streets, drives, alleys or roadways are not properly maintained or are closed, blocked, or vacated, the City shall give notice to the Owner(s) and if repairs or corrections are not made within the time designated in such notice, the City is authorized to, and will make or have made repairs or corrections and will charge and collect the cost thereof from the Owner(s).

6. The Owner(s) shall in no way consider or hold the City or its personnel guilty of a trespass in the performance of any of the municipal services, duties or responsibilities referred to herein.

7. The Owner(s) shall neither (a) alter the Development nor (b) close, block or vacate the streets, drives, alleys or roadways in the Development so that as a result of (a) or (b) the provision of the above-stated services to the Development is rendered impossible or materially

duty of land owner to maintain private streets, etc.

impaired.

8. The Owner(s) shall comply with all operating rules, regulations and engineering standards of the Denver Board of Water Commissioners as the same shall exist from time to time.

9. No combustible construction shall start in the Development until fire hydrants sufficient in number and location as determined by the Denver Fire Department have been installed and other fire protection facilities have been installed all in accordance with the provisions of the Uniform Fire Code and Uniform Building Code as adopted by the City and County of Denver.

10. The Owner(s) shall pay for and be responsible for all costs of installation and maintenance of sanitary sewers, sanitary sewer detention facilities, if required, storm sewers and storm drainage control facilities within the Development as determined necessary by and according to the specifications of the Department of Public Works of the City and County of Denver. While the City assumes no obligation for the maintenance or operation of such sewers, in the event of a malfunction of such sewers or drainage facilities and the failure of the Owner(s) to correct the malfunction in a reasonable time the Owner(s) authorizes the City to make or have made the correction or repair and to charge and collect the cost thereof from the Owner(s).

SECTION THREE. INDEMNITY AGREEMENT.

11. The Owner(s) agree to: defend, indemnify, and save harmless the City, its officers, agents and employees against any and all claims, liabilities, actions, causes of action, or legal or equitable proceedings for damage to property or injuries to or death of any person or persons which may result from City presence or operations at the Development, provided, however that the Owner(s) need not indemnify or save harmless the City, its officers, agents, and employees from damages as aforesaid proximately resulting from the sole negligence of the City's officers, agents, and employees. By all claims for damages this Agreement specifically includes, but is not limited to:

(A) Any street, drive, alley or roadway deterioration or damage on the Development.

(B) Any structural damage to buildings located on the Development caused by City vehicle weight or size, by vibrations generated by City vehicles, or by any other cause not specifically described.

(C) Any damage to utilities such as water pipes, sewer pipes, gas pipes, electrical power lines, and other communication lines, conduits, or cables.

(D) Any damage to landscaping including but not limited to shrubbery, trees and lawn.

land owner shall hold the city harmless

(E) Any bodily injury to any person except a City employee, which is caused directly or indirectly by City presence or operations at the Development, or by delay, or complication or prevention of provision of such operations due to closure, blocking, vacation, or disrepair of the private streets, drives, alleys or roadways referred to herein.

12. The Owner(s) further agrees jointly and severally to reimburse the City for any bodily injury to City personnel, or damages to City property caused by a defective or dangerous condition of the Development.

SECTION FOUR. DISPUTES.

13. Disputes between the City and any Owner(s) regarding any aspect of this Easement and Indemnity Agreement including but not limited to breach or default of the Agreement shall be resolved by administrative hearing pursuant to D.R.M.C. Chapter 56-106.

SECTION FIVE. NO DISCRIMINATION IN EMPLOYMENT; NO THIRD PARTY BENEFICIARIES.

14. In connection with the performance of work under this Agreement, the Owner(s) agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

15. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Owner(s), and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, subconsultants, and suppliers. It is the express intention of the City and the Owner(s) that any person other than the City or the Owner(s) receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

SECTION SIX. EASEMENT AND INDEMNITY AGREEMENT TO RUN WITH LAND.

16. The grant of easement and the covenants and duties contained herein shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto, their heirs, successors, or assigns, and the Owner(s) agrees that upon sale of any portion of the Development a copy of this Easement and Indemnity Agreement will be given to the purchaser.

17. The Owner(s) agrees to the terms of this Agreement and gives evidence of its voluntary agreement by having the individual(s) below sign their name(s) to the Agreement. The person or persons signing and executing this Agreement on behalf of the Owner(s) do hereby warrant

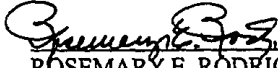
and guarantee that he/she or they have been fully authorized by the Owner(s) to execute this Agreement on behalf of the Owner(s) and to validly and legally bind the Owner(s) to all the terms, performances, provisions and conditions herein set forth.

18. THIS AGREEMENT shall become effective upon its execution by the parties hereto. The Owner(s) shall provide satisfactory evidence to the City of recordation of the Agreement with the Clerk and Recorder of the City and County of Denver.

20. THIS AGREEMENT shall be binding upon any and all heirs, successors, assignees, or transferees of the Parties hereto and shall be considered a covenant running with the land.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:



ROSEMARY E. RODRIGUEZ
and Recorder, Ex-Officio Clerk
City and County of Denver



CITY AND COUNTY OF DENVER

By: 
MAYOR

RECOMMENDED AND APPROVED:

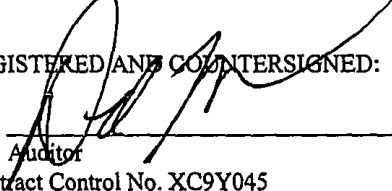
By: 
Manager of Public Works

APPROVED AS TO FORM:

DANIEL E. MUSE, Attorney for the
City and County of Denver

By: 
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: 
Auditor
Contract Control No. XC9Y045

PARTY OF THE FIRST PART

"CITY"

**Easement and Indemnity Agreement
Vitamin Cottage Chalet, L.L.C.**

VITAMIN COTTAGE CHALET, L.L.C.,
a Colorado limited liability company
IRS No. 84-1290179

By: Kemper Isely

Printed Name: Kemper Isely

Title: Managing Member

PARTY OF THE SECOND PART

"OWNER"

ATTEST:

Arcia A. Stenger

7-20-99
Date

STATE OF COLORADO)
CITY AND)ss.
COUNTY OF DENVER)

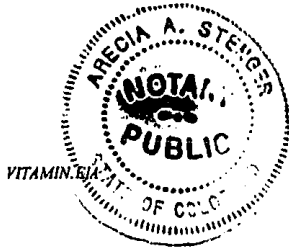
The foregoing instrument was acknowledged before me this 20th day of July, 1999, by Kemper Isely as Managing Member of Vitamin Cottage Chalet, L.L.C. (if by natural person or persons, insert name or names; if by person acting in representative or official capacity or as attorney in fact, insert name of person as executor, attorney in fact, or other capacity or description; if by officer of corporation or other entity, insert the name of such officer or officers as the president or other officers of such corporation or other entity, naming it). If acknowledgment is taken by a notary public, the date of expiration of her commission shall also appear on the certificate.

Witness my hand and official seal.

My commission expires: 6-26-2001

Arcia A. Stenger
Notary Public

2560 S. Holly St. Denver, CO 80222
Address



"EXHIBIT A"

THAT PART OF LOT 31 LYING NORTH OF COUNTY ROAD NO. 13 AND
ALL OF LOTS 32 TO 44, INCLUSIVE,
BLOCK 16,
SOUTH CAPITOL HILL,

TOGETHER WITH THAT PART OF THE WEST HALF OF VACATED SOUTH GLENCOE STREET
ADJOINING SAID LOTS ON THE EAST VESTED IN THE OWNER OF THE ABOVE LOTS BY
VIRTUE OF ORDINANCE NO. 434, SERIES OF 1979 OF THE CITY AND COUNTY OF DENVER
RECORDED OCTOBER 2, 1979 IN BOOK 2019 AT PAGE 206,

AND TOGETHER WITH THE EAST HALF OF VACATED ALLEY ADJOINING SAID LOTS ON THE
WEST VESTED IN THE OWNER OF THE ABOVE LOTS BY VIRTUE OF ORDINANCE NO. 359,
SERIES OF 1983 OF THE CITY AND COUNTY OF DENVER RECORDED JUNE 29, 1983 IN BOOK
2837 AT PAGE 370,

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

