



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: August 6, 2015

AGENDA TITLE: Request for Council direction regarding proposed a draft lease with the Colorado Chautauqua Association.

PRESENTERS

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Driskell, Executive Director, Community Planning and Sustainability

Maureen Rait, Executive Director, Public Works

Molly Winter, Executive Director, Downtown & University Hill Management Division and Parking Services

Yvette Bowden, Director, Parks and Recreation

Tracy Winfree, Director, Open Space and Mountain Parks

Mike Sweeney, Director, Public Works for Transportation

EXECUTIVE SUMMARY

For 117 years, the City of Boulder has partnered with the Colorado Chautauqua Association and its predecessor the Texas Colorado Chautauqua Association to create and maintain the Colorado Chautauqua. Since 1898, there have been nine lease renewals, modifications or renegotiations. The current lease, which was adopted on January 14, 1998 and modified on August 12, 2002, expires on January 13, 2018. It can adversely affect a tenant's (cottage owner's or other CCA tenant's) ability to obtain financing or CCA's ability to enter into multi-year contracts (e.g., with Colorado Music Festival or the Dining Hall operator) if a lease of this nature is allowed to come too close to its expiration date. Accordingly, both the city and CCA have a desire to enter into a new lease this year, effective January 1, 2016.

At a February 10, 2015 study session, Council considered and discussed options of a new lease with CCA. On February 17, 2015, Council created a Chautauqua Lease

Committee, consisting of two council members, two CCA representatives and one cottage owner. Between April and July, the committee met six times in meetings facilitated by Heather Bergman and supported by city staff. The meetings were open to the public and several community members attended and offered comments at each session. Minutes of each meeting were taken and published online, as were iterations of the lease as it was being revised. The committee has approved draft revisions to the lease, which are shown in attachment A. The purpose of this agenda item is to receive council feedback regarding these proposed changes. If Council is generally supportive of proposed lease, staff will seek feedback at a joint meeting of the Landmarks Board, the Open Space Board of Trustees, the Park and Recreation Advisory Board and the Transportation Advisory Board. Taking into account that feedback, Council will be asked to consider approval of the lease in September or October.

Discussion

The following highlights the major changes in the lease. Overall the goal was to update the lease to reflect the current relationship between the city and CCA, recognizing the shared values and important role that Chautauqua plays in our community. In 2012, the city council developed a stewardship framework for Chautauqua, including the adoption of Guiding Principles for Place Management and Fiscal Sustainability on December 4, 2012. These Guiding Principles balance the need to preserve, protect and maintain Chautauqua’s historic character with the needs of diverse stakeholders and user groups. The Guiding Principles are expressly incorporated as part of the lease and specifically reference three times. In large part the revisions to the lease were guided by Council’s earlier stewardship conversation.

Significant Changes to the Lease

The following is a discussion of the significant changes to the lease. They are presented here in the order in which they appear in the lease to make it easier to follow. The order, therefore, is not reflective of the significance of the change.

A. Term (Paragraph 1, page 2)

Under section 111 of the Boulder Home Rule Charter, most city leases cannot be more than 20 years. A lease can be up to thirty years “upon approval by a two-thirds vote of all council members if the tenant makes significant improvements to the property that the council finds provide a public benefit.” CCA would prefer a thirty year lease. The two council members of the committee did not feel comfortable recommending such a term, considering the language in the charter reserving to council the question whether there is or will be “significant improvements . . . that the council finds provide a public benefit.” Accordingly, the recommended provision is for a term of twenty years, with a provision for a new 20-year term beginning January 1, 2026 – ten years into the lease – if neither council nor the CCA board objects. Depending on Council’s reaction to this proposal, CCA might still advocate for a 30-year term.

B. Rent (Paragraph 2, page 2)

The current lease requires CCA to pay \$2,000 in lieu of ad valorem taxes and rent of \$2,500. The committee recommended that this provision be eliminated and replaced with a provision calling for rent of one dollar. The committee reasoned that considering the value of the property, the current rent is little more than symbolic. Moreover, the real value to the city lies not in the rent paid, but the maintenance, upkeep and capital investment that CCA makes at Chautauqua. This change would also bring the Chautauqua lease in line with the city leases for the Boulder Museum of Contemporary Art, the Dairy Center for the Arts and the Boulder History Museum. BMOCA and the Dairy Center each pay one dollar per year. The Boulder History Museum is treated as a contractor and does not pay rent.

C. Responsibilities (Paragraph 3, pages 2-3)

The “Responsibilities” paragraph provides important guidance about the use and maintenance of the leasehold area. Several provisions in the current lease go far beyond what would be considered acceptable today. There is also some ambiguity in the language regarding maintenance responsibilities. The committee attempted to clarify the roles and incorporate the Guiding Principles into the language allowing CCA to make changes at Chautauqua. The current lease reads as follow:

The Association shall have the privilege of remodeling the buildings and improvements and making such substitutions, additions, modifications and improvements thereto as the Association may deem proper

The breadth of this language is not unusual for a ground lease, but it does not reflect our current community values. Accordingly, the committee added the following qualification:

Any such substitutions, additions, modifications and improvements shall be governed by the Collaborative Place Management provisions of Guiding Principles for Place Management and Fiscal Sustainability as set forth in Exhibit B and be subject to all other city requirements.

The committee’s intent is that any change will require compliance with the Guiding Principles and any other city requirement, for example obtaining a landmarks alternation certificate when required under the code.

The current lease requires the city to maintain the “public streets.” This term is not defined. It may have been an attempt to exclude alleys. The new language is intended to clarify the city’s responsibilities and to conform to current practice.

Both CCA and the city anticipate the need to perform major renovation of the streets and underground utilities at Chautauqua. The need to perform this work will not limit normal maintenance of these facilities.

D. By-Laws and Articles of Incorporation (Paragraph 4, page 4)

Currently, the city is entitled to appoint two of fifteen board members. In the lease, this is written as two-fifteenths of the board. The committee revised this language to specify two members and to prohibit expansion of the board beyond its current size. In the event that CCA decides to reduce the size of its board, the city's representation will never be less than two members. In addition, this paragraph was amended to require that one city appointee shall be a city council member.

E. Use of Facilities (Paragraph 5, page 4)

The current lease requires that CCA give the facilities "the widest practicable use in terms of scope and time." The committee removed this language and replaced it with the following that is intended to reflect a more contemporary view of CCA's role:

[I]t is the intent of the parties that the leased facilities be managed such that needs and interests of many are balanced in a manner that protects the site and spirit of Chautauqua. The leasehold area should be used, managed and preserved in a manner consistent with the community's sustainability goals and with sensitivity to impacts on surrounding residential neighborhoods, while allowing the Association to remain financially viable without city subsidy.

This language includes several important concepts:

- CCA is no longer expected to maximize use.
- It incorporates preservation into CCA's responsibilities.
- It incorporates the city's sustainability goals.
- It requires sensitivity to the impacts on the surrounding residential neighborhoods.
- It recognizes that CCA needs to generate sufficient revenue to meet its responsibilities without city subsidy.

F. Traffic Control and Parking (Paragraph 6, page 5)

The committee changed the title of this paragraph to Access and Parking. The committee believes that the lease is not the appropriate means to address traffic control and parking at Chautauqua. The lease addresses only a portion of the greater Chautauqua area and only involves one stakeholder. The committee recognized that "Chautauqua needs a tailored access management to balance the access of the variety of users and modes while also maintaining natural, built and historic environments." Accordingly, the lease provides for a Chautauqua Access Management Plan (CAMP) to be developed by next year and then periodically updated, to address the needs and responsibilities of all users.

Staff recommends that the approach to developing CAMP be based on the principles detailed in the lease which implies a holistic, comprehensive and area-wide approach. Staff anticipates that given the different uses and unique character of the area a variety of tools and innovative approaches will be needed to meet the needs and challenges of the area. Staff will use existing access management strategies such as Neighborhood Parking Permit zones, paid and managed parking, integration with multi-modal strategies as the starting point for designing the tailored solutions needed to address the access needs within the Chautauqua lease area, the adjacent park and open space areas and the surrounding neighborhoods.

Staff will recommend implementation of Pilot Programs to test potential innovative solutions when appropriate. Substantial data were collected in 2011 and 2012 regarding the parking and use of the area as part of a prior access management effort. Because the OSMP visitation data used for this prior work dates back to 2005 and appears to capture visitation more broadly than at Chautauqua alone, OSMP is updating local visitation data through a special target study in the late summer of this year.

The development of the CAMP will have budget and resource impacts on all parties and will need to be integrated into the work plans of the city and the Chautauqua Association. Staff will work in collaboration with CCA and involve the other stakeholders and the surrounding neighborhoods.

Staff will develop a public process which involves soliciting input from stakeholders in the area, as well as reporting to and solicitation of feedback from key Boards and Commissions, before bringing a final recommendation to the City Council. The Council will receive periodic updates from staff as the project progresses.

G. Covenant Not to Incur Liens (Paragraph 9, Page 7)

The current lease limits liens to \$1 million. The committee changed this to CCA's "reasonable ability to pay based on Association revenue." The title of this paragraph was changed to "Liens."

H. Permitting (Paragraph 11, page 8)

This paragraph required that CCA and the city agree on a process for permitting activities in the park and required an annual meeting. In fact, staff meets with CCA regularly and much more frequently than annually. In addition, the paragraph did not address open space. Accordingly, the paragraph has been renamed "Coordination" and eliminates the annual review provision.

I. Limitation on Subleases (Paragraph 14, page 9)

This paragraph has been removed and replaced with a new paragraph 15, entitled "Subleases," which appears on page 9. The current lease devotes several pages to the limitations on the ability of private cottage owners to sell their cottages. CCA and the

cottage owners are in the process of renegotiating these provisions as well as others. The committee decided that it would be a better practice to simply incorporate the sublease into the lease by reference.

The new paragraph also requires that CCA assess the cottage owners for a portion of CCA's contribution to the major utility renovations discussed in paragraph 3. The final language of this paragraph is still being negotiated.

J. Privately Owned Cottages (New, Paragraph 14, page 13)

This paragraph recognizes the importance of the private cottages. It requires CCA to lease land to the cottage owners. It also limits CCA's ability to acquire additional cottages only if the acquisition meets strategic guidelines set established by the board of directors. CCA also agrees to maintain its current practice of increasing rents only to cover increased costs through inflation.

K. Miscellaneous (Paragraph 17, page 15)

In the current lease, the lease can be terminated immediately based on any breach. The committee recommended removing the word immediately and allowing an opportunity to fix the problem.

L. Amendment (New, Paragraph 18, page 16)

There was no provision in the existing contract for amendment of the lease. This paragraph provides a process for amendment.

ATTACHMENTS

Attachment A – Lease with Draft Revisions

LEASE

THIS LEASE, made and entered into this ____ day of _____, ~~2015~~, by and between- the City of Boulder, Colorado, a Colorado home rule city ("City"), and the Colorado Chautauqua Association, a Colorado non-profit corporation ("Association").

WITNESSETH:

WHEREAS, the City and the Association have maintained for ~~approximately one~~ hundred and seventeen years a mutually beneficial relationship in the establishment and maintenance of a Chautauqua assembly for the benefit of the Boulder community and its visitors; and

WHEREAS, the entire Chautauqua (a portion of which is described in Exhibit A attached hereto) was entered into the City, state and national registers of historic places as ~~an~~ historic district in 1978; and was designated a National Historic Landmark district by the U.S. Secretary of the Interior in 2006; and

WHEREAS, the preservation of the Chautauqua heritage for the benefit of future generations -and the operation -of the Chautauqua -for the benefit- of all are the primary objectives of both parties;

WHEREAS, the existing Lease agreement between the parties will expire on ~~March 6, 2004~~ January 14, 2018; and

WHEREAS, the parties have determined that it is in the interests of both to renew the existing Lease on the terms and conditions set forth below; and

WHEREAS, on December 4, 2012, the Boulder City Council adopted Guiding Principles for Place Management and Fiscal Sustainability, which are attached as Exhibit B and which are incorporated as if set fully forth in this lease agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM. The City hereby leases to the Association the real property described in Exhibit A attached hereto ~~to the Association~~ for a period of twenty years, beginning January 14, 1998~~1, 2016~~, and ending December 31, 2036. The parties agree that if, during the six-month period prior to January 1, 2026, neither party objects, the Lease will be extended automatically for a period of twenty years commencing on January 1, 2026, and concluding on December 31, 2046. Any such objection may be made by an affirmative vote of the majority of the City Council or by an affirmative vote of a majority of the Association's Board of Directors. In the event that a party so objects, the term of the Lease shall end on December 31, 2036. The City reserves the right to replace the description contained in Exhibit A by a more detailed survey of the land in question, at any time.

2. RENT. As rent, and as partial consideration for this Lease, the Association agrees to pay to the City on or before ~~October~~January 1 of every calendar year during the ~~term~~Term hereof ~~at the sum of money calculated as follows: one dollar.~~

A. ~~In lieu of City ad valorem taxes on the real property described in Exhibit A, the Association shall pay \$2,000.00 per annum to the City.~~

B. ~~As rental for the use of the real property described in Exhibit A, the Association shall pay \$2,500.00 per annum to the City.~~

3. RESPONSIBILITIES. Chautauqua encompasses multiple ownerships and missions; the needs and interests of many must be balanced in a manner that protects the site and spirit of Chautauqua, in keeping with Guiding Principles for Place Management and Fiscal Sustainability.

Management decisions about surrounding uses should be made with sensitivity to potential impacts on the Association's leasehold area. The Association accepts responsibility for the maintenance and improvement of all buildings and improvements located on the real property described in Exhibit A, except for private cottages and the public restrooms immediately below the Dining Hall. With respect to ~~such~~ the Dining Hall and public restrooms, the City shall assume all costs of regular and reasonable cleaning and maintenance, supplies and water, annual painting, and major maintenance, including, without limitation, replacement of obsolete or unserviceable fixtures. The Association shall maintain, preserve and keep all buildings and improvements for which it is responsible in good repair, working order and condition and shall make or cause to be made all necessary repairs and improvements to that end. The Association shall have the privilege of remodeling the buildings and improvements and making such substitutions, additions, modifications and improvements thereto as the Association may deem proper. Any such substitutions, additions, modifications and improvements shall be governed by the Collaborative Place Management provisions of Guiding Principles for Place Management and Fiscal Sustainability as set forth in Exhibit B and be subject to all other city requirements. The Association agrees to implement all feasible procedural safeguards in the operation of the Auditorium; ~~the Dining Hall and the Academic Hall~~ so as to minimize the likelihood of serious fire. ~~Subject to the availability of appropriations therefor, the City shall:~~

A. Provide all ongoing City services, such as police, fire, animal control, and the ~~like~~ similar services, to the area described in Exhibit A; and ~~shall assume the maintenance of e public streets and public utilities of such area and the park areas adjacent thereto;~~

B. ~~Plant screening landscape around the parking lot parcel separately described in Exhibit A; and~~

B. The City shall provide for the maintenance of the streets, but not the alleyways. The parties recognize that the streets in the leasehold area are part of the historic nature of Chautauqua. The city shall not be responsible for maintaining such streets to the level of normal city standards for city streets. The city shall make such minor and incidental repairs as may be necessary to keep the streets serviceable. The city shall provide snowplowing for such streets as resources are available consistent with other city priorities.

C. ~~If the Association is unable to secure grant funding for replacement after all reasonable efforts, pay for the cost of replacing the wooden roofs on the Dining Hall and the Auditorium (stage roof only) before or by 2014~~The parties agree that in the foreseeable future, major renovation of the streets, and drainage system will be necessary, and that on-going maintenance of the water mains and sanitary sewers will continue and prioritized with other city utility maintenance work. The parties intend that the renovation of infrastructure will be coordinated with moving the overhead utilities underground.

4. BY-LAWS AND ARTICLES OF INCORPORATION. Throughout the ~~term~~Term of this Lease, ~~two-fifteenths (2/15)~~ of the Association's ~~Board of Directors~~ shall be appointed by vote of the City Council, one of whom shall be a member of City Council. Without the written permission of the City, the Association shall have no more than 15 members of its Board of Directors, inclusive of those appointed by the City

5. USE OF FACILITIES. The Association shall have year-round use of all of the real property described in Exhibit A, and it is the intent of the parties that the leased facilities be ~~given the widest practicable use in terms of scope and time~~managed such that needs and interests of many are balanced in a manner that protects the site and spirit of Chautauqua. The leasehold area should be used, managed and preserved in a manner consistent with the community's

sustainability goals and with sensitivity to impacts on surrounding residential neighborhoods,
while allowing the Association to remain financially viable without city subsidy. At a minimum,
the Association shall schedule a summer entertainment program in the Auditorium annually
beginning no later than June 15 and extending to at least August 31. Such programming shall
include at least 15 live performances.

6. ~~TRAFFIC CONTROL~~ ACCESS AND PARKING. ~~The Association shall have the~~
~~following rights~~ MANAGEMENT. ~~As a national, regional and powers with respect to entry~~
~~into local landmark and parking within attraction, Chautauqua needs a tailored access~~
management strategy to balance the access of the areas described in Exhibit A:

A. ~~—~~ ~~The Association shall be entitled, at its discretion, to deny or regulate motor~~
~~vehicle entry into such areas when~~ variety of users and modes while also
maintaining ~~the available parking space therein has been filled or is close to~~
~~being filled. For purposes of exercising this right, the Association may deny or~~
~~regulate entry at the entrance to the park on Baseline Road and/or on 12th Street.~~
~~In exercising this right, the Association will use its best efforts to direct motor~~
~~vehicles which are denied entry to available parking space on the north side of~~
~~Baseline Road~~ natural, built, ~~and 12th Street, and will otherwise use its best~~
~~efforts to minimize the impact of motor vehicle parking and traffic in the~~
~~residential neighborhoods adjacent to the park.~~

B. ~~—~~ ~~The Association shall be entitled, at its discretion, to impose a charge for parking~~
~~within such areas.~~

historic environments. ~~The Association and the City agree that the absence of a~~
~~dependable and coherent residential parking scheme~~ program ~~in the areas described in Exhibit A~~
~~has adversely affected the Association's operations, the maintenance of a Chautauqua assembly~~
~~and its attendant mission, and the experiences of those who reside or stay in such areas in order to~~
~~enjoy and experience the Chautauqua.~~ ~~The Association and the City further agree that a solution~~

~~to the foregoing problems requires the adoption and implementation of a residential permit parking system or similar plan, which reasonably assures to each cottage a reasonably convenient on or off street parking space. To that end, the City shall direct its staff to work with the Association to design such a system or plan, and shall use its best efforts to adopt the same as an Ordinance of the City, enforceable in the same manner as other City Ordinances of a similar nature. But such commitment shall not impair the legislative authority of the City Council.~~Chautauqua. The parties recognize that during peak periods, parking demand for all uses within and around Chautauqua far exceeds supply. The movement of vehicles looking for parking presents safety issues and degrades the visitor experience. During the first year of this Lease, the parties commit to develop a Chautauqua Access Management Plan, which shall be thereafter periodically reviewed and revised by the parties to address current circumstances and conditions. That plan shall be governed by the following principles:

- Chautauqua is a unique shared resource requiring unique solutions.
- Chautauqua is a National Historic Landmark.
- A mix of uses must be accommodated.
- Pedestrians must be given priority on the narrow streets without sidewalks.
- Traffic circulation should be minimized in the interests of pedestrian safety and user experience.
- Parking demand is seasonal and solutions need not address time periods during which access is readily available.
- During peak periods, the parking needs of users in the historic core should be prioritized, but not exclusive.
- A seasonal transportation demand management (TDM) plan for employees should be implemented.
- The interests of the surrounding neighbors should be addressed.
- Any plan should be flexible to address changing circumstances.
- Access management should be consistent with the Guiding Principles for Place Management and Fiscal Sustainability.
- Consistent with the City's climate commitment and sustainability and resiliency goals, any plan should support public transit, alternative modes of transportation, and a reduction in vehicle miles traveled.

7. NON-DISCRIMINATION. The Association shall abide by all relevant City, state and federal legislation concerning non-discrimination in the offering of housing and public accommodations and in admissions to public events.

8. INSURANCE. The Association shall cause public liability insurance to be carried and maintained, at all times during the term hereof, with respect to all activities to be undertaken by the Association on or in connection with the real property described in Exhibit A. Such public liability insurance shall be in amounts not less than the then applicable coverage amounts for any injury to one person in any single occurrence and coverage amounts for any injury to two or more persons in any single occurrence set forth in Section 24-10-114, C.R.S. 1973, as amended, but not less than \$150,000.00 for any injury to one person in any single occurrence. Insurance purchased by the Association pursuant to this section shall name the City as an additional named insured, and a certificate evidencing the insurance coverage required by this section shall be provided at least annually to the City. Each insurance policy provided pursuant to this section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the City, without first giving actual written notice thereof to the City at least ten days in advance of such cancellation or modification.

9. COVENANT NOT TO INCUR LIENS. The Association shall not incur liens greater than a total of \$1 million dollars its reasonable ability to repay based on the leasehold described in Exhibit A or on any of the buildings or improvements located thereon not owned by the City, Association revenue. The Association shall obtain proper bonds to insure against any such liens and shall ~~post the land prominently to indicate~~ include provision in any relevant document stating that the City shall not be responsible for any indebtedness or liens incurred.

10. ASSOCIATION TO ASSUME DUTIES OF CITY: INDEMNIFICATION. The Association shall assume any and all duties ~~with which~~ might otherwise be imputed to the City by virtue of its continued ownership of the public buildings located on the real property described in

Exhibit A, except for the public restrooms-located on the lower level/north side of the Dining Hall building. The Association agrees to indemnify and save harmless the City against any and all claims, debts, demands, or obligations which may be asserted against the City arising by reason of, or in connection with, the City's ownership of the aforementioned public buildings and any alleged act or omission of the Association on or in connection with the real property described in Exhibit A.

11. PERMITTING COORDINATION. The Association and the City shall develop a mutually agreeable process for sharing information concerning planned activities and events in the City park and open space adjacent to the real property Association's leasehold described in Exhibit A, and concerning the receipt, review and grant of permits for activities in ~~the park.~~ ~~The process by which information will be shared, needed agreements reached and applications for permits reviewed and approved shall be included in an annual review of issues and procedures conducted between the Parks and Recreation Department and the Association, and may be renegotiated at any time upon request of either party.~~ those City adjacent areas.

12. INSPECTION OF BOOKS. The Association shall maintain its principal office on the Chautauqua grounds and shall keep and maintain the books of the Association at such office. The books and records of the Association shall be subject to inspection and examination by the City at all times.

13. ANNUAL REPORT AND AUDIT. The Association shall provide an annual report to the City on or before ~~March 1st of~~ June 15th of each year detailing the following performance indicators: number and type of performances; number of attendees in Auditorium, Community House and other programming venues; estimated number of City residents served; estimated number of Boulder youth served; number of tickets and free admissions provided to community organizations and individuals; number of free (no cost) events sponsored by the Association; description of outreach efforts to diverse populations/communities of color in Boulder; number of

low or no-cost rentals to non-profit or governmental groups in the community; and number and type of partnerships with other arts and cultural organizations. The foregoing report shall accompany an annual financial audit also submitted to the City. ~~Subsequent to the receipt of the annual report and the annual audit, the City Manager or his/her designee shall convene a meeting to discuss any and all issues that may exist between the City and the Association. This meeting may be combined with the annual review described in Section 11 above.~~

14. ~~LIMITATIONS ON SUBLEASES. The Association shall provide in all subleases to owners of private cottages that:~~

- ~~A. No sublease shall be assigned or further let without prior written approval of the Association, which approval shall not be unreasonably withheld.~~
- ~~B. Upon termination or nonrenewal of such sublease, the owner of the improvements on the property shall have the choice to remove such improvements from the property. Any improvements not removed within six months shall automatically become the property of the Association.~~
- ~~C. As a condition of continued tenancy, each cottage owner shall, prior to transferring an ownership interest in the cottage to or for the benefit of any person not related to the owner within the fourth degree of consanguinity including marriage or adoption, as set forth in the chart attached as Exhibit B), offer, in writing, to sell all ownership interests in the cottage to the Association (the "Offer"). The Association shall have twenty one (21) days from the date it receives the Offer to notify the owner in writing of its determination to proceed with the offer (the "Continuation Notice"). If the Association fails to provide the Continuation Notice within twenty one (21) days following its receipt of the Offer, the owner may freely transfer his or her interest in the cottage during the rest of the year, ending on the anniversary of the Association's receipt of the Offer. At the conclusion of that year, the provisions this paragraph shall again be~~

~~triggered by any proposed transfer beyond the fourth degree of consanguinity (as defined above). If the Association provides the Continuation Notice within twenty one (21) days following its receipt of the Offer, the owner and the Association shall proceed as follows:~~

~~(i) For the thirty (30) days immediately following the Association's provision of the Continuation Notice, the Association and the owner shall negotiate concerning the price to be paid by the Association for the purchase of all ownership interests in the cottage (the "Negotiated Purchase Price"). If, within or at the conclusion of that thirty (30) day period, the Association and the owner agree in writing on a Negotiated Purchase Price, then the owner shall transfer all ownership interests in the cottage to the Association for payment of the Negotiated Purchase Price at a closing occurring at date and time mutually agreeable to the parties, but no later than forty five (45) days after the date on which agreement was reached on the Purchase Price. Payment of the Negotiated Purchase Price at the closing shall be apportioned and allocated as follows: first, to the payment of any and all ad valorem or other taxes then due and owing on the cottage, or which will be due and owing for the calendar year, tax year or other relevant period up to the date of closing; second, to the full payment and satisfaction of any and all liens, encumbrances, assessments or other obligations secured by the cottage or any interest in the cottage; third, to the owner or his/her designee.~~

~~(ii) If the Association and the owner are not able to agree in writing on a Negotiated Purchase Price within the thirty (30) day period set forth above, then within seven (7) days after the termination of the thirty (30) days, the owner and the Association shall jointly request a list of six (6) appraisers from the Appraisal Institute or such other association or group of professional appraisers as may be~~

~~specified in the sublease to which the Association and the owner are parties. The listed appraisers shall have no prior or current professional or financial relationship with the Association or the owner, shall not have a family relationship of any type with the owner, and shall have the following minimum qualifications: a) an MAI or SRA certification; b) a minimum of seven (7) years experience in the appraisal of real estate; c) a minimum of five (5) years experience in the appraisal of real estate in the Denver-Boulder metropolitan area.~~

~~(iii) Within seven (7) days after receipt of the list of appraisers, the owner and the Association shall meet to select two appraisers from the list. The Association and the owner shall each take turns striking one appraiser from the list until only two appraisers remain (collectively, the "Impartial Appraisers").~~

~~(iv) The Association/ and the owner shall jointly inform each Impartial Appraiser of his/her selection, and shall jointly request that each Impartial Appraiser promptly appraise the value of the cottage without regard to the value of the land on which it is situated and which the owner is entitled to use and occupy by virtue of his or her sublease with the Association, without regard to any offer which may have been made for the purchase of the cottage, without regard to any contract of sale which may then be outstanding with respect to the cottage, and without communicating with the other Impartial Appraiser concerning his or her appraisal of the cottage. Each Impartial Appraiser shall issue a written report of his or her appraisal to the Association and the owner (an "Appraisal Report"). Except as set forth below, the Association and the owner shall be equally responsible for the payment of all fees and costs charged by the Impartial Appraisers in preparing the Appraisal Reports.~~

~~(v) The average of the values of the cottage set forth in the Appraisal Reports shall constitute the price which the Association must pay in order to purchase all ownership interests in the cottage (the "Appraised Purchase Price"). The Association shall have twenty one (21) days from its receipt of the second Appraisal Report in which to notify the owner of its intent to purchase all ownership interests in the cottage at the Appraised Purchase Price (the "Purchase Notice"). If the Association fails to provide the Purchase Notice within twenty one (21) days following its receipt of the second Appraisal Report, the owner may freely transfer his or her interest in the cottage during the rest of the year, ending on the anniversary of the Association's receipt of the second Appraisal Report. At the conclusion of that year, the provisions this paragraph C shall again be triggered by any proposed transfer beyond the fourth degree of consanguinity (as defined above).~~

~~(vi) If the Association provides the Purchase Notice within twenty one (21) days following its receipt of the second Appraisal Report, the Association shall be entitled to purchase and receive all ownership interests in the cottage on the terms set forth below unless, within thirty (30) days following his or her receipt of the Purchase Notice, the owner notifies the Association in writing of his/her decision to terminate the Purchase Notice (the "Termination Notice"). The Termination Notice shall be accompanied by payment from the owner to the Association in an amount equal to the Association's share of the fees and costs incurred and charged by the Impartial Appraisers in preparing the appraisal reports, and shall be void and ineffective unless accompanied by such payment. If the owner provides the Termination Notice and required payment to the Association on or within thirty (30) days following his or her receipt of the Purchase Notice, the Association's entitlement to purchase and receive all~~

~~ownership interests in the cottage shall terminate; provided, however, that the provisions of this paragraph C shall again be triggered by any proposed transfer beyond the fourth degree of consanguinity (as defined above), regardless of such transfer occurs or is proposed to occur.~~

~~(vii) If the Association provides the Purchase Notice within twenty one (21) days following its receipt of the second Appraisal Report, and if the owner does not provide the Termination Notice and required payment to the Association on or within thirty (30) days following his or her receipt of the Purchase Notice, the owner shall transfer all ownership interests in the cottage to the Association for payment of the Appraised Purchase Price at a closing occurring at a date and time mutually agreeable to the parties, but not later than forty five (45) days after the owner's receipt of the Purchase Notice. Payment of the Appraised Purchase Price at the closing shall be apportioned and allocated as follows: first, to the payment of any and all ad valorem or other taxes then due and owing on the cottage, or which will be due and owing for the calendar year, tax year or other relevant period up to the date of closing; second, to the full payment and satisfaction of any and all liens, encumbrances, assessments or other obligations secured by the cottage or any interest in the cottage; third, to the owner or his/her designee.~~

~~In order to assure an objective purchase decision on the part of the Association, the Association shall maintain a reasonable reserve for the purchase of cottages, and no person with a current or prospective financial interest in the matter may vote on the Association's decision to set the amount of such reserve or to purchase or not to purchase a cottage.~~

14. PRIVATELY OWNED COTTAGES. There are currently 39 privately-owned cottages at Chautauqua. Private ownership of some of the cottages provides a contemporary sense of neighborhood and a link to Chautauqua's history. While some cottages have year-round

residents, others follow a historic pattern of use by families during the summer months.
Recognizing the importance of private ownership, it is the intent of the parties that the number of privately-owned cottages shall not change significantly. The Association shall sublease the land on which the private cottages are situated to the owners of each private cottage. The Association has acquired a privately-owned cottage only once during the prior twenty year lease term. The parties recognize, however, that the Association may choose to acquire cottages in furtherance of its mission to preserve, perpetuate and improve the site and spirit of the historic Chautauqua. The Association agrees that it will only exercise the right of acquisition pursuant to strategic guidelines set forth by its board of directors and as necessary to further its mission. The Association further agrees to maintain the current practice of increasing rents only to account for increased costs through inflation.

15. SUBLEASES. The Association shall, as soon as practicable after the date of this lease, negotiate subleases with the private cottage owners (each a "Sublease"). Each Sublease shall be substantially in form and content as set forth in Exhibit C attached hereto and shall have the same term as the term of this lease including any extension of the term as provided in paragraph 2. As a condition of continued tenancy, the Association shall impose assessments upon the cottage owners sufficient to recover ___% of the Association's share of the costs associated with the capital improvements described in paragraph 3(C).

Nothing in this Section ~~14~~15 shall prohibit the Association and the owner from agreeing to provisions in the sublease which are supplemental or additional to the terms set forth above, provided that such supplemental or additional provisions are consistent with, and do not impair or limit, the terms set forth above.

~~15~~16. TERMINATION OR NONRENEWAL OF LEASE. Upon the termination or nonrenewal of this Lease, all buildings and improvements on the real property described in

Exhibit A shall be removed within six months, and if not removed shall automatically become the property of the City of Boulder.

4617. MISCELLANEOUS.

- A. The legislation of the State of Colorado and the City of Boulder shall be applied in the interpretation, execution, implementation and enforcement hereof.
- B. In the event that any provision hereof shall be held to be unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- C. This Lease shall be terminable ~~immediately~~ by either party upon any breach of the terms hereof; No delay, omission or forbearance in exercising such right or power shall impair any such right or power or shall be construed as a waiver thereof, unless such waiver is expressly given in writing and signed by both parties. Prior to termination, the party asserting breach shall provide notice immediately to the other party. The party that is alleged to have breached the Lease shall have fourteen days to cure. If the breach is not cured within fourteen days after notice, the Lease may be terminated.
- D. The captions contained herein are inserted for ease of reference only and shall not be construed to constitute or modify any part hereof.
- E. This Lease contains and constitutes the entire agreement ~~between~~ the City and the Association with respect to the subjects addressed herein, and all prior or contemporaneous agreements or leases between the City and the Association, whether written or oral, are merged in and superseded by this Lease.

18. AMENDMENT. No amendment or modification of this Lease, shall be valid or binding unless reduced to writing, approved and executed by the parties in the same manner as the execution of this Lease.

DRAFT

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

CITY OF BOULDER, COLORADO

Jane S. Brautigam, City Manager
1777 Broadway
Boulder, CO 80302
Telephone (303) 441-3090
Fax (303) 441-4478

Attest:

City Clerk

THE COLORADO CHAUTUAQUA
ASSOCIATION

By: _____
Susan G. Connelly, Executive Director
900 Baseline Road
Boulder, CO 80302
Telephone: (303) 442-3282
Fax: (303) 449-0790

Attest:

Secretary, Board of Directors