

## EVANS REDEVELOPMENT AGENCY

### AGENDA

Regular Meeting

May 17, 2016

Immediately Following City Council Meeting

Evans Redevelopment Agency meeting packets are prepared several days prior to the meetings. This information is reviewed and studied by the Agency members, eliminating lengthy discussions to gain basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis. An informational packet is available for public inspection on our website at [www.cityofevans.org](http://www.cityofevans.org) and posted immediately on the bulletin board adjacent to the Council Chambers.

1. CALL TO ORDER

2. ROLL CALL

Chair: John Morris  
Vice-Chair: Brian Rudy  
Commissioners: Mark Clark  
Sherri Finn  
Lance Homann  
Jay Schaffer  
Laura Speer

3. APPROVAL OF AGENDA

4. CONSENT AGENDA

A. Approval of Minutes of May 3, 2016

5. NEW BUSINESS

A. Approval of Listing Agreement with Realtec/Greeley

6. REPORTS

A. Executive Director  
B. ERA Attorney

7. EXECUTIVE SESSION

A. To Determine Positions Relative to Matters that May be Subject to Negotiations, Developing Strategy for Negotiations, and Instructing Negotiators, Pursuant to C.R.S. 24-6-402(4)(e)

8. ADJOURNMENT

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## ERA COMMUNICATION

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**DATE:** May 17, 2016  
**AGENDA ITEM:** 4.A  
**SUBJECT:** Approval of Minutes  
**PRESENTED BY:** Evans City Clerk

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**AGENDA ITEM DESCRIPTION:**

Approval of ERA minutes from May 3, 2016.

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**FINANCIAL SUMMARY:**

N/A

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**RECOMMENDATION:**

N/A

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**SUGGESTED MOTIONS:**

*"Mr. Chairman, I move to approve the minutes as presented."*

*OR*

*"Mr. Chairman, I move to deny/amend the minutes as presented."*

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**EVANS REDEVELOPMENT AGENCY  
MINUTES  
May 3, 2016**

**CALL TO ORDER**

Chairman Morris called the meeting to order at 8:05 p.m.

**ROLL CALL**

Present: Chairman Morris, Vice-Chair Rudy, Commissioners Finn, Homann, and Speer

Absent: Commissioners Clark and Schaffer

**APPROVAL OF AGENDA**

Vice Chair Rudy made the motion, seconded by Commissioner Homann, to adopt the consent agenda. The motion passed with all voting in favor thereof.

**CONSENT AGENDA**

**A. Approval of Minutes of February 16, 2016**

Vice Chair Rudy made the motion, seconded by Commissioner Finn, to adopt the consent agenda. The motion passed with all voting in favor thereof.

**NEW BUSINESS**

**A. Resolution No. ERA-002-2016 – Adopting the Bylaws for the Evans Redevelopment Agency**

Sheryl Trent, Executive Director of the ERA, presented the Resolution and introduced Malcolm Murray, Murray Dahl Kuechenmeister & Renaud LLP, ERA attorney. Ms. Trent spoke about the bylaws and the need to amend the bylaws by resolution to allow the designee of the City Manager to assume the position of the ERA executive director.

Commissioner Speer, asked about the statement in the bylaws to appoint the executive director, and if the selection must approved by the Evans City Council.

Chainman Morris discussed why it was within the City Manager’s purview to make the selection without it being a City Council appointment.

Commissioner Speer expressed her concerns about having a consultant appointed to be the executive director of the ERA.

Commissioner Homann made the motion, seconded by Vice Chair Rudy to approve Resolution No. ERA-002-2016 – Adopting the Bylaws for the Evans Redevelopment Agency. The motion passed with all voting in favor thereof.

## **REPORTS**

### **A. Executive Director**

Ms. Trent, discussed the agency's charge, spoke about its relationship with the City of Evans and the Evans City Council, and updated the ERA about its project area.

### **B. ERA Attorney**

Mr. Murray introduced himself to the ERA members, talked about his tenure with the ERA, and discussed his experience in urban renewal in Colorado. Mr. Murray spoke about the powers of an Urban Renewal Authority compared to municipalities.

Mr. Murray discussed the procedure for creating an Urban Renewal Area and spoke about the specific project areas in the City of Evans.

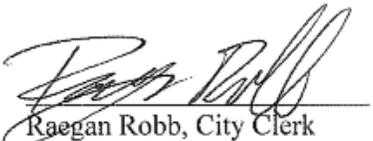
Ms. Trent explained the role of the City Strike Team, which review development within the ERA project area, and she spoke about providing more history about the project area at the next ERA meeting.

Mr. Murray also discussed House Bill 15-1348, which requires input from the County and special districts before the tax increment is distributed for urban renewal projects. Mr. Murray explained that the ERA took action in the fall of 2015 to protect the ERAs project from being impacted by HB15-1348. He spoke about current legislation to further protect projects, and bonding for projects, in place prior to when HB 15-1348 went into effect.

Chairman Morris thanked Mr. Murray for his presentation.

## **ADJOURNMENT**

The meeting adjourned at 9:15 p.m.

  
Raegan Robb, City Clerk

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# EVANS REDEVELOPMENT AGENCY COMMUNICATION

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**DATE:** May 17, 2016

**AGENDA ITEM:** 5.A

**SUBJECT:** Approval of Listing Agreement for Evans Redevelopment Agency

**FROM:** Aden Hogan, Executive Director

**PRESENTED BY:** Sheryl Trent, Economic Development Director

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## PROJECT DESCRIPTION

A Listing Agreement is necessary for a broker to represent land owned by the Evans Redevelopment Agency.

## BACKGROUND

The Evans Redevelopment Agency (ERA) owns approximately 12 acres on the corner of Highway 85 and 31<sup>st</sup> Street. The intent of the property, per adopted projects and policies, is to redevelop the site as a major regional retail destination. As a part of the project, the ERA will need a broker to list the site.

Realtec/Greeley and brokers Mark Bradley and Nick Berryman have been recommended by the Strike Team as the brokers to represent the site. The Listing Agreement will need to be signed by the Mayor to be effective.

## FINANCIAL IMPACT

There will be no outgoing financial expenses, any fees will be made a part of a sale or purchase agreement.

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## STAFF RECOMMENDATION

Staff recommends that the ERA approve the Listing Agreement with Realtec/Greeley and brokers Mark Bradley and Nick Berryman.

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## RECOMMENDED CITY COUNCIL MOTION

*“I move to approve the Listing Agreement as presented.”*

*“I move to deny the Listing Agreement.”*

*“I move to approve the Listing Agreement with the following changes ..... ”*

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**Realtec Greeley Commercial Real Estate**

1711 61st Ave Ste 104

Greeley, CO 80634

Phone: (970)346-9900 Fax: (970)304-0707

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.  
(LC50-8-13) (Mandatory 1-14)

**THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.**

**Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.**

**DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.**

**EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT**

**SELLER AGENCY**  **TRANSACTION-BROKERAGE**

Date: **May 3, 2016**

**1. AGREEMENT.** Seller and Brokerage Firm enter into this exclusive, irrevocable contract (Seller Listing Contract) and agree to its provisions. Broker, on behalf of Brokerage Firm, agrees to provide brokerage services to Seller. Seller agrees to pay Brokerage Firm as set forth in this Seller Listing Contract.

**2. BROKER AND BROKERAGE FIRM.**

**2.1. Multiple-Person Firm.** If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Seller and to perform the services for Seller required by this Seller Listing Contract is called Broker. If more than one individual is so designated, then references in this Seller Listing Contract to Broker include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

**2.2. One-Person Firm.** If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this Seller Listing Contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm who serve as the broker of Seller and perform the services for Seller required by this Seller Listing Contract.

**3. DEFINED TERMS.**

**3.1. Seller:** *Evans Redevelopment Agency (City of Evans)*

**3.2. Brokerage Firm:** *Realtec/Greeley*

**3.3. Broker:** *Mark Bradley and Nick Berryman*

**3.4. Property.** The Property is the following legally described real estate in the County of *Weld*, Colorado:  
*Approximately 11.39 acres of commercially-zoned land intended for redevelopment located at the following legal address:*

*LOT 1 JUNCTION AT EVANS MINOR RPLT, EVANS, CO 80620*

*[Legal address to be amended by land survey]*

known as No.	<i>SW corner of 31st St and Hwy 85</i>	<i>Evans</i>	<i>CO</i>	<i>80620</i>
Street Address		City	State	Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

**3.5. Sale; Lease.**

Seller initials \_\_\_\_\_

39           **3.5.1.** A Sale is the voluntary transfer or exchange of any interest in the Property or the voluntary creation of the  
40 obligation to convey any interest in the Property, including a contract or lease. It also includes an agreement to transfer any  
41 ownership interest in an entity which owns the Property.

42            **3.5.2.** If this box is checked, Seller authorizes Broker to negotiate leasing the Property. Lease of the Property or  
43 Lease means any agreement between the Seller and a tenant to create a tenancy or leasehold interest in the Property.

44           **3.6. Listing Period.** The Listing Period of this Seller Listing Contract begins on **May 3, 2016**, and  
45 continues through the earlier of (1) completion of the Sale of the Property or (2) **May 2, 2017**, and  
46 any written extensions (Listing Period). Broker must continue to assist in the completion of any Sale or Lease for which  
47 compensation is payable to Brokerage Firm under § 7 of this Seller Listing Contract.

48           **3.7. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation  
49 "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the date upon  
50 which both parties have signed this Seller Listing Contract.

51           **3.8 Day; Computation of Period of Days, Deadline.**

52           **3.8.1. Day.** As used in this Seller Listing Contract, the term "day" means the entire day ending at 11:59 p.m., United  
53 States Mountain Time (Standard or Daylight Savings as applicable).

54           **3.8.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not  
55 specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday,  
56 Sunday or federal or Colorado state holiday (Holiday), such deadline  **Will**  **Will Not** be extended to the next day that is not  
57 a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

#### 58 **4. BROKERAGE RELATIONSHIP.**

59           **4.1.** If the Seller Agency box at the top of page 1 is checked, Broker represents Seller as a Seller's limited agent (Seller's  
60 Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker acts as a Transaction-Broker.

61           **4.2. In-Company Transaction – Different Brokers.** When Seller and buyer in a transaction are working with different  
62 brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller  
63 acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a  
64 buyer.

65           **4.3. In-Company Transaction – One Broker.** If Seller and buyer are both working with the same broker, Broker must  
66 function as:

67           **4.3.1. Seller's Agent.** If the Seller Agency box at the top of page 1 is checked, the parties agree the following applies:

68           **4.3.1.1. Seller Agency Only.** Unless the box in § 4.3.1.2 (**Seller Agency Unless Brokerage Relationship**  
69 **with Both**) is checked, Broker represents Seller as Seller's Agent and must treat the buyer as a customer. A customer is a party to  
70 a transaction with whom Broker has no brokerage relationship. Broker must disclose to such customer Broker's relationship with  
71 Seller.

72            **4.3.1.2. Seller Agency Unless Brokerage Relationship with Both.** If this box is checked, Broker  
73 represents Seller as Seller's Agent and must treat the buyer as a customer, unless Broker currently has or enters into an agency or  
74 Transaction-Brokerage relationship with the buyer, in which case Broker must act as a Transaction-Broker.

75           **4.3.2. Transaction-Broker.** If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither  
76 box is checked, Broker must work with Seller as a Transaction-Broker. A Transaction-Broker must perform the duties described in  
77 § 5 and facilitate sales transactions without being an advocate or agent for either party. If Seller and buyer are working with the  
78 same broker, Broker must continue to function as a Transaction-Broker.

79           **5. BROKERAGE DUTIES.** Brokerage Firm, acting through Broker, as either a Transaction-Broker or a Seller's Agent, must  
80 perform the following **Uniform Duties** when working with Seller:

81           **5.1.** Broker must exercise reasonable skill and care for Seller, including, but not limited to the following:

82           **5.1.1.** Performing the terms of any written or oral agreement with Seller;

83           **5.1.2.** Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a  
84 contract for Sale;

85           **5.1.3.** Disclosing to Seller adverse material facts actually known by Broker;

86           **5.1.4.** Advising Seller regarding the transaction and advising Seller to obtain expert advice as to material matters  
87 about which Broker knows but the specifics of which are beyond the expertise of Broker;

88           **5.1.5.** Accounting in a timely manner for all money and property received; and

89           **5.1.6.** Keeping Seller fully informed regarding the transaction.

90           **5.2.** Broker must not disclose the following information without the informed consent of Seller:

91           **5.2.1.** That Seller is willing to accept less than the asking price for the Property;

92           **5.2.2.** What the motivating factors are for Seller to sell the Property;

93           **5.2.3.** That Seller will agree to financing terms other than those offered;

94           **5.2.4.** Any material information about Seller unless disclosure is required by law or failure to disclose such  
95 information would constitute fraud or dishonest dealing; or  
96           **5.2.5.** Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.  
97           **5.3.** Seller consents to Broker's disclosure of Seller's confidential information to the supervising broker or designee for the  
98 purpose of proper supervision, provided such supervising broker or designee does not further disclose such information without  
99 consent of Seller, or use such information to the detriment of Seller.  
100           **5.4.** Brokerage Firm may have agreements with other sellers to market and sell their property. Broker may show alternative  
101 properties not owned by Seller to other prospective buyers and list competing properties for sale.  
102           **5.5.** Broker is not obligated to seek additional offers to purchase the Property while the Property is subject to a contract for  
103 Sale.  
104           **5.6.** Broker has no duty to conduct an independent inspection of the Property for the benefit of a buyer and has no duty to  
105 independently verify the accuracy or completeness of statements made by Seller or independent inspectors. Broker has no duty to  
106 conduct an independent investigation of a buyer's financial condition or to verify the accuracy or completeness of any statement  
107 made by a buyer.  
108           **5.7:** Seller understands that Seller is not liable for Broker's acts or omissions that have not been approved, directed or  
109 ratified by Seller.  
110           **5.8.** When asked, Broker  **Will**  **Will Not** disclose to prospective buyers and cooperating brokers the existence of  
111 offers on the Property and whether the offers were obtained by Broker, a broker within Brokerage Firm or by another broker.

112 **6. ADDITIONAL DUTIES OF SELLER'S AGENT.** If the Seller Agency box at the top of page 1 is checked, Broker is  
113 Seller's Agent, with the following additional duties:  
114           **6.1.** Promoting the interests of Seller with the utmost good faith, loyalty and fidelity;  
115           **6.2.** Seeking a price and terms that are set forth in this Seller Listing Contract; and  
116           **6.3.** Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.

117 **7. COMPENSATION TO BROKERAGE FIRM; COMPENSATION TO COOPERATIVE BROKER.** Seller agrees that  
118 any Brokerage Firm compensation that is conditioned upon the Sale of the Property will be earned by Brokerage Firm as set forth  
119 herein without any discount or allowance for any efforts made by Seller or by any other person in connection with the Sale of the  
120 Property.  
121           **7.1. Amount.** In consideration of the services to be performed by Broker, Seller agrees to pay Brokerage Firm as follows:  
122           **7.1.1. Sale Commission.** (1) *See Section 28* % of the gross purchase price or (2) *n/a* ,  
123 in U.S. dollars.  
124           **7.1.2. Lease Commission.** If the box in § 3.5.2 is checked, Brokerage Firm will be paid a fee equal to (1) *n/a* % of  
125 the gross rent under the lease, or (2) *See Section 28* , in U.S. dollars, payable  
126 as follows: *n/a*.  
127           **7.1.3. Other Compensation.** \_\_\_\_\_  
128           **7.2. Cooperative Broker Compensation.** Brokerage Firm offers compensation to outside brokerage firms, whose brokers  
129 are acting as:  
130            **Buyer Agents:** *50% Co-op fee* % of the gross sales price or *n/a* , in U.S. dollars.  
131            **Transaction-Brokers:** *50% Co-op fee* % of the gross sales price or *n/a* , in U.S. dollars.  
132           **7.3. When Earned.** Such commission is earned upon the occurrence of any of the following:  
133           **7.3.1.** Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;  
134           **7.3.2.** Broker finding a buyer who is ready, willing and able to complete the Sale or Lease as specified in this Seller  
135 Listing Contract; or  
136           **7.3.3.** Any Sale (or Lease if § 3.5.2 is checked) of the Property within **120** calendar days after the Listing  
137 Period expires (Holdover Period) (1) to anyone with whom Broker negotiated and (2) whose name was submitted, in writing, to  
138 Seller by Broker during the Listing Period (Submitted Prospect). Provided, however, Seller  **Will**  **Will Not** owe the  
139 commission to Brokerage Firm under this § 7.3.3 if a commission is earned by another licensed real estate brokerage firm acting  
140 pursuant to an exclusive agreement entered into during the Holdover Period and a Sale or Lease to a Submitted Prospect is  
141 consummated. If no box is checked in this § 7.3.3, then Seller does not owe the commission to Brokerage Firm.  
142           **7.4. When Applicable and Payable.** The commission obligation applies to a Sale made during the Listing Period or any  
143 extension of such original or extended term. The commission described in § 7.1.1 is payable at the time of the closing of the Sale,  
144 or, if there is no closing (due to the refusal or neglect of Seller) then on the contracted date of closing, as contemplated by § 7.3.1  
145 or § 7.3.3, or upon fulfillment of § 7.3.2 where the offer made by such buyer is not accepted by Seller.

146 **8. LIMITATION ON THIRD-PARTY COMPENSATION.** Neither Broker nor Brokerage Firm, except as set forth in § 7,  
147 will accept compensation from any other person or entity in connection with the Property without the written consent of Seller.

148 Additionally, neither Broker nor Brokerage Firm is permitted to assess or receive mark-ups or other compensation for services  
149 performed by any third party or affiliated business entity unless Seller signs a separate written consent for such services.

150 **9. OTHER BROKERS' ASSISTANCE, MULTIPLE LISTING SERVICES AND MARKETING.** Seller has been advised  
151 by Broker of the advantages and disadvantages of various marketing methods, including advertising and the use of multiple listing  
152 services (MLS) and various methods of making the Property accessible by other brokerage firms (e.g., using lock boxes, by-  
153 appointment-only showings, etc.) and whether some methods may limit the ability of another broker to show the Property. After  
154 having been so advised, Seller has chosen the following:

155 **9.1. MLS/Information Exchange.**

156 **9.1.1.** The Property  Will  Will Not be submitted to one or more MLS and  Will  Will Not be submitted  
157 to one or more property information exchanges. If submitted, Seller authorizes Broker to provide timely notice of any status  
158 change to such MLS and information exchanges. Upon transfer of deed from Seller to buyer, Seller authorizes Broker to provide  
159 sales information to such MLS and information exchanges.

160 **9.1.2.** Seller authorizes the use of electronic and all other marketing methods except: *None specified.*

161 **9.1.3.** Seller further authorizes use of the data by MLS and property information exchanges, if any.

162 **9.1.4.** The Property Address  Will  Will Not be displayed on the Internet.

163 **9.1.5.** The Property Listing  Will  Will Not be displayed on the Internet.

164 **9.2. Property Access.** Access to the Property may be by:

165  Manual Lock Box  Electronic Lock Box

166  *By prior appointment with Broker, Seller will be informed ahead of time in  
event access to buildings are requested.*

167 Other instructions: *Property will be managed by a third-party management office.*

168 **9.3. Broker Marketing.** The following specific marketing tasks will be performed by Broker:

172 **10. SELLER'S OBLIGATIONS TO BROKER; DISCLOSURES AND CONSENT.**

173 **10.1. Negotiations and Communication.** Seller agrees to conduct all negotiations for the Sale of the Property only through  
174 Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective buyers, tenants or any  
175 other source during the Listing Period of this Seller Listing Contract.

176 **10.2. Advertising.** Seller agrees that any advertising of the Property by Seller (e.g., Internet, print and signage) must first be  
177 approved by Broker.

178 **10.3. No Existing Listing Agreement.** Seller represents that Seller  Is  Is Not currently a party to any listing  
179 agreement with any other broker to sell the Property.

180 **10.4. Ownership of Materials and Consent.** Seller represents that all materials (including all photographs, renderings,  
181 images or other creative items) supplied to Broker by or on behalf of Seller are owned by Seller, except as Seller has disclosed in  
182 writing to Broker. Seller is authorized to and grants to Broker, Brokerage Firm and any MLS (that Broker submits the Property to)  
183 a nonexclusive, irrevocable, royalty-free license to use such material for marketing of the Property, reporting as required and the  
184 publishing, display and reproduction of such material, compilation and data. This license survives the termination of this Seller  
185 Listing Contract.

186 **10.5. Colorado Foreclosure Protection Act.** The Colorado Foreclosure Protection Act (Act) generally applies if (1) the  
187 Property is residential (2) Seller resides in the Property as Seller's principal residence (3) Buyer's purpose in purchase of the  
188 Property is not to use the Property as Buyer's personal residence and (4) the Property is in foreclosure or Buyer has notice that any  
189 loan secured by the Property is at least thirty days delinquent or in default. If all requirements 1, 2, 3 and 4 are met and the Act  
190 otherwise applies, then a contract, between Buyer and Seller for the sale of the Property, that complies with the provisions of the  
191 Act is required. If the transaction is a Short Sale transaction and a Short Sale Addendum is part of the Contract between Seller and  
192 Buyer, the Act does not apply. It is recommended that Seller consult with an attorney.

193 **11. PRICE AND TERMS.** The following Price and Terms are acceptable to Seller:

194 **11.1. Price.** U.S. \$ *See Section 28*

195 **11.2. Terms.**  Cash  Conventional  FHA  VA  Other: \_\_\_\_\_

196 **11.3. Loan Discount Points.** *n/a*

197 **11.4. Buyer's Closing Costs (FHA/VA).** Seller must pay closing costs and fees, not to exceed \$ *n/a*, that Buyer  
198 is not allowed by law to pay, for tax service and *n/a*.

199 **11.5. Earnest Money.** Minimum amount of earnest money deposit U.S. \$ *50,000.00* in the form of *check, wire  
transfer, or other good funds*

200 11.6. **Seller Proceeds.** Seller will receive net proceeds of closing as indicated:  **Cashier's Check** at Seller's expense;  
201  **Funds Electronically Transferred (Wire Transfer)** to an account specified by Seller, at Seller's expense; or  **Closing**  
202 **Company's Trust Account Check.**

203 11.7. **Advisory: Tax Withholding.** The Internal Revenue Service and the Colorado Department of Revenue may require  
204 closing company to withhold a substantial portion of the proceeds of this Sale when Seller either (1) is a foreign person or (2) will  
205 not be a Colorado resident after closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an  
206 exemption exists.

207 12. **DEPOSITS.** Brokerage Firm is authorized to accept earnest money deposits received by Broker pursuant to a proposed Sale  
208 contract. Brokerage Firm is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of  
209 the Sale contract.

210 **13. INCLUSIONS AND EXCLUSIONS.**

211 13.1. **Inclusions.** The Purchase Price includes the following items (Inclusions):

212 13.1.1. **Fixtures.** The following items are included if attached to the Property on the date of this Seller Listing  
213 Contract, unless excluded under Exclusions (§ 13.2): lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV  
214 antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings,  
215 intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories),  
216 garage door openers including **TBD** remote controls.  
217 **Other Fixtures: TBD**

218  
219  
220 If any fixtures are attached to the Property after the date of this Seller Listing Contract, such additional fixtures are also included in  
221 the Purchase Price.

222 13.1.2. **Personal Property.** The following items are included if on the Property, whether attached or not, on the date  
223 of this Seller Listing Contract, unless excluded under Exclusions (§ 13.2): storm windows, storm doors, window and porch shades,  
224 awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating  
225 stoves, storage sheds, and all keys. If checked, the following are included:  **Water Softeners**  **Smoke/Fire Detectors**   
226 **Carbon Monoxide Alarms**  **Security Systems**  **Satellite Systems** (including satellite dishes); and  
227 **TBD**

228  
229 The Personal Property to be conveyed at closing must be conveyed by Seller free and clear of all taxes (except personal  
230 property taxes for the year of closing), liens and encumbrances, except **n/a**.  
231 Conveyance will be by bill of sale or other applicable legal instrument.

232 13.1.3. **Trade Fixtures.** The following trade fixtures are included: **TBD**

233 The Trade Fixtures to be conveyed at closing must be conveyed by Seller, free and clear of all taxes (except personal property  
234 taxes for the year of closing), liens and encumbrances, except **n/a**.  
235 Conveyance will be by bill of sale or other applicable legal instrument.

236 13.1.4. **Parking and Storage Facilities.**  **Use Only**  **Ownership** of the following parking facilities:  
237 **Any such areas so designated and located on Property, if any at time of sale.** ; and   
238 **Use Only**  **Ownership** of the following storage facilities: **Any such areas so designated and located on**  
239 **Property, if any at time of sale.** .

240 13.1.5. **Water Rights.** The following legally described water rights:  
241 **Seller to provide Broker knowledge of any previously dedicated raw water benefitting**  
242 **the Property.**

243 Any water rights must be conveyed by **n/a** deed or other applicable legal instrument. The Well  
244 Permit # is **n/a** .

245 13.1.6. **Growing Crops.** The following growing crops:  
246 **n/a**

247 13.2. **Exclusions.** The following are excluded (Exclusions): **None specified.**

248  
249  
250 14. **TITLE AND ENCUMBRANCES.** Seller represents to Broker that title to the Property is solely in Seller's name. Seller

251 must deliver to Broker true copies of all relevant title materials, leases, improvement location certificates and surveys in Seller's  
252 possession and must disclose to Broker all easements, liens and other encumbrances, if any, on the Property, of which Seller has  
253 knowledge. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the  
254 amount owing on said encumbrance and the terms thereof. In case of Sale, Seller agrees to convey, by a **Special Warranty**  
255 deed, only that title Seller has in the Property. Property must be conveyed free and clear of all taxes, except the general taxes for  
256 the year of closing.

257 All monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) must be paid by Seller and released  
258 except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows: \_\_\_\_\_.

259 The Property is subject to the following leases and tenancies: **[Seller to provide list of tenancies]**.

260 If the Property has been or will be subject to any governmental liens for special improvements installed at the time of signing  
261 a Sale contract, Seller is responsible for payment of same, unless otherwise agreed.

262 **15. EVIDENCE OF TITLE.** Seller agrees to furnish buyer, at Seller's expense, unless the parties agree in writing to a different  
263 arrangement, a current commitment and an owner's title insurance policy in an amount equal to the Purchase Price as specified in  
264 the Sale contract, or if this box is checked,  **An Abstract of Title** certified to a current date.

265 **16. ASSOCIATION ASSESSMENTS.** Seller represents that the amount of the regular owners' association assessment is  
266 currently payable at approximately \$ **TBD** per **TBD** and that there are no unpaid regular or special assessments against  
267 the Property except the current regular assessments and except **n/a**. Seller agrees to promptly  
268 request the owners' association to deliver to buyer before date of closing a current statement of assessments against the Property.

269 **17. POSSESSION.** Possession of the Property will be delivered to buyer as follows: **Date of closing unless**  
270 **otherwise provided for in contract to purchase.**,  
subject to leases and tenancies as described in § 14.

271 **18. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.**

272 **18.1. Broker's Obligations.** Colorado law requires a broker to disclose to any prospective buyer all adverse material facts  
273 actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property and the  
274 physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property which  
275 are required by law to be disclosed. These types of disclosures may include such matters as structural defects, soil conditions,  
276 violations of health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer may have  
277 the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known by Broker about the Property.

278 **18.2. Seller's Obligations.**

279 **18.2.1. Seller's Property Disclosure Form.** Disclosure of known material latent (not obvious) defects is required by  
280 law. Seller  **Agrees**  **Does Not Agree** to provide a Seller's Property Disclosure form completed to Seller's current, actual  
281 knowledge.

282 **18.2.2. Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more residential  
283 dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sales) form  
284 must be signed by Seller and the real estate licensees, and given to any potential buyer in a timely manner.

285 **18.2.3. Carbon Monoxide Alarms.** Note: If the improvements on the Property have a fuel-fired heater or appliance, a  
286 fireplace, or an attached garage and one or more rooms lawfully used for sleeping purposes (Bedroom), Seller understands that  
287 Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the  
288 entrance to each Bedroom or in a location as required by the applicable building code, prior to offering the Property for sale or lease.

289 **18.2.4. Condition of Property.** The Property will be conveyed in the condition existing as of the date of the sales  
290 contract or lease, ordinary wear and tear excepted, unless Seller, at Seller's sole option, agrees in writing to any repairs or other  
291 work to be performed by Seller.

292 **19. RIGHT OF PARTIES TO CANCEL.**

293 **19.1. Right of Seller to Cancel.** In the event Broker defaults under this Seller Listing Contract, Seller has the right to cancel  
294 this Seller Listing Contract, including all rights of Brokerage Firm to any compensation if the Seller Agency box is checked.  
295 Examples of a Broker default include, but are not limited to (1) abandonment of Seller, (2) failure to fulfill all material obligations  
296 of Broker and (3) failure to fulfill all material Uniform Duties (§ 5) or, if the Seller Agency box at the top of page 1 if checked, the  
297 failure to fulfill all material Additional Duties Of Seller's Agent (§ 6). Any rights of Seller that accrued prior to cancellation will  
298 survive such cancellation.

300 **19.2. Right of Broker to Cancel.** Brokerage Firm may cancel this Seller Listing Contract upon written notice to Seller that  
301 title is not satisfactory to Brokerage Firm. Although Broker has no obligation to investigate or inspect the Property, and no duty to  
302 verify statements made, Brokerage Firm has the right to cancel this Seller Listing Contract if any of the following are

303 unsatisfactory (1) the physical condition of the Property or Inclusions, (2) any proposed or existing transportation project, road,  
304 street or highway, (3) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the  
305 Property or its occupants, or (4) if any facts or suspicions regarding circumstances that could psychologically impact or stigmatize  
306 the Property. Additionally, Brokerage Firm has the right to cancel this Seller Listing Contract if Seller or occupant of the Property  
307 fails to reasonably cooperate with Broker or Seller defaults under this Seller Listing Contract. Any rights of Brokerage Firm that  
308 accrued prior to cancellation will survive such cancellation.

309 **20. FORFEITURE OF PAYMENTS.** In the event of a forfeiture of payments made by a buyer, the sums received will be  
310 divided between Brokerage Firm and Seller, one-half thereof to Brokerage Firm but not to exceed the Brokerage Firm  
311 compensation agreed upon herein, and the balance to Seller. Any forfeiture of payment under this section will not reduce any  
312 Brokerage Firm compensation owed, earned and payable under § 7.

313 **21. COST OF SERVICES AND REIMBURSEMENT.** Unless otherwise agreed upon in writing, Brokerage Firm must bear all  
314 expenses incurred by Brokerage Firm, if any, to market the Property and to compensate cooperating brokerage firms, if any.  
315 Neither Broker nor Brokerage Firm will obtain or order any other products or services unless Seller agrees in writing to pay for  
316 them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Unless  
317 otherwise agreed, neither Broker nor Brokerage Firm is obligated to advance funds for Seller. Seller must reimburse Brokerage  
318 Firm for payments made by Brokerage Firm for such products or services authorized by Seller.

319 **22. DISCLOSURE OF SETTLEMENT COSTS.** Seller acknowledges that costs, quality, and extent of service vary between  
320 different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

321 **23. MAINTENANCE OF THE PROPERTY.** Neither Broker nor Brokerage Firm is responsible for maintenance of the  
322 Property nor are they liable for damage of any kind occurring to the Property, unless such damage is caused by their negligence or  
323 intentional misconduct.

324 **24. NONDISCRIMINATION.** The parties agree not to discriminate unlawfully against any prospective buyer because of the  
325 race, creed, color, sex, sexual orientation, marital status, familial status, physical or mental disability, handicap, religion, national  
326 origin or ancestry of such person.

327 **25. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Seller acknowledges that Broker  
328 has advised that this document has important legal consequences and has recommended consultation with legal and tax or other  
329 counsel before signing this Seller Listing Contract.

330 **26. MEDIATION.** If a dispute arises relating to this Seller Listing Contract, prior to or after closing, and is not resolved, the  
331 parties must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an  
332 impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The  
333 parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable  
334 mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event  
335 the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party  
336 to the other at the other party's last known address.

337 **27. ATTORNEY FEES.** In the event of any arbitration or litigation relating to this Seller Listing Contract, the arbitrator or court  
338 must award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

339 **28. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate  
340 Commission.)

341 **28.1. SALE PRICE.** *Pricing negotiable, subject to quality of user and any incentives offered by Seller or City of Evans. Seller reserves right to amend any stated pricing on marketing materials during the term of this listing agreement.*

**28.2. LEASE RATE.** *Pricing negotiable, subject to quality of user and any incentives offered by Seller or City of Evans. Seller reserves right to amend any stated pricing on marketing materials during the term of this listing agreement.*

**28.3. BROKER COMMISSION FEE(S).** *Upon either closing date or lease commencement date, Broker will be paid a market rate commission equal to six percent (6%) of the purchase price or base rent amount for initial term of lease, prior to any Seller*

or City of Evans financial incentives offered to buyer/tenant, if any; or if applicable, five percent (5%) of the purchase price or base rent amount for the initial term of the lease, when no cooperating broker represents the buyer/tenant in the transaction.

28.4. **AUTHORIZATION TO DISCLOSE POTENTIAL FOR PURCHASE OF NEIGHBORING SITES.** Seller authorizes Broker to disclose Seller's ability to purchase additional acreage adjacent for redevelopment purposes when talking with prospects. Broker will not disclose such information on any printed or web materials unless previously approved by Seller.

28.5. **AMENDMENT FOR ADDITIONAL LOTS TO MARKET.** In the event that Seller decides to engage Broker to actively and publicly market additional lots near to Property herein, Seller and Broker will amend this listing agreement to add in the defined legal address of lot(s) desired prior to issuing any marketing materials.

28.5. **AUTOMATIC EXTENSION OF LISTING AGREEMENT.** In the event that during the term of this listing agreement the Broker obtains a buyer for the Property and where the closing date extends beyond the expiration date of this listing agreement then the listing agreement expiration date will automatically extend to the closing date of the purchase contract.

28.6. **MARKETING ALLOWANCE.** Broker and Seller will work together to establish a joint marketing budget that the Seller will participate in as such defined expenses are incurred. Said budget will be approved by both Broker and Seller in writing, also detailing at what percent of cost is shared between the parties.

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344 **29. ATTACHMENTS.** The following are a part of this Seller Listing Contract:

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347 **30. NO OTHER PARTY OR INTENDED BENEFICIARIES.** Nothing in this Seller Listing Contract is deemed to inure to the  
348 benefit of any person other than Seller, Broker and Brokerage Firm.

349 **31. NOTICE, DELIVERY AND CHOICE OF LAW.**

350 **31.1. Physical Delivery.** All notices must be in writing, except as provided in § 31.2. Any document, including a signed  
351 document or notice, delivered to the other party to this Seller Listing Contract, is effective upon physical receipt. Delivery to Seller  
352 is effective when physically received by Seller, any signator on behalf of Seller, any named individual of Seller or representative  
353 of Seller.

354 **31.2. Electronic Delivery.** As an alternative to physical delivery, any document, including any signed document or written  
355 notice, may be delivered in electronic form only by the following indicated methods:  Facsimile  Email  Internet. If no  
356 box is checked, this § 31.2 is not applicable and § 31.1 governs notice and delivery. Documents with original signatures will be  
357 provided upon request of any party.

358 **31.3. Choice of Law.** This Seller Listing Contract and all disputes arising hereunder are governed by and construed in  
359 accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state  
360 for property located in Colorado.

361 **32. MODIFICATION OF THIS SELLER LISTING CONTRACT.** No subsequent modification of any of the terms of this  
362 Seller Listing Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

363 **33. COUNTERPARTS.** This Seller Listing Contract may be executed by each of the parties, separately, and when so executed  
364 by all the parties, such copies taken together are deemed to be a full and complete contract between the parties.

365 **34. ENTIRE AGREEMENT.** This agreement constitutes the entire contract between the parties, and any prior agreements,  
366 whether oral or written, have been merged and integrated into this Seller Listing Contract.

367 **35. COPY OF CONTRACT.** Seller acknowledges receipt of a copy of this Seller Listing Contract signed by Broker, including  
368 all attachments.

369 Brokerage Firm authorizes Broker to execute this Seller Listing Contract on behalf of Brokerage Firm.

Seller's Name: **Evans Redevelopment Agency (City of Evans)**

\_\_\_\_\_  
Seller's Signature Date

\_\_\_\_\_  
Seller's Signature Date

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Electronic Address: \_\_\_\_\_

Broker's Name: **Mark Bradley, Nick Berryman**

 \_\_\_\_\_  
Broker's Signature Date **5/3/16**

Address: **1711 61st Ave Ste 104**

**Greeley, CO 80634**

Phone No.: **(970) 346-9900**

Fax No.: **(970) 304-0707**

Electronic Address: **NBerryman@realtec.com**

Brokerage Firm's Name: **Realtec/Greeley**

Address: **1711 61st Ave Ste 104, Greeley, CO 80634**

Phone No.: **(970) 346-9900**

Fax No.: **(970) 304-0707**

Electronic Address: **NBerryman@realtec.com**

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## **EVANS REDEVELOPMENT AGENCY COMMUNICATION**

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**DATE:** May 17, 2016  
**AGENDA ITEM:** 7.A  
**SUBJECT:** Adjournment to Executive Session

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**AGENDA ITEM DESCRIPTION:**

The Evans Development Agency will adjourn into an executive session to determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, pursuant to C.R.S. 24-6-402(4)(e).

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**FINANCIAL SUMMARY:**

N/A

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**RECOMMENDATION:**

N/A

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**SUGGESTED MOTIONS:**

*“I move to go into Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, pursuant to C.R.S. 24-6-402(4)(e).”*

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