

**COPY**

**CITY OF CENTENNIAL/TAGAWA  
ANNEXATION AND DEVELOPMENT AGREEMENT**

**DATED: May 22, 2006**

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## ANNEXATION AND DEVELOPMENT AGREEMENT

### TAGAWA ROSE FARMS, INC.

This Annexation and Development Agreement ("Agreement") is entered into by the City of Centennial, Colorado, a Colorado statutory city ("Centennial"), and Tagawa Rose Farms, Inc. ("Tagawa"), Centennial and Tagawa together being referred to as "Parties."

### RECITALS

- A. Tagawa owns certain real property generally known as Tagawa Garden Center and Florist, as more particularly described in Exhibit A ("Property").
- B. Tagawa desires to continue its existing operations which include: agricultural related activities; commercial greenhouses; retail garden center; retail florist; related interior and exterior storage of plant, gardening, and landscaping materials; and parking areas.
- C. Tagawa desires to secure the potential to develop, redevelop, change, or modify its existing operations by increasing in the amount of land devoted to retail operations and business offices and by enhancing parking areas and facilities for its customers.
- D. Tagawa has submitted to Centennial an Annexation Petition for the Property. Centennial has determined the Annexation Petition is in substantial compliance with the Municipal Annexation Act of 1965 ("Annexation Act") and, following a public hearing held upon notice as required by the Annexation Act, determined that the Property is eligible for annexation.
- E. The historic and pre-annexation use of the Property, including all current uses, is as follows:
- Agricultural, zoned A-1, consisting of agricultural related activities; commercial greenhouses; retail garden center; retail sales; corporate offices; related interior and exterior storage of plant, gardening, and landscaping materials; and parking areas.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

#### ARTICLE I DEFINITIONS AND GENERAL PROVISIONS

- 1.1 Definitions. The following terms shall have the meanings indicated below:
- A. Affiliate. Any entity owned, controlled, managed, or under common ownership by, directly or indirectly, Tagawa and his respective spouses, children, or trusts established by or on behalf of Tagawa.
- B. Agreement. This Annexation and Development Agreement.

- C. Annexation Petition. The petition for annexation of the Property, which Tagawa filed with Centennial on March 29, 2006.
- D. City or Centennial. The City of Centennial, a municipal corporation of the State of Colorado.
- E. Centennial Land Development Code. The City of Centennial Land Development Code as initially adopted by reference by Ordinance No 2001-06, and readopted and codified in the Centennial Municipal Code by Ordinance No 2002-09, and as may be amended from time to time.
- F. Centennial Municipal Code. The City of Centennial Municipal Code, including the Land Development Code, as in effect on the Effective Date (or where this Agreement expressly states otherwise, at the particular time stated).
- G. City Council. The City Council of Centennial.
- H. District. District shall refer to any special district that is currently or will in the future provide services that may include but shall not be limited to water, sewer, fire, and recreation.
- I. Effective Date. The date first set forth above, which shall be the date on which City Council takes final action to adopt an ordinance approving this Agreement and authorizing the Mayor to execute this Agreement on behalf of Centennial.
- J. Exhibits. The following Exhibits to this Agreement, each of which are incorporated by reference into and made a part of this Agreement:
  - Exhibit A – Legal Description of Property.
- K. Final Approval. The fortieth (40th) day after publication following final action by City Council approving: (a) this Agreement; (b) annexation of the Property to Centennial; or (c) the Initial Zoning Ordinance, whichever comes latest.. Final Approval will not have occurred if a Legal Challenge is brought on or before such fortieth (40th) day. Tagawa may, in writing, waive the foregoing limitation on Final Approval, in which case Final Approval shall be deemed to have occurred.
- L. Final Development Plan or FDP. Collectively, each final development plan (as defined in the Centennial Land Development Code § 11.2A.402) to be submitted by Tagawa for the Property and processed by Centennial pursuant to the requirements and procedures set forth in Centennial Land Development Code, Title 11, Chapter 1, Part 4900.
- M. Final Plats. The final plats to be submitted by Tagawa for portions of the Property and processed by Centennial pursuant to the requirements and procedures set forth in Centennial Municipal Code Title 11, Chapter 2, Part 300.
- N. Initial Zoning Ordinance. The ordinance adopted by the City Council for the City of Centennial initially zoning the Property following annexation as required by C.R.S. § 31-12-115(2) (which ordinance must be adopted within 90 days of the effective date of annexation).

- O. Legal Challenge. For purposes of this Agreement, either of the following shall constitute a Legal Challenge: (1) a third party commences any legal proceeding, request for reconsideration pursuant to § 31-12-116, C.R.S., or other action that directly or indirectly challenges this Agreement, annexation and/or zoning of the Property, or any of Centennial's resolutions or ordinances approving the annexation, or the Initial Zoning Ordinance; or (2) a third party submits a petition for a referendum seeking to reverse or nullify any of the ordinances referenced in (1).
- P. Property. The real property described on Exhibit A attached to this Agreement consisting of approximately ten (10) acres generally known as Tagawa Garden Center and Florist Property.
- Q. Preliminary Development Plan or PDP. A Preliminary Development Plan for the Property as defined by the Centennial Land Development Code.
- R. Vested Property Rights. The rights described in Section 6.3 of this Agreement.
- S. Vested Property Rights Regulations. Section 1.1.4913 of the Centennial Land Development Code in effect as of the Effective Date.
- T. Vested Property Rights Statute. Sections 24-68-101, et seq. of the Colorado Revised Statutes in effect as of the Effective Date.

1.2 Covenants. The provisions of this Agreement shall constitute covenants or servitudes that shall touch, attach to and run with the land comprising the Property. The burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided herein.

1.3 Term of Vested Property Rights. In recognition of the tax revenues and other benefits Centennial will derive from annexation and potential development of the Property, the substantial investment and time required to complete the development of the Property and related infrastructure and public facilities, and the possible impact of economic cycles and varying market conditions during the course of development, the term of the Vested Property Rights shall commence on the Effective Date and shall continue until the seventh (7th) anniversary of the Effective Date (the "Term"). After expiration of the Term, the Property shall continue to be subject to the ordinances, rules and regulations of Centennial for so long as it is located within the municipal boundaries of Centennial, and the Vested Property Rights shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) the annexation of the Property to Centennial, (b) any common-law vested rights obtained prior to such termination; or (c) any right, whether characterized as vested or otherwise, arising from this Agreement, permits, approvals, zoning, or other land use approval for the Property or the Project that were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of this Agreement

1.4 Term of Agreement. The term of this Agreement shall commence upon the Effective Date and continue until all obligations related to the development of the Property have been satisfied, or this Agreement has been otherwise terminated as provided herein

- 1.5 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent of Centennial and Tagawa in writing following the public notice and public hearing procedures required for approval of this Agreement. For the purposes of any amendment to this Agreement, "Tagawa" shall mean only the signatories to this Agreement constituting Tagawa and those parties, if any, to whom such signatories have specifically granted, in writing, the power to enter into such amendment. However, any successor to Tagawa's interest in any portion of the Property shall also constitute "Tagawa" for purposes of amending this Agreement relative only to the portion of the Property owned and only so long as such amendment does not impose greater obligations or decrease the benefits under this Agreement for any other owner of a portion of the Property.

## ARTICLE II ANNEXATION, BUILDING AND ZONING

- 2.1 Annexation. Annexation of the Property shall be in accordance with the terms and conditions of the Annexation Petition, this Agreement, and the Municipal Annexation Act of 1965 (§§ 31-12-101, et seq., C.R.S.).
- A Conditions Precedent. Annexation of the Property shall not become effective until the following conditions have been satisfied: (a) Tagawa and Centennial have mutually executed and delivered this Agreement; (b) Centennial has adopted the Annexation Ordinance; (c) Centennial has granted its final non-appealable approval of the Initial Zoning Ordinance; and (d) Final Approval has occurred.
- B. Failure of Conditions. Unless and until all of the conditions set forth in Section 2.1.A. have been satisfied, neither Tagawa nor Centennial shall record or cause to be recorded the items described in § 31-12-113(2)(a)(II)(A), C.R.S., except that the Parties recognize and understand that a single annexation map has been prepared to annex property commonly known as the Fetters/Vermilion Creek property, the ACWWA Braun Well Site property, and the Tagawa Property and that such annexation map will be recorded in order to finalize the annexations of the Fetters/Vermilion Creek property and the ACWWA Braun Well Site property.
- 2.2 Zoning. Following annexation of the Property and pursuant to C.R.S. § 31-12-115(2), the entire Property shall be initially zoned by the City at the City's cost and expense to the same zone district designation the Property currently enjoys within unincorporated Arapahoe County. If Centennial determines not to initially zone the Property in accordance with this section 2.2, Centennial shall, upon written request of Tagawa made within one (1) year of annexation, disconnect the Property from Centennial. Such remedy shall be Tagawa's sole remedy for Centennial's failure to initially zone the Property in accordance with this Agreement. The Parties understand and acknowledge that the zoning of property is a legislative action and that subsequent governing bodies of Centennial cannot be contractually bound in a manner that would prevent the exercise of legislative discretion. Although Centennial retains the authority to rezone the property following annexation and initial zoning, Centennial represents that it has no current intention to rezone the Property and acknowledges that Centennial cannot unilaterally

rezone the Property during the term of Vested Property Rights except as permitted by the Vested Property Rights Statute.

- 2.3 Centennial Comprehensive Plan. The Property is not included in the Centennial Comprehensive Plan at the time of annexation. In the event that the Centennial Comprehensive Plan is amended to include the Property, the Plan shall acknowledge the existing historic use of the property as generally compatible and consistent with the neighboring uses for the duration or period of any Vested Property Rights.

### ARTICLE III PUBLIC SERVICES

- 3.1 Water Utility Service. Centennial does not currently provide water service to the Property. Centennial agrees to assist Tagawa in seeking domestic water service for the Property from Arapahoe County Water and Wastewater Authority or any other water providers to the extent necessary to ensure the Property has an adequate water supply. Such efforts to assist Tagawa in securing a reliable water supply may include advocating to such water providers that water service be provided in exchange for relinquishment by Tagawa of existing wells located on the Property. Centennial shall have no obligation to provide any water utility service to the Property.
- 3.2 Sewage Utility Service. Centennial does not currently provide sewage service to the Property. Centennial agrees to assist Tagawa in seeking sanitary sewer service for the Property from Arapahoe County Water and Wastewater Authority or any other special district or authority that is conferred jurisdiction to provide such service to the Property. Centennial shall have no obligation to provide any sewage utility service to the Property.
- 3.3 Fire Protection Centennial does not currently provide fire protection to the Property. Tagawa agrees that it shall be the Tagawa's obligation to meet any requirements for service from the Parker Fire Protection District or any other special district or authority that is conferred jurisdiction to provide such service to the property. Centennial shall have no obligation to provide any fire protection to the Property.
- 3.4 Roads and Trails. The City agrees to cooperate with Tagawa to maintain the existing access from Broncos Parkway (formerly East Dry Creek Road) as a temporary access to the Property until South Cherokee Trail is completed. At such time, the temporary access point will be eliminated and a right-in/right-out access from South Cherokee Trail will be permanently authorized or allowed by Centennial. Upon the completion and opening of Cherokee Trail to permit vehicular traffic to travel from the intersection of Broncos Parkway/Cherokee Trail to the intersection of East Long Avenue/Parker Road, Tagawa shall be allowed two (2) access points to the Property, one on Cherokee Trail and one from Broncos Parkway. No public roads or trails are anticipated to be located within the Property.

In March of 2006, the City contracted at the City's cost with Tetra Tech RMC for a preliminary design and engineering study to evaluate the potential for access from Broncos Parkway near the northwest corner of the Property. Based on the preliminary findings of such study, the City believes that such access is feasible and reasonable and, upon the City's final determination to provide such access to Broncos Parkway, the City will take such action as may be necessary to budget for and schedule such access improvement as part of the City's capital improvement plan. Such access will be



constructed upon securing rights-of-way, easements, or other rights of access from third parties and that the City's ability to secure such rights not guaranteed. The City agrees to pay any cost and expense for any access to the Property from Broncos Parkway although Tagawa may, at its election and option, contribute in whole or in part to the cost of access.

- 3.5 Signage. Tagawa shall be allowed reasonable commercial signage on Broncos Parkway and Cherokee Trail in accordance with the applicable sign code for the City of Centennial.

#### ARTICLE IV MITIGATION

- 4.1 Mitigation. Except as expressly provided in this Article IV and, specifically, paragraph (J)(1) of this section 4.1 below, Tagawa shall not be subject to any mitigation requirements so long as the Property uses in effect at the time this Agreement is executed remain unchanged. In the event Tagawa requests a change in use for the Property, Tagawa shall be required to mitigate the impacts of any development on the ability of Centennial to provide public services to the Property and to the public generally. Centennial anticipates that the impacts of development of the Property will include:

- A. Public Parks and Public Purpose Land Dedications. The public parks and public purpose land dedications, or cash-in-lieu requirements, of the Centennial Municipal Code shall be required, if applicable, at the time of any FDP approval. Dedication requirements must be met on a phase-by-phase basis for any residential development. Any surplus park and public purpose land dedication from other portions of the Property that have received FDP approval shall be available for purposes of meeting dedication requirements for subsequently approved FDPs for applicable residential phases.
- B. Law Enforcement Services. In the event use of the Property changes, the Parties agree to assess whether additional conditions are necessary to properly mitigate the development impacts on the City's ability to provide law enforcement services.
- C. Fire Protection Services. Parker Fire Protection District currently provides fire protection services to the Property. In the event use of the Property changes, the Parties agree to assess whether additional conditions are necessary to properly mitigate the development impacts on Parker Fire Protection District's ability to provide fire protection services.
- D. Emergency Medical Services. Parker Fire Protection District currently provides emergency medical services to the Property. In the event use of the Property changes, the Parties agree to assess whether additional conditions are necessary to properly mitigate the development impacts on Parker Fire Protection District's ability to provide fire protection services.
- E. School Impacts. The Property is located within the Cherry Creek School District. The School land dedication, or cash-in-lieu requirements of the Centennial Municipal Code, if required, shall be applied at the time of any FDP approval. In

the event the use of the Property changes, the Parties agree to assess whether additional conditions are necessary to properly mitigate the School District's ability to provide services.

- F. Water Service Impacts. In the event use of the Property changes, the Parties agree to assess whether additional conditions are necessary to mitigate Tagawa's ability to provide water service. If necessary, Centennial agrees to assist Tagawa in seeking water service for the Property from Arapahoe County Water and Wastewater Authority or any other special district or authority that is conferred jurisdiction to provide such service to the Property.
- G. Sewer Service Impacts Sewer service to the Property is currently provided by private septic system. Tagawa understands that the City does not permit new private septic systems and, in the event use of the Property changes or the property redevelops, the Parties agree to assess whether additional conditions are necessary to mitigate Tagawa's ability to provide sewer service in accordance with the regulations applicable at the time of change in use or redevelopment. If necessary, Centennial agrees to assist Tagawa in seeking sewer service for the Property from Arapahoe County Water and Wastewater Authority or any other municipality, special district, or authority that is conferred jurisdiction to provide such service to the Property.
- H. Recreation Service Impacts. The Property is located within the Arapahoe County Recreation District which provides recreation service to the Property. In the event use of the Property changes, the Parties agree to assess whether additional conditions are necessary to mitigate the District, or other special district or authority that is conferred jurisdiction, ability to provide recreation service to the Property.
- I. Library Service Impacts. Arapahoe Library District currently provides Library service to the Property. In the event use of the Property changes, the Parties agree to assess whether additional conditions are necessary to mitigate Arapahoe Library District's ability to provide library service.
- J. Transportation Impacts.
  - 1. In order that Cherokee Trail (a planned public street) may be properly located adjacent to and on the northeast corner of the Property, the City may request in writing that Tagawa dedicate to the public for right-of-way purposes a parcel of land not larger than .006 acres (255 square feet) in size. Such dedication shall be made by Tagawa upon demand by the City without payment of monetary compensation to Tagawa and Tagawa shall execute, at the City's option, either a standardized form of quitclaim deed, easement agreement, or an FDP (prepared by others) dedicating such parcel to the City for use as right-of-way.
  - 2. No additional mitigation of the development impacts on offsite streets and roadways is contemplated.

- K. Storm Water Drainage. In the event use of the Property changes, the Parties agree to assess whether Tagawa needs to mitigate the development impacts to storm water drainage systems as determined at the time of any FDP approval.
  - L. Centennial Airport Impacts. The Property is currently included within the Centennial Airport Influence Area, as described and regulated by the Centennial Land Use Code. Compliance with the Airport Overlay Zone regulations shall mitigate development impacts on Centennial Airport. Tagawa shall provide to each prospective purchaser and tenant of any part of the Property a written disclosure that they are located within an area that will be impacted by low-flying aircraft and aircraft noise. Tagawa shall install signs as required by Centennial as a condition of any FDP approval along the public roadways informing persons that they are entering the Centennial Airport Influence Area. Such signs shall be similar in size, content, and design to existing signs within Centennial that provide notice of the boundaries of the Centennial Airport Influence Area.
- 4.2 Mitigation Commitment. Tagawa agrees that in the event mitigation becomes necessary as a result of changed use of the Property, the mitigation provisions of this Article IV, including the payment of monies as specified herein, are imposed by contract, independent of the continued validity or any invalidity of any of the provisions of the Centennial Municipal Code, subdivision, zoning and building regulations, or other regulations. Further, Tagawa agrees that the mitigation provisions of this Article IV are both reasonable and binding commitments on the part of Tagawa, reasonably relate to Tagawa's and Centennial's estimate of the extent and timing of impacts that are expected to occur from development of the Property, and are in rough proportion to such impacts.

## ARTICLE V GENERAL DEVELOPMENT

- 5.1 General Development. Tagawa has not proposed changes to the current land use and existing development of the Property at the time of annexation. Tagawa has the right following annexation, and final approval of a any new zoning or PDP or an amendment of any existing PDP (if necessary), and the approval of an FDP, to develop the Property subject to the terms and conditions of the Centennial Municipal Code, and specifications, rules and regulations promulgated thereunder. Except as otherwise provided in this Agreement, including satisfaction of public improvement and mitigation requirements as applicable, Tagawa shall have no liability to Centennial or any other party for its failure to develop all or any part of the Property.
- A. Existing Zoning to be Confirmed by Ordinance. Following annexation and within ninety (90) days of the effective date of annexation pursuant to C.R.S. § 31-12-115(2), Centennial shall cause the Property to be initially zoned through the adoption of the Initial Zoning Ordinance confirming the continued applicability of the existing zone district designation as valid and effective within Arapahoe County immediately prior to the effective date of the annexation. It is the intent of the parties that no change in zoning should result merely from the act of annexation. In the event that Centennial fails to adopt the Initial Zoning Ordinance making such confirmation and zoning designation, Centennial shall promptly and without undue delay take such action as may be necessary to de-

annex the Property from the City of Centennial which de-annexation shall be effective on or before December 31, 2006.

- B. Applicable Regulations Any construction related to development of the Property shall be subject to the codes, specifications and rules and regulations of Centennial. This includes the construction specifications for land development improvement and public works manuals generally applicable and in effect at the time Tagawa submits applicable construction plans, except as the requirements and standards are modified by this Agreement. Should these regulations and requirements change subsequent to the entry of this Agreement, Tagawa agrees as a matter of contract to abide by such changes for all improvements designed and constructed after the date of such changes
- C. Signage. Signage for the property shall conform to the requirements set forth in Title 11 of the Centennial Land Development Code, as it may be amended, or upon any PDP if such signage requirements and limitations are stated in a PDP. All existing on-site signage shall be deemed approved despite any non-conforming characteristics, and a new monument sign meeting the requirements of the Centennial Land Development Code shall be permitted to be installed on the small non-contiguous parcel located south of Broncos Parkway (formerly East Dry Creek Road) if Tagawa owns or secures such right of use for the non-contiguous parcel
- D. Incorporation of Other Property. In the event that Tagawa petitions for annexation, and Centennial annexes, other property owned or controlled by Tagawa adjacent to or within 1320 feet (1/4 mile) of the Property, Centennial agrees to include and incorporate such other property into this Agreement as falling within the definition of "Property" and extend the terms and conditions of this Agreement to such other property.

## ARTICLE VI VESTED RIGHTS

- 6.1 Vesting of Property Rights. This Agreement, any later approved PDP and any later approved FDP together shall constitute an approved "site-specific development plan" as defined in the Vested Property Rights Statute, and shall establish vested property rights pursuant to the Vested Property Rights Statute to develop the Property in the manner contemplated by such documents for seven (7) years. The vested property rights created in connection with any approved FDP shall be supplemental to those property rights initially vested through this Agreement as of the Effective Date, and shall be vested pursuant to the Vested Property Rights Statute for seven (7) years
- 6.2 Compliance with General Regulations Subject to the terms, conditions and limitations of the Vested Property Rights Statute, except as this Agreement expressly provides otherwise, the establishment of vested property rights pursuant to this Agreement shall not preclude the application, on a uniform and non-discriminatory basis, of Centennial regulations of general applicability (including, but not limited to, building, fire, natural gas, housing, water, utilities computer services, electrical, plumbing and wastewater treatment codes, the Centennial Municipal Code, and other Centennial rules and regulations) or the application of state or federal regulations.

- 6.3 Property Rights Vested Subject to the terms, conditions and limitations of the Vested Property Rights Statute, subject to compliance with the Centennial Municipal Code, and except as this Agreement expressly provides otherwise, the rights identified below shall constitute vested property rights under this Agreement pursuant to the Vested Property Rights Statute.
- A. The right to develop, plan and engage in land uses within the Property in the order, at the rate and at the time that market conditions dictate, in a manner that is substantially consistent with the terms and conditions of this Agreement (including each provision hereof) and the Centennial Municipal Code.
  - B. The right to commence and complete development of the Property in the manner contemplated in an approved PDP and FDP (including, without limitation, the right to develop the Property with the uses and densities specified on such PDP and the right to receive all Centennial approvals and permits necessary for the development of the Property) with conditions, standards and dedications which are no more onerous than those imposed by Centennial upon other developers in Centennial on a uniform, non-discriminatory and consistent basis.
  - C. The right to apply for and, upon compliance with the applicable terms and conditions of the Centennial Municipal Code, to receive grading permits, building permits, certificates of occupancy, and other permits necessary for the timely development, construction and occupancy of improvements within the Property.
  - D. Except as the Vested Property Rights Statute or this Agreement expressly provide otherwise, no initiated or referred zoning, subdivision, land use or other legal or administrative action that would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of Tagawa's rights set forth in this Agreement shall apply to or be effective against the Property during the term of Vested Property Rights.

**ARTICLE VII  
AGREEMENT CONDITIONED UPON ANNEXATION**

- 7.1 Cooperation in Defending Legal Challenges. If any Legal Challenge is commenced by a non-party to the annexation of the Property or this Agreement, Tagawa and Centennial shall cooperate in defending such Legal Challenge and shall bear their own expenses in connection therewith, although Centennial, in its sole discretion, may choose not to defend such action unless its costs and expenses are paid by Tagawa. Unless Centennial and Tagawa otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with Legal Challenge.
- 7.2 Expiration or Termination During Pendency of Legal Challenge. Notwithstanding any contrary provision of this Agreement, if a Legal Challenge occurs, this Agreement shall not expire or terminate during the pendency of any Legal Challenge and shall, unless earlier terminated or modified by a written amendment signed by all parties hereto, remain in full force and effect through and until the thirty-first (31st) day following expiration of the Legal Challenge period

- 7.3 Agreement Conditioned Upon Annexation. This Agreement is expressly conditioned upon the annexation and PDP approval. In the event the annexation and the PDP are not so approved, the Property shall be disconnected from Centennial, and this Agreement shall be null, void and of no further force or effect, and the Parties shall be released from all liability hereunder, provided a written request for disconnection is made by Tagawa within one (1) year of the annexation of the Property

**ARTICLE VIII  
MISCELLANEOUS**

- 8.1 Contractual Obligations. Tagawa agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress. Tagawa agrees and desires that the agreements contained herein regarding the payment of fees, installation of public improvements and conditions for zoning, subdivision and building approvals, including the incorporation of provisions of the Centennial Municipal Code and specifications, rules and regulations promulgated thereunder, are imposed by contract, independent of the continued validity or invalidity of any of the provisions of the Centennial Municipal Code, subdivision, zoning and building or other regulations. The agreements to pay fees, and construct public improvements or provide security, are reasonable and binding commitments on the part of Tagawa and reasonably relate to Tagawa's estimates of the extent and timing of impacts that are expected to occur from the development of the Property, and are in rough proportion to such impacts.
- 8.2 Assignment This Agreement may not be assigned or delegated by Tagawa without the written consent of Centennial. Such consent shall not be unreasonably withheld provided the Assignee agrees to and meets all the obligations of Tagawa under this and related agreements and approvals. Any assignment of all or a portion of the Property by Tagawa for the following purposes shall not require Centennial's prior consent: (i) assignment to an Affiliate, (ii) assignment for estate planning purposes; or (iii) assignment as the result of a merger or the sale of substantially all of Tagawa's assets. In such event, the Assignee shall be deemed "Tagawa" under this Agreement. The sale of any applicable individual residential dwelling units or individual lots within the Property shall also not require Centennial's prior consent.
- 8.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is intended to be given at the address set forth below, or at such other address as may be subsequently furnished to the other Party as provided herein. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

To Centennial:

City Manager  
City of Centennial  
12503 East Euclid Drive, Suite 200  
Centennial, Colorado 80111

To Tagawa:

Tagawa Rose Farms, Inc.  
17999 Weld County Road 4  
Brighton, CO 80601

With copies to:

City Attorney  
City of Centennial  
12503 E. Euclid Drive, Suite 200  
Centennial, Colorado 80111

With copies to:

Cameron J. Syke  
Attorney at Law  
Syke & Associates, P.C.  
9250 E. Costilla Avenue, Suite 600  
Englewood, Colorado 80112

- 8.4 Paragraph Captions. The captions of the paragraphs are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement
- 8.5 Interpretation. Where appropriate, words in the singular include the plural and vice-versa.
- 8.6 Additional Documents or Action The Parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
- 8.7 Integration and Amendment. This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings except as otherwise referred to herein. This Agreement may be amended only by an instrument in writing signed by the Parties.
- 8.8 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective legal representatives, successors and assigns. This Agreement touches and concerns the Property, constitutes covenants running with the Property and shall bind the Property and all subsequent developers until all provisions are satisfied. Either Party may record this Agreement in the real property records of Arapahoe County, Colorado.
- 8.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the Parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.
- 8.10 Integration and Amendment. This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings except as otherwise referred to herein. This Agreement may be amended only by an instrument in writing signed by the Parties in accordance with the requirements of Section 1.5 of this Agreement.

#### ARTICLE IX BREACH

- 9.1 Default by City. Except as provided in Section 2.2 herein, a "breach" or "default" by Centennial under this Agreement shall be defined as: (a) any zoning, land use or other action or inaction, direct, indirect or pursuant to an initiated measure, taken after the Effective Date without Tagawa's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise adversely affects any

development, use or other rights of Tagawa under this Agreement in a material manner except upon the discovery of natural or man-made hazards on or in the immediate vicinity of the Property that could not have been reasonably discovered at the time of Centennial's approval of a "site-specific development plan" and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare; or (b) Centennial's failure to fulfill or perform any material obligation of Centennial contained in this Agreement

- 9.2 Default by Tagawa. A "breach" or "default" by Tagawa shall be defined as Tagawa's failure to fulfill or perform any material obligation of Tagawa contained in this Agreement.
- 9.3 Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in Section 8.3 above, and the defaulting party shall have twenty (20) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 20-day period and the defaulting party gives written notice to the non-defaulting party within such 20-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 20-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.
- 9.4 Tagawa's Breach. Upon breach by Tagawa, until any security is invoked or until the breach is otherwise remedied, Centennial shall have the right to refuse to issue for any phase of development building permits, certificates of occupancy, temporary certificates of occupancy, or approve any application or request for approval associated with the Property. Upon such breach and written notice from Centennial, Tagawa shall also cease any development activity, including construction pursuant to a previously issued approval, authorization or permit. Any amounts due and owing to Centennial under this Agreement that are not paid in a timely manner may be certified to the Arapahoe County Treasurer for collection with taxes.
- 9.5 Waiver of Breach The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.
- 9.6 Remedies. Tagawa and Centennial hereby acknowledge that this Agreement may be enforced in law or in equity by a decree of specific performance, damages, foreclosure of liens for unpaid amounts, or other such legal and equitable relief as may be available under the laws and statutes of the State of Colorado.
- 9.7 Attorney's Fees. If any action is filed or maintained by either party to this Agreement, the substantially prevailing party shall be awarded its reasonable costs and attorney's fees, which rights shall survive termination of this Agreement.





## EXHIBIT A

### PROPERTY DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 32 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE NORTH ONE-QUARTER CORNER OF SECTION 32, THENCE ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 32 SOUTH  $01^{\circ}06'52''$  WEST 928.84 FEET TO THE SOUTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN DEED RECORDED MARCH 1, 1989 IN BOOK 5641 AT PAGE 421 OF THE ARAPAHOE COUNTY RECORDS; THENCE ALONG THE SOUTH LINE OF SAID PARCEL ALSO BEING THE SOUTH LINE OF RIVER RUN II, A PLAT RECORDED APRIL 24, 2000 AT RECEPTION NO B0047132 NORTH  $89^{\circ}48'52''$  EAST 1241.88 FEET, THENCE SOUTH  $00^{\circ}11'08''$  EAST 100.00 FEET TO THE TRUE POINT OF BEGINNING;

NORTH ALONG A LINE 100.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH LINE OF RIVER RUN II NORTH  $89^{\circ}48'52''$  EAST 660.00 FEET; THENCE SOUTH  $00^{\circ}11'08''$  EAST 660.00 FEET; THENCE SOUTH  $89^{\circ}48'52''$  WEST 660.00 FEET THENCE NORTH  $00^{\circ}11'08''$  WEST 660.00 FEET TO THE TRUE POINT OF BEGINNING,

SAID PARCEL CONTAINING 10.000 ACRES, MORE OR LESS