

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, September 10, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 27, 2012)
- 3. Purpose of Special WEDA Meeting is to consider**
 - A. Resolution No. 145 re Loan Approval for up to \$7.420 Million to Refinance an Existing Loan for the South Sheridan Urban Renewal Project
 - B. Orchard Parkway, 138th Avenue to 144th Avenue Project and 142nd Avenue from Huron Street to Orchard Parkway – Engineering Design Contract
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, AUGUST 27, 2012, AT 8:03 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter, and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Kaiser, to approve the minutes of the meeting of August 13, 2012, as written. The motion carried unanimously.

RESOLUTION NO. 144 – LOAN TO REFINANCE EXISTING LOAN FOR NORTH HURON URA

It was moved by Board Member Atchison and seconded by Board Member Kaiser to adopt Resolution No. 144 authorizing the Executive Director or his designee to enter into a Loan Agreement for up to \$60 million with Compass Mortgage Corporation to refinance an existing Loan between the Westminster Economic Development Authority and the Bank for the North Huron Urban Renewal Project, as well as approving loan documents including but not limited to the Loan Resolution, Loan Agreement, Cooperation Agreement with the City, and an Intergovernmental Agreement with the City. On roll call vote, the motion passed unanimously.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Atchison, seconded by Major, to adjourn. The motion passed and the meeting adjourned at 8:04 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
September 10, 2012



SUBJECT: Resolution No. 145 re Loan Approval for up to \$7.420 Million to Refinance an Existing Loan for the South Sheridan Urban Renewal Project

Prepared By: Tammy Hitchens, Finance Director
Robert Byerhof, Senior Financial Analyst
Rachel Price, Financial Analyst

Recommended Board Action

Adopt Resolution No.145 authorizing the Executive Director or his designee to enter into a Loan Agreement for up to \$7.420 million with Vectra Bank Colorado to refinance an existing Loan between the Westminster Economic Development Authority and the Bank for the South Sheridan Urban Renewal Project (URA), as well as approving loan documents, in essentially the same form as attached, including but not limited to the Loan Resolution; Loan Agreement; and Cooperation Agreement with the City.

Summary Statement

- The recommended action secures variable rate financing through the end of 2028. The rate is tied to a LIBOR index.
- By approving the attached resolution, Westminster Economic Development Authority (WEDA) approves the loan refunding and the following contract documents necessary to complete the transaction:
 - a) Loan Resolution dated September 10, 2012 authorizing WEDA to enter into the agreement related to the urban renewal project.
 - b) Loan Agreement dated September 13, 2012 between WEDA and the Lender Bank, Vectra Bank Colorado (Bank), Colorado.
 - c) Cooperation Agreement dated September 10, 2012 between WEDA and the City.
- The WEDA Board reviewed this refinancing at their August 27th Post Meeting and directed Staff to bring this item forward for official action.

Expenditure Required: Up to \$7.420 million

Source of Funds: Loan proceeds and increment revenues within the URA

Policy Issue

Should WEDA refund the 2009 South Sheridan Urban Renewal Project (URA) Loan?

Alternatives

Decline or delay approval of the resolution concerning refunding of the 2009 WEDA Loan - This is not recommended. If the WEDA Board were not to approve the new rate, the outstanding \$7.420 million balance of the 2009 Loan plus accrued interest would be immediately due and payable. Of the solutions investigated, the proposed action provides a financially prudent variable rate solution through the term of the original bonds issued in 2007. The interest rate would be indexed off of the 90-day, 180-day, 1-Year or 5-Year LIBOR, at the discretion of WEDA and reset based on the related interest period chosen. Due to the principal amount of the loan, the variable rate option will allow WEDA to take advantage of a manageable amount of interest rate risk, which is tied to a recognized index, and WEDA will not incur cost of issuance expenses of a typical debt issuance. In addition, the refunding continues to provide for a floating sales tax pledge under the terms of the Loan Agreement, which permits excess sales tax revenues not needed for WEDA debt service to be available for the City's General Fund.

Background Information

In 2007, WEDA issued \$8.320 million of Variable Rate Revenue Bonds with an underlying Letter of Credit (LOC) agreement with DEPFA Bank. In September 2008, DEPFA Bank's credit ratings were downgraded below investment grade, which resulted in investors tendering bonds back to the bank and subsequently resulted in these bonds being converted into Bank Bonds. The terms of the Bank Bonds eliminated the ability to release excess sales tax increment revenue due to an accelerated repayment of the principal; equal quarterly payments over a ten-year period per the agreement. On January 12, 2009 a Staff Report was presented to the WEDA Board and the Council regarding the Bank Bond issue.

In 2009, WEDA refinanced three outstanding Variable Rate Revenue Bonds that had been secured by letters of credit from DEPFA Bank. On June 16, 2009, WEDA entered into an \$8.075 million loan agreement with the Bank to refinance the WEDA 2007 Revenue Bonds (South Sheridan Project). Under the loan agreement the interest rate the Bank charged WEDA was set at 4.95% for a three year period ending June 15, 2012. On or before June 16, 2012 the Bank had the right to determine a new interest rate to take affect on June 16, 2012. The Loan Agreement, as approved, did not specify a specific interest rate reset methodology. Thus, the Bank and staff agreed to negotiate the terms needed to establish a mutually acceptable interest rate reset formula for a long-term borrowing solution.

On June 11, 2012, the Bank offered and the WEDA Board approved a 90 day extension of the original loan at an interest rate of 70% of 3 month Libor plus 2.25%. This rate was 2.58% starting on June 16, 2012 through and including September 13, 2012.

Under the terms of the new loan agreement, the Bank will offer interest rate reset options to consider prior to the expiration of the then existing reset modes described below. Depending on the current and projected direction of interest rates as the reset date approaches, Staff will manage interest rate risk with one of the following interest reset modes:

- 70% of the 1-month LIBOR plus 2.25%
- 70% of the 3-month LIBOR plus 2.25%
- 70% of the 1-year LIBOR plus 2.25%
- 70% of the 5-year LIBOR plus 2.25%

The initial rate will be set at the 70% of 5-year LIBOR plus 2.25%.

The London Interbank Offered Rate (LIBOR) is similar to the US Federal Reserve's Federal Funds rate, which is the rate US Banks charge to loan money between each other. LIBOR is the rate international banks will charge each other to lend US dollar deposits they hold and it sets the base rate from which lending rates are determined for banks and other entities based on their credit worthiness.

WEDA has employed variable interest rate reset options traditionally based on 1-week reset modes but has recently fixed two larger WEDA debt issues, Mandalay Gardens and North Huron URA projects, due significantly to the favorable capital market rates offered. Staff believes it prudent to keep the South Sheridan debt variable with the Bank for the following reasons:

- Since the principal amount is \$7.420 million, exposure to increases in interest payments when interest rates rise in comparison to the other larger issues mentioned isn't as significant.
- WEDA will not incur Cost of Issuance expenses typical in an underwritten debt issuance, which were projected to be \$105,000.
- The flexibility to manage interest rate risk under the terms of the Loan Agreement provides Staff the ability to respond to the dynamics of financial market environment relative to interest rates through the duration of the agreement in 2028. If Staff believes that interest rates are more likely to rise versus fall when a reset date approaches, Staff may reset the term with a longer interest rate reset period and conversely, when rates are more likely to decrease, a shorter reset period may be selected.
- Staff believes it is prudent to lock in the five year rate at this time. The rate will be finalized at or before closing.

The proposed Loan Agreement with the Bank is structured in a similar fashion to the other WEDA loan agreements, which permit excess sales tax increment dollars to flow back to the City. Based on current market conditions where 3-month LIBOR is 0.437% and the 5-year LIBOR is 1.026%, the range of interest rates offered through the proposed agreement are 2.56-2.97%. At these levels, the City will receive sales tax increment revenues in 2013 estimated to be \$1.954 million and in 2014 \$2.139 million.

This recommended action supports the strategic objectives of a Financially Sustainable City Government Providing Exceptional Services, a Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community. It does so by controlling the financing costs for debt issued by WEDA and providing more certainty for the sales tax revenues generated in the Urban Renewal Area that the City will be able to retain.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments: Loan Agreement
Cooperation Agreement
Loan Resolution

LOAN AGREEMENT

by and between

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
as Borrower

and

VECTRA BANK COLORADO, NATIONAL ASSOCIATION
as Lender

regarding

[\$7,420,000]
Westminster Economic Development Authority
Tax Increment Revenue Refunding Loan
(South Sheridan Urban Renewal Project)
Series 2012

Dated as of September 13, 2012

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS..... 2

ARTICLE II

LOAN TERMS, FEES, APPLICATION OF PROCEEDS

Section 2.01. Agreement to Make Loan 12
Section 2.02. Series 2009 Fund Balances 12
Section 2.03. Application of Loan Proceeds..... 13
Section 2.04. Interest Period; Interest Rate; Default Rate; Interest Payments;
Principal Payments..... 13
Section 2.05. Maximum Interest Rate..... 15
Section 2.06. Loan Prepayment 15
Section 2.07. Statements of Fund Activity 15
Section 2.08. Expenses and Attorneys' Fees 15
Section 2.09. Provisions Regarding Sales Tax Rate Certificate 16

ARTICLE III

CONDITIONS TO CLOSING

Section 3.01. Conditions to Loan Closing 16

ARTICLE IV

FUNDS

Section 4.01. Creation of Funds..... 19
Section 4.02. Flow of Funds 19
Section 4.03. Loan Payment Fund 20
Section 4.04. Reserve Fund 21
Section 4.05. Supplemental Reserve Fund 22
Section 4.06. Transaction Costs Fund..... 23
Section 4.07. Subordinate Obligations Fund 24
Section 4.08. Lender To Direct Funds and Accounts: Accounting 24

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 5.01. Accuracy of Information..... 25
Section 5.02. Organization; Litigation..... 25
Section 5.03. Performance of Covenants, Authority 25
Section 5.04. Use of Proceeds..... 25
Section 5.05. Tax Covenants 26
Section 5.06. Other Liabilities 26
Section 5.07. Financial Statements 26
Section 5.08. Reporting Requirements 26
Section 5.09. Inspection of Books and Records 27
Section 5.10. Instruments of Further Assurance..... 27

Section 5.11.	Additional Debt Restrictions.....	28
Section 5.12.	Continued Existence	28
Section 5.13.	Restructuring.....	29
Section 5.14.	Operation and Management.....	29
Section 5.15.	Annual Audit and Budget	29
Section 5.16.	No Exclusion of Property.....	29
Section 5.17.	Amendments to Financing Documents Require Prior Lender Consent.....	29
Section 5.18.	Enforcement of City Cooperation Agreement	29
Section 5.19.	Proper Allocation of New Construction	29

ARTICLE VI

RESERVED.....		29
---------------	--	----

ARTICLE VII DEPOSITS; INVESTMENTS

Section 7.01.	Deposits Held Under This Agreement.....	29
Section 7.02.	Investment of Reserve Fund and Supplemental Reserve Fund	30
Section 7.03.	Compliance with Tax Covenants	30

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.01.	Events of Default	30
Section 8.02.	Remedies on Occurrence of Event of Default	32
Section 8.03.	Notice to Lender of Default	32
Section 8.04.	Termination of Disbursements; Additional Lender Rights.....	33
Section 8.05.	Delay or Omission No Waiver.....	33
Section 8.06.	No Waiver of One Default to Affect Another; All Remedies Cumulative.....	33
Section 8.07.	Other Remedies.....	33

ARTICLE IX MISCELLANEOUS

Section 9.01.	Loan Agreement and Relationship to Other Documents	33
Section 9.02.	Successors; Assignment.....	33
Section 9.03.	Indemnification	33
Section 9.04.	Notice of Claims against Lender; Limitation of Certain Damages.....	34
Section 9.05.	Notices	34
Section 9.06.	Payments.....	35
Section 9.07.	Applicable Law and Jurisdiction; Interpretation; Severability	35
Section 9.08.	Copies; Entire Agreement; Modification.....	35
Section 9.09.	Waiver of Jury Trial.....	36
Section 9.10.	Attachments	36
Section 9.11.	No Recourse Against Officers and Agents	36
Section 9.12.	Conclusive Recital	36
Section 9.13.	Limitation of Actions	36
Section 9.14.	Pledge of Revenues.....	37
Section 9.15.	Payment on Non-Business Days.....	37

Section 9.16. Termination..... 37

EXHIBIT A FORM OF PROMISSORY NOTE

EXHIBIT B PRINCIPAL REPAYMENT SCHEDULE

EXHIBIT C URBAN RENEWAL AREA

EXHIBIT D FORM OF SALES TAX RATE CERTIFICATE

EXHIBIT E FORM OF INTEREST PERIOD SELECTION CERTIFICATE

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of September 13, 2012 by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (the “Borrower”), a public body corporate and politic duly existing under the laws of the State of Colorado, and **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association, in its capacity as lender (the “Lender”).

RECITALS

WHEREAS, the Borrower is a public body corporate and politic and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes (the “Act”) (all capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in Article I hereof); and

WHEREAS, pursuant to the Act, the Borrower has the power and authority to borrow money and to apply for and accept loans to accomplish the purposes set forth in the Act, and to give such security as may be required; and

WHEREAS, an urban renewal plan, known as the “South Sheridan Urban Renewal Plan” was originally approved on March 29, 2004, amended on February 28, 2005, and further amended on June 8, 2009 (as so amended, the “Urban Renewal Plan”) pursuant to resolutions duly and regularly adopted by the City Council of the City approving an urban renewal project (the “Urban Renewal Project”) under the Act; and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, the Borrower previously issued, for the purpose of paying a portion of the costs of the Urban Renewal Project, its Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007 (the “Series 2007 Bonds”); and

WHEREAS, for the purpose of refunding the Series 2007 Bonds, the Lender made a prior loan (the “Series 2009 Loan”) to the Borrower pursuant to the terms of a Loan Agreement dated as of June 16, 2009, as amended pursuant to a First Amendment to Loan Agreement dated as of June 11, 2012 (as so amended, the “2009 Loan Agreement”); and

WHEREAS, the Borrower and the Lender desire to refinance the Series 2009 Loan on terms and conditions different from those set forth in the 2009 Loan Agreement; and

WHEREAS, the Borrower has determined that it is in the best interests of the Borrower and the citizens and taxpayers of the City to refinance the Series 2009 Loan on such different terms and conditions; and

WHEREAS, for such purpose, the Borrower requested and the Lender has agreed to make a loan available to the Borrower in the original principal amount of \$[7,420,000] (the “Loan” or the “Series 2012 Loan”) on the terms and conditions set forth in this Agreement; and

WHEREAS, the Borrower’s authority to execute and deliver the Note (as defined in Article I hereof) and this Agreement and perform its obligations thereunder and hereunder is authorized pursuant to the Authorizing Resolution (as more particularly defined in Article I hereof); the Act; the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Public Securities Act”); and all other laws thereunto enabling; and

WHEREAS, the Loan shall constitute a special revenue obligation of the Borrower payable from and secured by the Pledged Revenue, subject to the limitations set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties hereto agree as follows.

ARTICLE I

DEFINITIONS

“*2009 Loan Agreement*” is defined in the recitals hereof.

“*2009 Loan Payment Fund*” means the Loan Payment Fund established and held under the 2009 Loan Agreement.

“*2009 Reserve Fund*” means the Reserve Fund established and held under the 2009 Loan Agreement.

“*2009 Revenue Fund*” means the Revenue Fund established and held under the 2009 Loan Agreement.

“*2009 Supplemental Reserve Fund*” means the Supplemental Reserve Fund established and held under the 2009 Loan Agreement.

“*2012 Loan Payment Fund*” means the Loan Payment Fund, as defined in this Article I.

“*2012 Reserve Fund*” means the Reserve Fund, as defined in this Article I.

“*2012 Reserve Requirement*” means the Reserve Requirement, as defined in this Article I.

“*2012 Revenue Fund*” means the Revenue Fund, as defined in this Article I.

“*2012 Supplemental Reserve Fund*” means the Supplemental Reserve Fund, as defined in this Article I.

“*Adams County Assessor*” means the assessor of Adams County, Colorado.

“*Additional Subordinate Debt*” means Debt issued pursuant to the provisions of Section 5.11(d) hereof.

“*Authorized Person*” means (a) the Chairperson or Executive Director of the Borrower or any designee thereof; (b) the City Finance Director; and/or (c) any other individual authorized by the Board to act as an Authorized Person hereunder, provided that the Borrower has provided evidence of such authority to the Lender in a form acceptable to the Lender.

“*Authorizing Resolution*” means Resolution No. ____, Series of 2012 adopted by the Board on September 10, 2012, authorizing the Borrower to incur the indebtedness of the Loan and execute and deliver the Note, this Agreement, and the other Financing Documents to which the Borrower is a party.

“*Board*” means the Board of Commissioners of the Borrower.

“*Bond Counsel*” means (a) as of the Closing Date, Sherman & Howard L.L.C., Denver, Colorado, and (b) as of any other date, Sherman & Howard L.L.C., Denver, Colorado, or such other attorneys selected by the Borrower with nationally recognized expertise in the issuance of tax-exempt debt.

“*Borrower*” means Westminster Economic Development Authority, a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado.

“*Business Day*” means any day other than a Saturday, a Sunday, or any holiday on which the Lender is closed for business.

“*City*” means the City of Westminster, Colorado.

“*City Cooperation Agreement*” means the 2012 Cooperation Agreement Between the City of Westminster and the Westminster Economic Development Authority dated as of September ____, 2012.

“*Closing*” means the concurrent execution and delivery of the Note, the Loan Agreement, and the other Financing Documents by the respective parties thereto and the issuance and disbursement of the Loan and application of the proceeds thereof in accordance with Section 2.03 hereof.

“*Closing Date*” means the date on which the Closing occurs, estimated to be on or about September 13, 2012.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“*Counties*” means, collectively, Adams County, Colorado and Jefferson County, Colorado.

“*County Assessors*” means, collectively, the Adams County Assessor and the Jefferson County Assessor.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Debt*” means, without duplication, all of the following obligations of the Borrower (other than the obligations represented by this Agreement and the Note) which are secured by any portion of the Pledged Revenue: (a) borrowed money of any kind; (b) obligations evidenced by bonds, debentures, notes or similar instruments, including the Note; (c) obligations upon which interest charges are customarily paid; (d) obligations under conditional sale or other title retention agreements relating to property or assets purchased by the Borrower; (e) obligations issued or assumed as the deferred purchase price of property or services; (f) obligations subject to annual appropriation of amounts sufficient to pay such obligations; (g) obligations in connection with indebtedness of others secured by (or which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien or other encumbrance on property owned or acquired by the Borrower, whether or not the obligations secured thereby have been assumed (only to the extent of the fair market value of such asset if such indebtedness has not been assumed by the Borrower); (h) obligations arising from guarantees made by the Borrower; (i) obligations evidenced by capital leases; (j) obligations as an account party in respect of letters of credit and bankers’ acceptances or similar obligations issued in respect of the Borrower; (k) obligations evidenced by any interest rate exchange agreement; provided however, that notwithstanding the foregoing, for purposes of any restrictions on the issuance of Debt herein, Debt hereunder shall not include the City Cooperation Agreement, any amounts representing the overpayment of incremental property taxes as the result of refunds made to taxpayers and with respect to which the Borrower has undertaken an obligation to repay the Treasurer of each of the Counties as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes, and management, consultant, operation, repair, service, goods, construction and maintenance contracts entered into in the ordinary course of business.

“*Default*” means an event, act or occurrence which, with the giving of notice or the lapse of time (or both), would become an Event of Default.

“*Developer*” means Shoenberg Venture, a Colorado Joint Venture.

“*Developer Debt*” means the obligations of the Borrower to the Developer pursuant to Sections 4.2 and 4.3 of the Shoenberg Redevelopment Agreement.

“*Developer Debt Payment Obligations*” means an annual amount equal to 50% of the Shoenberg Center Sales Taxes for the applicable Fiscal Year, payable quarterly on the first day of February, May, August, and November each year until such time as the total paid by WEDA in Developer Debt is equal to \$5,000,000. As of the date hereof, the total paid by WEDA in Developer Debt is \$4,335,285 and \$664,715 remains due and owing.

“*Event of Default*” has the meaning set forth in Section 8.01 hereof.

“*Final Assessed Valuation*” means the final certified assessed valuation of all taxable property within the Urban Renewal Project Area, as calculated and recorded by the County

Assessors on or about December 10 of each year, or on such other date as may be established by law for the annual final certification of assessed valuation.

“*Financing Documents*” means this Agreement, the Note, the Authorizing Resolution, the Urban Renewal Plan, the Replenishment Resolution and the City Cooperation Agreement, all in form and substance satisfactory to the Lender.

“*Fiscal Year*” means the Twelve Month Period commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year, or any other twelve month period which the Borrower or other appropriate authority hereafter may establish as the Borrower’s fiscal year.

“*Five Year Interest Period*” means five consecutive Twelve Month Periods during which the Loan shall bear interest at the Five Year Rate.

“*Five Year Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the Five Year Index plus (b) 2.25%.

“*Five Year Index*” means the [5-Year LIBOR]. [WILL EXPAND ON DEFINITION]

“*Interest Payment Date*” means June 1 and December 1 of each year, commencing December 1, 2012 and continuing through and including the Maturity Date.

“*Interest Period*” means any one of the following, as then in effect with respect to the Loan pursuant to the provisions of Section 2.04(a) hereof: (a) the Ninety Day Interest Period; (b) the Six Month Interest Period; (c) the One Year Interest Period; and (d) the Five Year Interest Period.

“*Interest Period Selection Certificate*” means a certificate of the Borrower to the Lender evidencing the Borrower’s selection of the next succeeding Interest Period pursuant to the provisions of Section 2.04(a)(ii) hereof, in substantially the form of Exhibit E attached hereto.

“*Jefferson County Assessor*” means the assessor of Jefferson County, Colorado.

“*Lender*” means Vectra Bank Colorado, National Association, a national banking association, in its capacity as lender of the Loan.

“*Loan*” means the loan made by the Lender to the Borrower in the original principal amount of \$[7,420,000] as evidenced by the Note and made in accordance with the terms and provisions of this Agreement.

“*Loan Amount*” means [Seven Million Four Hundred Twenty Thousand] and 00/100 U.S. Dollars (\$[7,420,000]).

“*Loan Payment Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.03 hereof.

“*Loan Requirements*” means, with respect to any Payment Date or any other specified period, an amount equal to the sum of the following with respect to any such date or period: (a) the principal due on the Loan and (b) the interest due on the Loan, computed by the Lender based on the actual rate of interest borne or to be borne by the Loan for the applicable period.

“*Maturity Date*” means December 1, 2028.

“*Maximum Sales Tax Rate*” means 3.00%.

“*Net Pledged Revenue*” means the moneys described in clauses (a), (b), (c) and (e) of the definition of Pledged Revenue set forth in this Article I.

“*Ninety Day Interest Period*” means a period of ninety (90) consecutive days during which the Loan shall bear interest at the Ninety Day Rate.

“*Ninety Day Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the Ninety Day Index plus (b) 2.25%.

“*Ninety Day Index*” means the [90-Day LIBOR]. [WILL EXPAND ON DEFINITION]

“*Note*” means the Promissory Note evidencing the Loan issued in the original principal amount of \$[7,420,000] from the Borrower, as maker, to the Lender, as payee, and dated as of September 13, 2012.

“*One Year Interest Period*” means one Twelve Month Period during which the Loan shall bear interest at the One Year Rate.

“*One Year Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the One Year Index plus (b) 2.25%.

“*One Year Index*” means the [1-Year LIBOR]. [WILL EXPAND ON DEFINITION]

“*Parity Debt*” means any Debt of the Borrower having a lien upon all or any portion of the Pledged Revenue on parity with the lien thereon of the Loan.

“*Payment Date*” means a Principal Payment Date and/or an Interest Payment Date, as the context requires, and the Maturity Date.

“*Permitted Investments*” means (a) certificates of deposit in the Lender which have (i) a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (ii) a yield which is not less than the yield on reasonably comparable direct obligations of the United States, and (iii) a yield which is not less than the highest yield that is published or posted by the issuer of the certificate to be currently available from such issuer on reasonably comparable certificates of deposit offered to the public to comparable governmental entities and subject to the Public Deposit Protection Act; (b) any money market account offered by the Lender which bears interest at the published money market rate of the Lender, as applicable, and has a yield which is at least 100 basis points less than the yield on the Loan (as set forth in the Tax Certificate); and (c) any investment or deposit offered by the Lender which (i) is a permitted

investment for governmental entities under then-applicable Colorado law, and (ii) in the opinion of nationally recognized bond counsel delivered to the Borrower and the Lender will not cause the Borrower to violate the covenant in Section 5.05 hereof. If, after making a good faith effort to do so, the Borrower determines that it is not possible to invest in the investments described in (a), (b) or (c) above, Permitted Investments means any investment or deposit directed by the Borrower which (i) is a permitted investment for governmental entities under then-applicable Colorado law, and (ii) in the opinion of nationally recognized bond counsel delivered to the Borrower and the Lender will not cause the Borrower to violate the covenant in Section 5.05 hereof.

“*Permitted Subordinate Debt*” means the following Debt, if any, secured by a lien on all or any portion of the Pledged Revenue subordinate to the lien thereon of the Loan: (a) the payment obligations of the Borrower under the City Cooperation Agreement; (b) any amounts representing the overpayment of incremental property taxes as the result of refunds made to taxpayers and with respect to which the Borrower has undertaken an obligation to repay the Treasurer of each of the Counties as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes; (c) Developer Debt; and (d) any Additional Subordinate Debt issued pursuant to the provisions of Section 5.11(d) hereof.

“*Pledged Property Tax Revenues*” means, for the relevant Fiscal Year, that portion of the ad valorem property taxes produced by the levies at the rates fixed each year by or for the governing bodies of the various taxing jurisdictions within or overlapping the Urban Renewal Project Area, but excluding ad valorem property taxes produced by any mill levy imposed by any special district formed after the Closing Date pursuant to Title 32, Article 1, Colorado Revised Statutes, which mill levy is in addition to, and not a replacement for, property taxes levied by taxing entities in existence as of the Closing Date, upon that portion of the valuation for assessment of all taxable property within the Urban Renewal Project Area which is in excess of the Property Tax Base Amount for each of the Counties; provided, however, that such amount shall be reduced by any lawful collection fee charged by the Counties.

“*Pledged Revenue*” means:

- (a) Pledged Property Tax Revenues;
- (b) Pledged Sales Tax Revenues;
- (c) all amounts appropriated to the Borrower by the City in accordance with the Replenishment Resolution;
- (d) all amounts held in the funds and accounts established and maintained hereunder together with investment earnings thereon, including, without limitation, the Loan Payment Fund, the Reserve Fund and the Supplemental Reserve Fund; and
- (e) all other legally available moneys which the Borrower determines, in its sole discretion, to deposit in the Loan Payment Fund.

“*Pledged Sales Tax Rate*” means, for any particular Sales Tax Rate Period, the Proposed Pledged Sales Tax Rate set forth in the applicable Sales Tax Rate Certificate with respect to such

Sales Tax Rate Period and, subject to the provisions of Section 2.09 hereof, approved (or deemed approved) by the Lender, provided, however, that:

(a) for any Sales Tax Rate Period with respect to which a Sales Tax Rate Certificate has not been provided by the Borrower or, if provided, has not (subject to the provisions of Section 2.09 hereof), been approved (or deemed approved) by the Lender on or before the last Business Day of February of the year in which such certificate was submitted, the Pledged Sales Tax Rate for such period shall mean 3.00%;

(b) for any Sales Tax Rate Period immediately succeeding a Sales Tax Rate Period in which (i) an Event of Default occurred which has not been cured to the satisfaction of the Lender or (ii) there was a draw on the Reserve Fund which has not yet been replenished, the Pledged Sales Tax Rate shall mean 3.00%; and

(c) for the Sales Tax Rate Period commencing the Closing Date and continuing through and including February 28, 2013, the Pledged Sales Tax Rate shall mean 0.00%.

“Pledged Sales Tax Revenues” means that portion of the Sales Tax revenue equal to the product of the Pledged Sales Tax Rate *times* the amount of the taxable transactions subject to the Sales Tax in the Urban Renewal Project Area, less the Sales Tax Base Amount, and less the proportional share of the reasonable and necessary costs and expenses of collecting and enforcing the Sales Tax attributable to the Urban Renewal Project Area.

“Prime Rate” means the variable rate of interest per annum, as adjusted from time to time, established by the Lender as the Lender’s prime rate. The Prime Rate is a reference rate that serves as the basis upon which effective rates of interest are calculated for loans making reference to the Prime Rate. The Prime Rate is only one of the Lender’s reference rates (some of which other reference rates may determine prime on another basis) and may not be the lowest or best of the Lender’s reference rates or other rates of interest.

“Principal Payment Date” means December 1 of each year, commencing December 1, 2012 and continuing through and including the Maturity Date.

“Prior Year Gross Sales Tax” means, with respect to the immediately preceding Fiscal Year, an amount equal to the total Sales Tax revenue of the City (expressed in dollars) attributable to transactions occurring in the Urban Renewal Project Area during such Fiscal Year (as reported by the City). For purposes of clarification, “Prior Year Gross Sales Tax” includes Sales Tax revenue attributable to transactions occurring through December 31 of such Fiscal Year which are reported and with respect to which Sales Tax is collected on or before January 31 of the immediately following Fiscal Year.

“Prior Year Sales Tax Increment” means, with respect to the immediately preceding Fiscal Year, an amount equal to the Prior Year Gross Sales Tax for the same Fiscal Year *minus* the Sales Tax Base Amount.

“Projected Available Revenue” means, for the applicable Fiscal Year, an amount equal to the Projected Pledged Property Tax Revenues for such Fiscal Year *minus* the Reserve Fund

Deficit *plus* the Supplemental Reserve Fund Balance *plus* the Subordinate Obligation Fund Balance.

“*Projected Debt Service*” means, with respect to the Fiscal Year for which it is calculated, the sum of Senior Debt Service Requirements and Subordinate Debt Service Requirements for such Fiscal Year.

“*Projected Incremental Taxable Sales*” means, for the relevant Fiscal Year, the quotient of the Prior Year Sales Tax Increment divided by the Maximum Sales Tax Rate.

“*Projected Pledged Property Tax Revenues*” means, for the relevant Fiscal Year, the amount of Pledged Property Tax Revenues projected to be generated in such Fiscal Year calculated as (a) the most recent Final Assessed Valuation of the Urban Renewal Project Area *minus* (b) the sum of the most recent certified Property Tax Base Amount for each of the Counties, *multiplied by* (c) (i) the sum of the most recent ad valorem property tax mill levies certified by all taxing jurisdictions within the Urban Renewal Project Area *less* (ii) the sum of all mill levies (if any) certified by a special district formed after the Closing Date pursuant to Title 32, Article 1, Colorado Revised Statutes, which mill levies are in addition to, and not a replacement for, property taxes levied by taxing entities in existence as of the Closing Date.

“*Property Tax Base Amount*” means the amount certified by each of the County Assessors as the valuation for assessment of all taxable property within the Urban Renewal Project Area last certified by the County Assessors prior to the adoption of the Urban Renewal Plan; provided, however, that in the event of a general reassessment of taxable property in the Urban Renewal Project Area, the valuation for assessment of taxable property within the Urban Renewal Project Area shall be proportionately adjusted in accordance with such general reassessment in the manner required by the Act. The Property Tax Base Amount for calendar year 2011 (collection year 2012) certified by the Adams County Assessor was \$1,941,560 and the Property Tax Base Amount for calendar year 2011 (collection year 2012) established by the Jefferson County Assessor was \$3,740,763.

“*Proposed Pledged Sales Tax Rate*” means, for the relevant Sales Tax Rate Period, the quotient of the Required Sales Tax Revenue *divided by* the Projected Incremental Taxable Sales, as set forth in the applicable Sales Tax Rate Certificate, which shall not exceed 3.00%.

“*Public Deposit Protection Act*” means Article 10.5 of Title 11, Colorado Revised Statutes, as amended from time to time.

“*Replenishment Resolution*” means Resolution No. ____, Series of 2012 adopted by the City Council on September 10, 2012, expressing the City Council’s present intent to lend additional moneys to the Borrower to maintain the Reserve Fund at the Reserve Requirement.

“*Required Sales Tax Revenue*” means, with respect to the applicable Fiscal Year, an amount equal to Projected Debt Service *minus* Projected Available Revenue.

“*Reserve Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.04 hereof.

“*Reserve Fund Deficit*” means, as of February 1 of the relevant year, the amount by which (if any) the Reserve Fund balance is less than the Reserve Fund Requirement, stated as a positive number.

“*Reserve Requirement*” means an amount equal to \$300,000.

“*Revenue Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth herein.

“*Sales Tax*” or “*Sales Taxes*” means the municipal general sales tax at the rate of 3.00%, established by the City as the same shall from time to time be in effect, pertaining to, including, without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services, or any successor tax in the event that such taxes are replaced or superseded, but excluding any additional sales tax which may be approved by the electors of the City subsequent to the execution and delivery of this Loan Agreement. For purposes of clarification, the City’s open space sales tax (at the rate of 0.25%) and the City’s public safety sales tax (at the rate of 0.60%) are not part of the City’s general sales tax of 3.00% and do not constitute “Sales Tax” or “Sales Taxes.”

“*Sales Tax Base Amount*” means \$567,400 or such other amount as may be lawfully determined by the City to be the total collections of Sales Taxes within the Urban Renewal Project Area for the twelve-month period ending on the last day of the month immediately prior to the effective date (as originally approved) of the Urban Renewal Plan.

“*Sales Tax Rate Certificate*” means a certificate, in the form attached as Exhibit D hereto, executed by the Authorized Person and approved by the Lender (which approval may be withheld only under the circumstances set forth in Section 2.09 hereof).

“*Sales Tax Rate Period*” means the Twelve Month Period commencing on March 1 of the applicable calendar year and ending on February 28 (or February 29, as the case may be) of the immediately succeeding calendar year; provided that the initial Sales Tax Rate Period shall commence on the Closing Date and continue through and including February 28, 2013.

“*Senior Debt Service Requirements*” means, with respect to any applicable Fiscal Year, an amount equal to the sum of the following with respect to such Fiscal Year: (a) the principal due on the Loan and (b) the interest due on the Loan, computed by the Lender as follows:

(i) if the Loan is in an Interest Period where the actual rate of interest to be borne by the Loan during the entire applicable Fiscal Year is known at the time of the relevant calculation, then the interest shall be calculated based on the actual rate of interest in effect for such Fiscal Year; or

(ii) if the Loan is in an Interest Period where the actual rate of interest to be borne by the Loan for the entire applicable Fiscal Year is not known at the time of the relevant calculation, then the interest shall be calculated by assuming that the Interest Period currently in effect shall be and remain in effect for the entire applicable Fiscal Year.

“*Shoenberg Center*” means the real property described in Section 1.11 (under the definition of “Property”) of the Shoenberg Redevelopment Agreement.

“*Shoenberg Center Obligation*” means 50% of the Shoenberg Center Sales Taxes up to but not exceeding \$5,000,000.

“*Shoenberg Center Sales Taxes*” means, with respect to the relevant Fiscal Year, the incremental Sales Tax revenue in excess of the base amount of \$87,645 which is actually collected from transactions occurring in the Shoenberg Center during such Fiscal Year (as reported by the City), expressed in dollars. For purposes of clarification, such amount includes sales occurring through December 31 of the applicable Fiscal Year which are reported and with respect to which sales tax is collected on or before January 31 of the following Fiscal Year.

“*Shoenberg Redevelopment Agreement*” means the Shoenberg Shopping Center Redevelopment Agreement dated February 17, 2006 between the Borrower and the Developer.

“*Six Month Interest Period*” means a period of one hundred and eighty (180) consecutive days during which the Loan shall bear interest at the Six Month Rate.

“*Six Month Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the Six Month Index *plus* (b) 2.25%.

“*Six Month Index*” means the [180-Day LIBOR]. [WILL EXPAND ON DEFINITION]

“*Subordinate Debt Service Requirements*” means, with respect to the relevant Fiscal Year, the sum of the regularly scheduled principal and interest payments on all Permitted Subordinate Debt of the Borrower coming due in such Fiscal Year. With respect to the Developer Debt, “regularly scheduled principal and interest payments” shall mean the sum of (a) an amount equal to the Developer Debt Payment Obligations (as defined in this Article I) for the immediately preceding Fiscal Year *plus* (b) any amounts representing Developer Debt Payment Obligations due and owing in the immediately preceding Fiscal Year which remain unpaid by Borrower.

“*Subordinate Obligations Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.07 hereof.

“*Subordinate Obligations Fund Balance*” means, as of February 1 of the relevant year, the amount then on deposit in the Subordinate Obligations Fund.

“*Supplemental Public Securities Act*” means Title 11, Article 57, C.R.S.

“*Supplemental Reserve Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.05 hereof.

“*Supplemental Reserve Fund Balance*” means, as of February 1 of the relevant year, the then current amount on deposit in the Supplemental Reserve Fund.

“*Supplemental Reserve Fund Maximum*” means \$650,000.

“*Tax Certificate*” means the tax compliance certificate to be signed by the Borrower, in a form acceptable to Bond Counsel, relating to the requirements of Sections 103 and 141-150 of the Code.

“*Transaction Costs Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.06 hereof.

“*Twelve Month Period*” means any relevant period of twelve (12) consecutive calendar months.

“*Urban Renewal Project Area*” means the area described in Exhibit C hereto.

ARTICLE II

LOAN TERMS, FEES, APPLICATION OF PROCEEDS

Section 2.01. Agreement to Make Loan. The Lender hereby agrees to make a loan to the Borrower in the original aggregate principal amount of \$[7,420,000] (as previously defined, the “Loan Amount”) subject to the terms and conditions of this Agreement. The Loan shall be evidenced by the Note, the form of which is set forth in Exhibit A attached hereto.

Section 2.02. Series 2009 Fund Balances. On the Closing Date, from the funds and accounts held by the Lender under the 2009 Loan Agreement, the Lender shall cause the following transfers and credits to be made:

- (a) from the 2009 Revenue Fund, the amount of \$[52.00], representing the balance therein, shall be credited to the 2012 Revenue Fund;
- (b) from the 2009 Reserve Fund, having a balance of [\$662,023.00]:
 - (i) the amount of \$300,000.00, being the 2012 Reserve Requirement, shall be credited to the 2012 Reserve Fund; and
 - (ii) the amount of \$[362,023.00], representing the balance therein, shall be credited to the 2012 Supplemental Reserve Fund;
- (c) from 2009 Loan Payment Fund, having a balance of \$[458,591.00]:
 - (i) the amount of \$_____ shall be applied to the payment of the interest due on the Series 2009 Loan from June 1, 2012 to the Closing Date; and
 - (ii) the balance of \$_____ shall be credited to the 2012 Loan Payment Fund; and

(d) from the 2009 Supplemental Reserve Fund, having a balance of \$[1,079,487.00]:

(i) the amount of \$_____ shall be credited to the 2012 Transaction Costs Fund for application to the payment of the costs of issuance in connection with the Loan;

(ii) the amount of \$_____ shall be credited to the 2012 Loan Payment Fund so that, when combined with the amount set forth in Section 2.02(c)(ii) above, the amount therein shall be equal to the Loan Requirements for the Fiscal Year in which the Closing Date occurs;

(iii) the amount of \$_____ shall be credited to the 2012 Subordinate Obligations Fund, being the amount necessary to pay the Subordinate Obligations for the Fiscal Year in which the Closing Date occurs; and

(iv) the amount of \$_____, representing the balance therein, shall be credited to the 2012 Supplemental Reserve Fund.

Section 2.03. Application of Loan Proceeds. On the Closing Date, the Lender shall disburse the gross Loan proceeds in the amount of \$[7,420,000] and shall apply such amount to the payment of the entire principal amount of the Series 2009 Loan outstanding which, when combined with the amount set forth in Section 2.02(c)(i) above, shall cause the Series 2009 Loan to be paid in full.

Section 2.04. Interest Period; Interest Rate; Default Rate; Interest Payments; Principal Payments.

(a) **Interest Period.** The Borrower shall select each Interest Period for the Loan as follows:

(i) **Initial Interest Period.** The Borrower has selected the Five Year Interest Period as the initial Interest Period on the Loan and such Five Year Interest Period shall commence on the Closing Date.

(ii) **Subsequent Interest Periods.** Thereafter, on the Business Day which is not less than ten Business Days prior to the last day of the Interest Period then applicable to the Loan, the Borrower shall notify the Lender in writing of the Interest Period selected by the Borrower for the next succeeding Interest Period and such selection shall dictate the rate of interest to be borne by the Loan for such succeeding Interest Period (provided that if Event of Default shall occur during such Interest Period, the provisions of Section 2.04(c) shall apply). Such written notice shall be given by submitting to the Lender an Interest Period Selection Certificate in substantially the form of Exhibit E attached hereto, signed by an Authorized Person, and the Lender shall be entitled to rely upon such certificate with respect to the Interest Period so selected. If the Lender is not in receipt of an Interest Period Selection Certificate by the date which is ten Business Days prior to the last day of the Interest Period then applicable to the

Loan, the Interest Period then in effect shall be deemed selected by the Borrower for the next succeeding Interest Period.

(iii) **Interest Rate Resets.** For the initial Interest Period selected by the Borrower pursuant to Section 2.04(a)(i) above, the rate of interest applicable to the Loan shall take effect on the Closing Date and shall remain in effect through and including the last day of such Interest Period. For each subsequent Interest Period selected by the Borrower pursuant to Section 2.04(a)(ii) above, the rate of interest applicable to the Loan shall take effect on the first day of the Interest Period so chosen and shall remain in effect through and including the last day of that Interest Period.

(b) **Interest Rates.** Subject to the provisions of Section 2.04(c) below, the outstanding principal of the Loan shall bear interest at the applicable rate per annum as set forth below:

(i) at the Ninety Day Rate during each Ninety Day Interest Period selected as the applicable Interest Period by the Borrower;

(ii) at the Six Month Rate during each Six Month Interest Period selected as the applicable Interest Period by the Borrower;

(iii) at the One Year Rate during each One Year Interest Period selected as the applicable Interest Period by the Borrower; and

(iv) at the Five Year Rate during each Five Year Interest Period selected as the applicable Interest Period by the Borrower.

(c) **Default Rate.** If, following the occurrence of an Event of Default hereunder, such default has not been cured to the satisfaction of the Lender within 30 days from the occurrence thereof, interest on the outstanding principal of the Loan shall accrue (commencing on the 31st date after the occurrence of such Event of Default) at a rate per annum equal to the greater of (i) the interest rate then borne by the Loan pursuant to Section 2.04(a) above or (ii) the sum of Prime Rate plus four percent (4.00%) (the "Default Rate"). The Default Rate shall remain in effect until such time as the applicable Event of Default is cured to the satisfaction of the Lender.

(d) **Maximum Rate.** Notwithstanding the foregoing provisions, the Loan shall not bear interest at a rate in excess of any limitation specifically required by law. However, in computing amounts due from the Borrower hereunder, the provisions of Section 2.05 hereof shall apply.

(e) **Interest Payments.** Interest payments on the Loan shall be due semi-annually on June 1 and December 1 each year, commencing December 1, 2012.

(f) **Principal Payments.** Repayment of Loan principal shall be due and payable on the 1st day of December each year, commencing December 1, 2012, in the

amounts corresponding to the Principal Payment Dates set forth in Exhibit B attached hereto.

(g) **Interest Calculation.** All interest and fees due and owing hereunder shall be calculated on the basis of a 360-day year and actual number of days elapsed in any applicable period.

Section 2.05. Maximum Interest Rate. If the interest due and payable on any obligation hereunder computed at the applicable rate as provided in Sections 2.04(a), (b) and (c) hereof is in excess of the amount actually paid by the Borrower as a result of the provisions of Section 2.04(d) hereof, the difference between what would have been the interest payable on such obligation had it accrued interest at the rate provided in Sections 2.04(a), (b) and (c) hereof and the actual interest paid by the Borrower on such obligation (the “Interest Differential”) shall remain an obligation of the Borrower. Notwithstanding anything herein or in the other Financing Documents to the contrary, if at any time the amount of interest required to be paid hereunder exceeds the sum of interest on all obligations due hereunder at the rate computed as provided in Sections 2.04(a), (b) and (c) hereof plus the then applicable Interest Differential and the Lender shall not receive payment at such interest rate, any subsequent scheduled reduction in such interest rate shall not reduce the rate of interest utilized for the calculation of amounts payable to the Lender hereunder until the total amount due has been paid to the Lender as if the applicable rate computed as provided in Sections 2.04(a), (b) and (c) hereof had at all times been utilized.

Section 2.06. Loan Prepayment.

(a) **Prepayment With Termination Fee.** At all times that the Loan is in a Five Year Interest Period, the Loan may be prepaid, in whole or in part, on any date prior to the second anniversary of the first day of the Five Year Interest Period then in effect upon payment of a prepayment price equal to the sum of (i) the principal amount of the Loan so prepaid; (ii) accrued interest thereon to the date of prepayment; and (iii) a termination fee equal to 1.0% of the principal amount of the Loan then outstanding.

(b) **Prepayment With No Termination Fee.** At such time as (i) the Loan is in a Five Year Interest Period and the second anniversary of the first day of such Five Year Interest Period has occurred and/or (ii) the Loan is in any Interest Period other than a Five Year Interest Period, the Loan may be prepaid, in whole or in part, on any date, at a prepayment price equal to the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, without termination fee, premium, or penalty.

Section 2.07. Statements of Fund Activity. The Lender agrees to send monthly statements in electronic format itemizing all transactions in the funds maintained by the Lender hereunder to the Borrower at the e-mail address set forth in Section 9.05 hereof or at such other address as the Borrower shall specify to the Lender in writing.

Section 2.08. Expenses and Attorneys’ Fees. In the event that a claim by the Lender is brought against the Borrower and the Lender prevails in such claim, the Borrower will reimburse the Lender for all reasonable attorneys’ and all other consultants’ fees and all other costs, fees and out-of-pocket disbursements incurred by the Lender in connection with the preparation,

execution, delivery, administration, defense and enforcement of this Agreement or any of the other Financing Documents, including reasonable attorneys' and all other consultants' fees and all other costs and fees (a) incurred before or after commencement of litigation or at trial, on appeal or in any other proceeding; (b) incurred in any bankruptcy proceeding and (c) related to any waivers or amendments with respect thereto (examples of costs and fees include but are not limited to fees and costs for enforcing the collection of ad valorem property taxes or Sales Taxes in the amounts required hereunder or confirming the priority of the Lender's claim on the Pledged Revenue or the funds and accounts established hereunder). The Borrower will also reimburse the Lender for all costs of collection of the Pledged Revenue, including all reasonable attorneys' and all other consultants' fees, before and after judgment.

Section 2.09. Provisions Regarding Sales Tax Rate Certificate. Each Sales Tax Rate Certificate shall be submitted by the Borrower to the Lender no later than the February 1 immediately prior to the commencement of the Sales Tax Rate Period for which the Proposed Pledged Sales Tax Rate set forth in such certificate is proposed to be effective. Subject to compliance by the Borrower with the foregoing sentence, if, on the February 15 following submission of a Sales Tax Rate Certificate, the Lender has not approved or provided to the Borrower a written objection thereto in compliance with the following sentence, the Lender will be deemed to have approved such certificate and the Proposed Pledged Sales Tax Rate set forth therein. The Lender shall be entitled to object to a Sales Tax Rate Certificate and the Proposed Pledged Sales Tax Rate set forth therein only on the basis that the Lender reasonably believes that: (a) a mathematical calculation therein is incorrect or not in compliance with the provisions of this Agreement, or (b) one or more values used in the calculation are incorrect. If making an objection, the Lender shall use commercially reasonable efforts to provide notice of such objection to the Borrower as promptly as possible after receipt of the Sales Tax Rate Certificate, but in no event later than the applicable February 15. If, following any such objection by the Lender, no resolution has been reached by the Borrower and the Lender by the last Business Day in February of that year, the Proposed Pledged Sales Tax Rate shall *not* be deemed approved by the Lender and the provisions of clause (a) of the definition of "Pledged Sales Tax Rate" set forth in Article I hereof shall apply.

ARTICLE III

CONDITIONS TO CLOSING

Section 3.01. Conditions to Loan Closing. The funding by the Lender of the Loan pursuant to Section 2.03 hereof is conditioned upon the satisfaction of each of the following:

(a) ***The Financing Documents.*** The Financing Documents shall have been duly executed and delivered by each of the respective parties thereto and shall not have been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed original or certified copies of each thereof have been delivered to the Lender; provided, however, that with respect to the Note, the Lender shall be in receipt of the executed original.

(b) ***Borrower Proceedings.*** The Lender shall have received a certified copy of all resolutions and proceedings taken by the Borrower authorizing the execution,

delivery and performance of this Agreement, the Note, and the other Financing Documents to which the Borrower is a party, and the transactions contemplated hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the Borrower authorized to sign this Agreement, the Note, and the other Financing Documents to be delivered by the Borrower hereunder and as to other matters of fact as shall reasonably be requested by the Lender.

(c) ***Governmental Approvals.*** The Lender shall have received certified copies of all governmental approvals, if any, necessary for the Borrower to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party.

(d) ***Representations and Warranties True; No Default.*** The Lender shall be satisfied that on the Closing Date each representation and warranty on the part of the Borrower contained in this Agreement and any other Financing Document to which the Borrower is a party are true and correct in all material respects and no Default or Event of Default has occurred and is continuing, and the Lender shall be entitled to receive certificates, signed by authorized officers of the Borrower, to such effect.

(e) ***Borrower's Certificate.*** The Lender shall have received a certificate signed by an authorized officer of the Borrower, dated the Closing Date, to the same effect as provided in the foregoing Subsections 3.01(a), (b), (c) and (d). Such certificate shall cover such other matters incidental to the transactions contemplated by this Agreement or any other Financing Document as the Lender may reasonably request.

(f) ***Bond Counsel's Legal Opinions.*** The Lender shall have received a letter from Bond Counsel to the effect that the Lender may rely upon an opinion of Bond Counsel addressed to the Borrower as if such opinion were addressed to the Lender; such opinion being dated the Closing Date and stating that the obligations of the Borrower under this Agreement constitute a special revenue obligation of the Borrower; that such obligation is binding and enforceable against the Borrower in accordance with the terms of this Agreement; and which opinion shall address the tax exemption of the interest on the Loan for state and federal purposes and include a statement to the effect that the Loan is deemed designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3)(B) of the Code. The opinion addressed to the Borrower and the reliance letter addressed to the Lender shall be in form and substance satisfactory to the Lender and its counsel.

(g) ***Opinion of Counsel to the Borrower.*** The Lender shall have received an opinion of counsel to the Borrower dated the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, in form and substance satisfactory to the Lender and its counsel, including opinions as to the validity of the Borrower's organization and existence; to the effect that all other governmental approvals, if any, necessary for the Borrower to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party have been duly obtained; that the Authorizing Resolution has been duly and properly adopted; and that this Agreement and the other Financing Documents

to which the Borrower is a party have been duly authorized and delivered by the Borrower.

(h) ***Opinion of Counsel to City.*** The Lender shall have received an opinion from counsel to the City, dated the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, including, without limitation, opinions to the effect that the Replenishment Resolution and the Urban Renewal Plan have been duly and properly adopted by the City Council of the City, have not been rescinded, revoked, or amended since such adoption and each remain in full force and effect; that the City Cooperation Agreement has been duly authorized and delivered by the City and constitutes a valid and binding obligation of the City enforceable in accordance with its terms; and otherwise in form and substance satisfactory to the Lender and its counsel.

(i) ***Other Certificates and Opinions.*** The Lender shall have received certificates of authorized representatives of all parties to the Financing Documents with respect to such matters as the Lender may require, or opinions of counsel as the Lender may require, all in form and substance satisfactory to the Lender and its counsel.

(j) ***No Change in Law.*** No law, regulation, ruling or other action of the United States, the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Borrower from fulfilling its obligations under this Agreement.

(k) ***Fees and Expenses.*** All Lender's counsel fees and any other fees and expenses due and payable in connection with the issuance of the Loan, the execution and delivery of this Agreement and the other Financing Documents, and any other amounts due and payable hereunder shall have been paid by the Borrower.

(l) ***Borrower Financial Information.*** The Borrower shall have provided the Lender with all pertinent financial information regarding the Borrower, including, without limitation, copies of all documents describing and evidencing any and all Debt of the Borrower.

(m) ***Borrower Due Diligence.*** The Lender and its counsel shall have been provided with the opportunity to review all agreements, documents, and other material information relating to the Borrower, the Pledged Revenue, the Refunded Bonds, and the Borrower's ability to perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party.

(n) ***Approval of Financing Documents.*** The Lender and its counsel shall have had sufficient time to review the Financing Documents and the substantially final versions of such documents shall be in form and content satisfactory to the Lender and its counsel.

(o) ***Other Requirements.*** The Lender shall be in receipt of such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Lender.

(p) **Other Matters.** All other legal matters pertaining to the execution and delivery of this Agreement, the Note, and the other Financing Documents, and the issuance of the Loan shall be reasonably satisfactory to the Lender and its counsel.

(q) **Debt Outstanding.** The Lender shall be in receipt of the evidence satisfactory to the Lender, including, without limitation, certifications from the Borrower to the effect that, except for the indebtedness evidenced by the Note and this Agreement, as of the Closing Date the Borrower has no Debt outstanding, other than the Developer Debt and the contingent liability set forth in the City Cooperation Agreement.

ARTICLE IV

FUNDS

Section 4.01. Creation of Funds. The following funds are hereby created and established with respect to the Loan, each of which shall be administered by the Lender in accordance with the provisions hereof:

- (a) Revenue Fund;
- (b) the Loan Payment Fund;
- (c) the Reserve Fund;
- (d) the Supplemental Reserve Fund;
- (e) the Transaction Costs Fund; and
- (f) the Subordinate Obligation Fund.

Section 4.02. Flow of Funds. On the Closing Date, the Borrower shall cause to be transferred to the Lender any Net Pledged Revenue then held by the Borrower. Thereafter, the Borrower shall transfer all amounts comprising Net Pledged Revenue to the Lender as soon as may be practicable after the receipt thereof. The Lender shall deposit all such Net Pledged Revenue into the Revenue Fund and apply the same as received in the order of priority set forth below. For purposes of the following, when payment of more than one purpose is required at any single priority level, such credits shall rank *pari passu* with each other.

FIRST: to the credit of the Loan Payment Fund, the amounts required by Section 4.03(b) hereof for the then current Fiscal Year;

SECOND: to the credit of the Reserve Fund, the amount required to replenish the Reserve Fund to the Reserve Requirement, if any; and

THIRD: to the Supplemental Reserve Fund, all Net Pledged Revenue received in the then current Fiscal Year (after the payments and accumulations set forth in clauses FIRST and SECOND above)

until such time as (if at all) the amount therein is equal to the Supplemental Reserve Fund Maximum; and

FOURTH: all Net Pledged Revenue received for the remainder of the Fiscal Year after the payments and accumulations set forth in clauses FIRST, SECOND, and THIRD above with respect to such Fiscal Year shall be credited to the Subordinate Obligations Fund.

Section 4.03. Loan Payment Fund.

(a) **General.** The Loan Payment Fund shall be administered by the Lender in accordance with the terms of this Agreement.

(b) **Credits to Loan Payment Fund.** There shall be credited to the Loan Payment Fund in each Fiscal Year an amount of Net Pledged Revenue which, when combined with other legally available moneys in the Loan Payment Fund, equals the Loan Requirements for such Fiscal Year. For purposes of clarification, the foregoing shall not be interpreted to require that there be maintained in the Loan Payment Fund at all times an amount equal to the annual Loan Requirements but, rather, that there is to be transferred to the Loan Payment Fund in each Fiscal Year (and prior to transfers for any other purpose as provided in Section 4.02 clauses SECOND and THIRD hereof), moneys which, in the aggregate, when combined with other legally available moneys in the Loan Payment Fund from time to time equals the Loan Requirements for such Fiscal Year. At any given time, amounts on deposit in the Loan Payment Fund are not intended to be in excess of the portion of the Loan Requirements remaining to be paid for the then current Fiscal Year.

(c) **Notice of Deficiency.** If, on the day which is ten (10) Business Days prior to any Payment Date, the amount then on deposit in the Loan Payment Fund is insufficient to pay the Loan Requirements coming due on such Payment Date based on an invoice provided by the Lender, then the Lender shall notify the Borrower in writing of such shortfall indicating the amount of such deficiency. If, on or before such Payment Date, the Borrower provides funds to the Lender to make up any or all of such deficiency, then the Lender shall accept and deposit such funds into the Loan Payment Fund for the payment of the Loan Requirements then due.

(d) **Application of Moneys in Loan Payment Fund.** Moneys in the Loan Payment Fund (including amounts transferred thereto pursuant to provisions hereof) shall be used by the Lender solely to pay the Loan Requirements in the following order of priority. For purposes of the following, when payment of more than one purpose is required at any single priority level, such credits shall rank *pari passu* with each other.

(i) First, to the payment of interest due in connection with the Loan pursuant to the relevant invoice provided by the Lender; and

(ii) Second, to the payment of regularly scheduled principal on the Loan when due.

(e) **Investment Earnings.** All interest income from moneys credited to the Loan Payment Fund shall remain therein.

Section 4.04. Reserve Fund.

(a) **General.** The Reserve Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Reserve Fund shall be used by the Lender, if necessary, only for the purposes set forth in this Section 4.04 and the Reserve Fund is hereby pledged for such purposes.

(b) **Transfers to Loan Payment Fund.** If, on any Payment Date, the amount then on deposit in the Loan Payment Fund (including amounts which were transferred thereto from the Supplemental Reserve Fund) is an amount which is less than the Loan Requirements owing on such Payment Date, the Lender shall transfer from the Reserve Fund to the Loan Payment Fund an amount which, when combined with moneys then on deposit in the Loan Payment Fund (including amounts which were transferred thereto from the Supplemental Reserve Fund), will be sufficient to pay such Loan Requirements when due on the applicable Payment Date. In the event that moneys in the Reserve Fund, together with moneys then on deposit in the Loan Payment Fund (including amounts which were transferred thereto from the Supplemental Reserve Fund) are insufficient for such purpose, the Lender is to nonetheless transfer all moneys in the Reserve Fund to the Loan Payment Fund for the purpose of making partial payments in the order of priority provided in Section 4.03(d) hereof. Moneys shall be transferred to the Loan Payment Fund *first*, from the Supplemental Reserve Fund, prior to any transfers thereto from the Reserve Fund.

(c) **Replenishment of Reserve.** The Reserve Fund shall be replenished from Pledged Revenue available therefor in accordance with Section 4.02 hereof and, after application of the foregoing, from amounts, if any, paid by the City in accordance with the Replenishment Resolution. In no event shall replenishment of the Reserve Fund to the Reserve Requirement be made later than 90 days following the notice from the Lender to the City Manager pursuant to Section 4.04(h) below.

(d) **Earnings.** All interest income on moneys on deposit in the Reserve Fund in excess of the Reserve Requirement shall be transferred by the Lender to the Loan Payment Fund.

(e) **Maturity Date.** All amounts on deposit in the Reserve Fund on the Maturity Date shall be applied by the Lender to the payment of the Loan in the order of priority determined by the Lender.

(f) **Application to Prepayment of Loan.** If Borrower elects to prepay the Loan in full prior to the Maturity Date, it may utilize amounts on deposit in the Reserve Fund for such purpose if the application thereof, together with all other available amounts on deposit in the funds and account held hereunder (and other moneys of the Borrower legally available and reserved for such purpose), are sufficient to pay all principal and

accrued interest on the Loan together with any termination fee due in accordance with Section 2.06 hereof.

(h) ***Lender Notice Regarding Deficiency in Reserve Fund.*** If, at any time, the Reserve Fund is not funded to the Reserve Requirement, the Lender shall notify the City Manager of any deficiency and, pursuant to the Replenishment Resolution, the City Council has agreed to consider but is not obligated to, replenish the Reserve Fund immediately thereafter. Prior to any request to the City to replenish the Reserve Fund, Pledged Revenues shall be deposited in the Reserve Fund in accordance with Section 4.02 hereof. The Lender and the Borrower acknowledge that any City replenishment of the Reserve Fund shall constitute a loan by the City to the Borrower payable as Permitted Subordinate Debt in accordance with the City Cooperation Agreement.

Section 4.05. Supplemental Reserve Fund.

(a) ***General.*** The Supplemental Reserve Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Supplemental Reserve Fund shall be used by the Lender, if necessary, only for the purposes set forth in this Section 4.05 and the Supplemental Reserve Fund is hereby pledged for such purposes.

(b) ***Transfers to Loan Payment Fund.*** If, on any Payment Date, the amount then on deposit in the Loan Payment Fund is an amount which is less than the Loan Requirements owing on such Payment Date, the Lender shall transfer from the Supplemental Reserve Fund to the Loan Payment Fund an amount which, when combined with moneys then on deposit in the Loan Payment Fund, will be sufficient to pay such Loan Requirements when due on the applicable Payment Date. In the event that moneys in the Supplemental Reserve Fund, together with moneys then on deposit in the Loan Payment Fund, are insufficient for such purpose, the Lender is to nonetheless transfer all moneys in the Supplemental Reserve Fund to the Loan Payment Fund for the purpose of making partial payments in the order of priority provided in Section 4.03(d) hereof. Moneys shall be transferred to the Loan Payment Fund *first*, from the Supplemental Reserve Fund, prior to any transfers thereto from the Reserve Fund.

(c) ***Transfers to Subordinate Obligations Fund.***

(i) Any amounts in the Supplemental Reserve Fund in excess of the Supplemental Reserve Fund Maximum shall be automatically transferred by the Lender to the Subordinate Obligations Fund.

(ii) With respect the transfer of moneys from the Supplemental Reserve Fund to the Subordinate Obligations Fund while the balance in the Supplemental Reserve Fund is less than the Supplemental Reserve Fund Maximum, Borrower may, subject to the provisions of Section 4.05(c)(iii) below, request such a transfer from the Lender not more than [once per month] provided that such request is in writing and is not later than 10 days prior to the requested disbursement date, which date shall be a Business Day. At the sole election of

Lender, it may approve or deny such request for transfer to the Subordinate Obligations Fund and the provisions of this Section 4.05(c)(ii) shall not obligate the Lender in any way to approve any such request nor shall it obligate the Lender to provide any explanation for its denial of any such request. Lender shall notify the Borrower in writing as promptly as possible of its approval or denial of such request, but in no event shall such notification be later than the Business Day immediately prior to the requested disbursement date. Borrower covenants that it shall not present a request to the Lender pursuant to this Section 4.05(c)(ii) for a transfer of moneys from the Supplemental Reserve Fund to the Subordinate Obligations Fund unless it has Permitted Subordinate Debt outstanding at the time of such request.

(iii) In the event there has occurred and is continuing an Event of Default hereunder, the Borrower shall not be entitled to request that any amounts be transferred from the Supplemental Reserve Fund to the Subordinate Obligations Fund until such time as the Event of Default is cured to the satisfaction of the Lender.

(d) **Earnings.** All interest income on moneys on deposit in the Supplemental Reserve Fund shall remain in the Supplemental Reserve Fund until such time as the amount therein is equal to the Supplement Reserve Fund Maximum. Moneys in the Supplemental Reserve Fund in excess of the Supplemental Reserve Fund Maximum shall be transferred by the Lender to the Subordinate Obligations Fund.

(e) **Application to Prepayment of Loan.** Subject to the provisions of Section 2.06 hereof, if Borrower elects to prepay the Loan in full prior to the Maturity Date, it may utilize amounts on deposit in the Supplemental Reserve Fund for such purpose if the application thereof, together with all other available amounts on deposit in the funds and account held hereunder (and other moneys of the Borrower legally available and reserved for such purpose), are sufficient to pay all principal and accrued interest on the Loan together with any termination fee due in accordance with Section 2.06 hereof.

(f) **Application to Rebate Payments.** The Lender shall, at the written direction of the Borrower, transfer to the Borrower from the Supplemental Reserve Fund the amount, if any, necessary to pay rebate requirements to the United States of America when the same become due and payable, as more particularly provided in the Tax Certificate.

(g) **Maturity Date.** Any amounts on deposit in the Supplemental Reserve Fund on the Maturity Date not required to pay Loan Requirements on such date shall be disbursed by the Lender to the Borrower for application to any lawful purpose.

Section 4.06. Transaction Costs Fund. The Transaction Costs Fund shall be maintained by the Lender in accordance with the terms of this Section 4.06. All moneys on deposit in the Transaction Costs Fund shall be applied by the Lender, as directed by the Borrower, to the payment of the costs incurred in connection with the transactions contemplated by the Financing Documents in accordance with invoices provided to the Lender and as detailed

in a closing memorandum approved by the Borrower. Any amounts remaining in the Transaction Costs Fund sixty (60) days after the Closing Date, including investment earnings thereon, shall be transferred by the Lender to the Loan Payment Fund. At such time as no amounts remain in the Transaction Costs Fund, such fund shall terminate.

Section 4.07. Subordinate Obligations Fund. Funds on deposit in the Subordinate Obligations Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Subordinate Obligations Fund shall be disbursed to the Borrower for application to the payment of Permitted Subordinate Debt pursuant to written requests of Borrower provided to Lender.

(a) ***Developer Debt.*** Quarterly, on or before the last Business Day of January, April, July, and October and pursuant to a statement provided by the Borrower, the Lender shall disburse to the Borrower funds up to the amount necessary to pay the Developer Debt Payment Obligations when due but only from and to the extent of moneys then on deposit in the Subordinate Obligations Fund.

(b) ***Other Permitted Subordinate Debt.*** Following receipt of any other statement from Borrower requesting disbursement by Lender of amounts from the Subordinate Obligations Fund for the payment of Permitted Subordinate Debt, the Lender shall disburse the sum so requested, but only from and to the extent of moneys then on deposit in the Subordinate Obligations Fund.

(c) ***Statements from Borrower.*** With respect to all amounts requested by Borrower for disbursement from the Subordinate Obligations Fund, Borrower agrees to provide a statement to Lender concurrently with its written request to Lender to transfer funds from the Supplemental Reserve Fund to the Subordinate Obligations Fund pursuant to Section 4.05(c)(ii) hereof. Borrower covenants that all moneys requested from the Subordinate Obligation Fund shall be applied solely to the payment of Permitted Subordinate Debt. If disbursement requests from the Borrower exceed the amount then on deposit in the Subordinate Obligations Fund, the Lender shall so notify the Borrower and the Borrower shall redirect the Lender as to the disbursement of such available funds. Following such notice from Lender to the Borrower of any shortfall, the Lender shall not be obligated to disburse any moneys until such time as a revised statement is provided by Borrower.

(d) ***Termination of Subordinate Obligations Fund; Transfer of Moneys.*** If, on any date, no Permitted Subordinate Debt remains outstanding and the Borrower does not reasonably anticipate the incurrence of any additional Permitted Subordinate Debt, upon the Lender's receipt of a writing from the Borrower to such effect, the Subordinate Obligations Fund shall terminate.

Section 4.08. Lender To Direct Funds and Accounts: Accounting. Subject to Article VII hereof, the Borrower hereby grants to the Lender the right and the authority to direct all activity with respect to all funds and accounts created pursuant to this Agreement, including those funds and accounts created pursuant to this Article IV, provided that any such Lender direction shall be in accordance with the terms of this Agreement. Subject to Article VII hereof,

the Borrower shall not have any right, power, or authority to direct any activity within any funds created pursuant to this Agreement, including those funds and accounts created pursuant to this Article IV, except that the Borrower may make any deposits into such funds as may be required by this Agreement. Lender shall keep and maintain accounting records in such manner that the Pledged Revenue received and amounts deposited to each fund and account held hereunder may at all times be readily and accurately determined.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

While any part of the Loan is outstanding or any other obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Borrower continuously warrants, covenants and agrees as follows:

Section 5.01. Accuracy of Information. All information, certificates or statements given to the Lender by the Borrower pursuant to this Agreement and the other Financing Documents will be true and complete when given.

Section 5.02. Organization; Litigation. The Borrower is validly existing and in good standing under the laws of its state of organization, has all requisite power and authority and possesses all licenses, permits and approvals necessary to conduct its business. There is no litigation or administrative proceeding threatened or pending against the Borrower which could, if adversely determined, have a material adverse effect on the Borrower's financial condition.

Section 5.03. Performance of Covenants, Authority. The Borrower covenants that it will faithfully perform and observe at all times any and all covenants, undertakings, stipulations, and provisions contained in the Authorizing Resolution, this Agreement, the Note, and all proceedings pertaining thereto. The Borrower covenants that it is duly authorized under the constitution and laws of the State of Colorado, including, particularly and without limitation, the Act, to execute and deliver the Note, this Agreement, and the other Financing Documents to which it is a party, and that all action on its part for the execution and delivery of the Note, this Agreement, and the other Financing Documents to which it is a party have been duly and effectively taken and will be duly taken as provided therein and herein, and that the Loan, the Note, this Agreement, and the other Financing Documents to which the Borrower is a party are and will be valid and enforceable obligations of the Borrower according to the terms thereof and hereof.

Section 5.04. Use of Proceeds. Disbursements by the Lender to the Borrower hereunder will be used exclusively by the Borrower for the purposes represented to the Lender and in accordance with the provisions of Section 2.03 hereof.

Section 5.05. Tax Covenants. The Borrower covenants for the benefit of the Lender that it will not take any action or omit to take any action with respect to the Loan, the proceeds thereof, or any other funds of the Borrower or any facilities financed or refinanced with the proceeds of the Loan if such action or omission (a) would cause the interest on the Loan to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code or (b) would cause interest on the Loan to lose its exclusion from Colorado taxable income under present Colorado law. The foregoing covenants shall remain in full force and effect notwithstanding the payment in full or defeasance of the Loan until the date on which all obligations of the Borrower in fulfilling the above covenants under the Tax Code and Colorado law have been met. For the purpose of Section 265(b)(3)(B) of the Code, the Loan is deemed designated as a qualified tax-exempt obligation.

Section 5.06. Other Liabilities. The Borrower will pay and discharge, when due, all of its liabilities, except when the payment thereof is being contested in good faith by appropriate procedures which will avoid financial liability and with adequate reserves provided therefor.

Section 5.07. Financial Statements. The financial statements and other information previously provided to the Lender by the Borrower or provided to the Lender by the Borrower in the future are or will be complete and accurate and prepared in accordance with generally accepted accounting principles generally applicable to urban renewal authorities. There has been no material adverse change in the Borrower's financial condition since such information was provided by the Borrower to the Lender. The Borrower will (a) maintain accounting records in accordance with generally recognized and accepted principles of accounting generally applicable to urban renewal authorities consistently applied throughout the accounting periods involved; (b) provide the Lender with such information concerning the business affairs and financial condition of the Borrower as the Lender may request; and (c) without request, provide the Lender with the information set forth in Section 5.08 below. The Borrower shall notify the Lender promptly of all litigation or administrative proceedings, threatened or pending, against the Borrower which would, if adversely determined, in Borrower's reasonable opinion, have a material adverse effect on the Borrower's financial condition arising after the date hereof.

Section 5.08. Reporting Requirements. The Borrower will provide the following to the Lender at the times and in the manner provided below:

(i) as soon as available, but not later than 210 days following each Fiscal Year, a copy of the City's comprehensive annual financial report (CAFR) which shall include audited financial statements of the City and of the Borrower as a component unit of the City and which may be submitted to the Lender via an internet link;

(ii) as soon as available, but in no event later than December 31 of each year, the annual budget of the Borrower for the immediately succeeding Fiscal Year;

(iii) promptly upon receipt thereof, a certification of values issued by each of the County Assessors containing the certified preliminary assessed

valuation of the Urban Renewal Project Area and the Property Tax Base Amount for that year;

(iv) promptly upon receipt thereof, a certification of values issued by each of the County Assessors containing the Final Assessed Valuation of the Urban Renewal Project Area and the Property Tax Base Amount for that year;

(v) within 60 days of the end of each calendar quarter, commencing with the quarter ending September 30, 2012, a summary of the Pledged Revenues received by the Borrower during the previous calendar quarter and during the consecutive twelve month period, separating the amount of Pledged Property Tax Revenues and Pledged Sales Tax Revenues received, together with a copy of any material amendments made or proposed to be made to the Borrower's annual budget;

(vi) not later than February 1 of each year, a Sales Tax Rate Certificate;

(vii) as soon as available, a copy of any report to the Borrower of any auditor of the Borrower, following approval thereof by the Borrower;

(viii) promptly after obtaining the actual knowledge thereof, notice to the Lender of any closure or impending closure of any business located within the Urban Renewal Project Area;

(ix) promptly at the time or times at which such event occurs, written notice of any events likely to have a material adverse effect on the Borrower or the Loan; and

(x) promptly upon request of the Lender, the Borrower shall furnish to the Lender such other reports or information regarding the Pledged Revenue or the assets, financial condition, business or operations of the Borrower as the Lender may reasonably request, to the extent legally permissible for the Borrower to provide.

Section 5.09. Inspection of Books and Records. The Lender shall have the right to examine any of the books and records of the Borrower at any reasonable time and as often as the Lender may reasonably desire. Without limiting the generality of the foregoing, the Lender agrees that it shall use commercially reasonable efforts to maintain as confidential any non-public or proprietary information obtained by the Lender in exercising its rights under this Section 5.09.

Section 5.10. Instruments of Further Assurance. The Borrower covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such agreements supplemental hereto and such further acts, instruments, and transfers as the Lender may reasonably require for the better assuring, transferring, and pledging unto the Lender the Pledged Revenue; provided, however, that the Borrower shall not be obligated to incur in excess of nominal expenses in complying with this covenant.

Section 5.11. Additional Debt Restrictions.

(a) *No Senior Debt.* The Borrower shall not incur Debt payable from or constituting a lien upon the Pledged Revenue senior to the lien thereon of the Loan.

(b) *No Parity Debt Without Lender Consent.* The Borrower shall not, without the prior written consent of the Lender, incur additional Debt payable from or constituting a lien upon the Pledged Revenue on parity to the lien thereon of the Loan.

(c) *Existing Permitted Subordinate Debt.* As of the Closing Date, the Borrower has no Debt outstanding with a lien on the Pledged Revenue subordinate to the lien thereon of the Loan other than (i) the Developer Debt, (ii) Borrower's contingent obligations to the City under the Cooperation Agreement, and (iii) any amounts representing the overpayment of incremental property taxes as the result of refunds made to taxpayers and with respect to which the Borrower has undertaken an obligation to repay the Treasurer of each of the Counties as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes. The Borrower's payment of the Developer Debt from Net Pledged Revenue shall be limited to that portion thereof which constitutes the Shoenberg Center Obligation. The Borrower shall not alter the terms applicable to the foregoing Permitted Subordinate Debt in effect as of the Closing Date without the prior written consent of the Lender; provided, however, that the Lender acknowledges and agrees that the statutory terms governing the Permitted Subordinate Debt described in clause (iii) above in effect as of the Closing Date may be altered without obtaining the prior written consent of the Lender.

(d) *Additional Subordinate Debt.* The Borrower may incur additional Debt secured by a lien on the Net Pledged Revenue fully subordinate to the lien thereon of the Loan ("Additional Subordinate Debt"), provided that:

(i) the proceeds thereof (other than those used to pay costs of issuance or fund required reserves) shall be used to finance the development or redevelopment of projects within the Urban Renewal Project Area;

(ii) such obligations shall not be subject to acceleration;

(iii) at the time of issuing or incurring such obligations, no Event of Default shall have occurred and be continuing under this Agreement; and

(iv) prior to the issuance or incurrence of the Additional Subordinate Debt then proposed, the Borrower shall provide Lender with notice of the proposed issuance thereof, which notice shall include a statement to the effect that such obligations will be incurred in accordance with the provisions of this Section 5.11(d).

Section 5.12. Continued Existence. The Borrower will maintain its existence and shall not merge or otherwise alter its corporate structure in any manner or to any extent as might reduce the security provided for the payment of the Loan.

Section 5.13. Restructuring. In the event the Pledged Revenue is insufficient or is anticipated to be insufficient to pay the principal of, termination fee, if any, and interest on the Loan when due, the Borrower shall use its best efforts to refinance, refund, or otherwise restructure the Loan so as to avoid such a default.

Section 5.14. Operation and Management. The Borrower will continue to operate in accordance with all applicable laws, rules, regulations, and intergovernmental agreements, and keep and maintain separate accounts of the receipts and expenses thereof in such manner that the Pledged Revenue may at all times be readily and accurately determined.

Section 5.15. Annual Audit and Budget. At least once a year in the time and manner provided by law, the Borrower will cause audits to be performed of the records relating to the Borrower's revenues and expenditures. In addition, at least once a year in the time and manner provided by law, the Borrower will cause budgets to be prepared and adopted. The audits and budgets of the Borrower may be presented as a component unit of the City. Copies of the budgets and the audits will be filed and recorded in the places, time, and manner provided by law.

Section 5.16. No Exclusion of Property. The Borrower shall take no action that could have the effect of excluding property from the Urban Renewal Project Area without the prior written consent of the Lender.

Section 5.17. Amendments to Financing Documents Require Prior Lender Consent. The Borrower shall not amend or consent to any amendment to any Financing Document, or waive any provision thereof, without the prior written consent of the Lender.

Section 5.18. Enforcement of City Cooperation Agreement. The Borrower shall do all things reasonably necessary and appropriate to enforce the City Cooperation Agreement against the City.

Section 5.19. Proper Allocation of New Construction. The Borrower shall cooperate with the Lender in making a good faith effort to determine that the Jefferson County Assessor and the Adams County Assessor have correctly allocated new construction to the reassessment of property within the Urban Renewal Project Area.

ARTICLE VI

RESERVED

ARTICLE VII

DEPOSITS; INVESTMENTS

Section 7.01. Deposits Held Under This Agreement. Subject to Section 7.02 hereof, all moneys held in any of the funds or accounts to be held and administered by the Lender under this Agreement shall be held in depository accounts in the possession of the Lender and satisfying the requirements of the Public Deposit Protection Act and shall not be invested, but

shall earn interest at the rate provided by the Lender, as applicable, with respect to depository accounts for public funds.

Section 7.02. Investment of Reserve Fund and Supplemental Reserve Fund. Notwithstanding any provision contained herein, the Lender shall invest moneys on deposit in the Reserve Fund and the Supplemental Reserve Fund as directed in writing by the Borrower in Permitted Investments and may rely upon such direction as a determination that the investment described in such direction is a Permitted Investment.

Section 7.03. Compliance with Tax Covenants. Any and all interest income on moneys held and administered by the Lender under this Agreement shall be subject to full and complete compliance at all times with the covenants and provisions of Section 5.05 hereof.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. The occurrence of any one or more of the following events or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement (whatever the reason for such event or condition and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, rule, regulation, or order of any court or any administrative or governmental body), and there shall be no default or Event of Default hereunder except as provided in this Section 8.01.

(a) The Borrower fails to pay the interest on the Loan when due pursuant to this Agreement;

(b) The Borrower fails to pay the principal or termination fee on the Loan when due pursuant to this Agreement;

(c) The Borrower fails to deposit the Net Pledged Revenue as required herein or fails to transfer the Net Pledged Revenue to the Lender as required herein;

(d) The Borrower defaults in the performance or observance of any other of the covenants, agreements, or conditions on the part of the Borrower in this Agreement or the Note and fails to remedy the same to the satisfaction of the Lender within 45 days after the occurrence thereof;

(e) The Borrower fails to replenish the Reserve Fund to the Reserve Requirement by the time required in Section 4.04(d) hereof;

(f) Any financial information, statement, certificate, representation or warranty given to the Lender by the Borrower in connection with entering into this Agreement or the other Financing Documents and/or any borrowing thereunder, or required to be furnished under the terms thereof, shall prove untrue or misleading in any material respect (as determined by the Lender in the exercise of its judgment) as of the

time when given and shall not be duly corrected and communicated to the Lender within the first to occur of 30 days following (i) the Borrower becoming aware of such incorrect information or (ii) the Lender's delivery of written notice to the Borrower of such incorrect information;

(g) Any final judgment, not subject to further appeals, shall be obtained against the Borrower in excess of the sum of \$10,000 and shall remain unsatisfied, unpaid, unvacated, unbonded or unstayed for a period of 30 days following the date of entry thereof;

(h) (i) the Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of its property, or the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) and the same shall remain undismissed for a period of 60 days from the date of commencement; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; or (iv) the Borrower shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(i) a change occurs in the financial or operating conditions of the Borrower, that, in the Lender's reasonable judgment, will have a materially adverse impact on the ability of the Borrower to generate revenues sufficient to satisfy the Borrower's obligations under this Agreement or its other obligations, and the Borrower fails to cure such condition within 45 days after receipt by the Borrower of written notice thereof from the Lender;

(j) any funds or investments on deposit in, or otherwise to the credit of, any of the Loan Payment Fund, Supplemental Reserve Fund, Reserve Fund, or Transaction Costs Fund become subject to any writ, judgment, warrant or attachment, execution or similar process not attributable to actions of the Lender;

(k) the City fails to appropriate moneys to pay when due any obligation subject to annual appropriation; or

(l) any determination, decision, or decree is made by the Commissioner or the District Director of the Internal Revenue Service, or by any court of competent

jurisdiction, that the interest payable on the Loan is includable in the gross income for federal income tax purposes of the Lender by virtue of the occurrence of any event, including any change in the Constitution or laws of the United States of America or the State of Colorado, which results in interest payable on the Loan becoming includable in the gross income of the Lender pursuant to Section 103(b) of the Internal Revenue Code, and the rules and regulations promulgated thereunder if and so long as such determination, decision or decree is not being appealed or otherwise contested in good faith by the Borrower.

Section 8.02. Remedies on Occurrence of Event of Default.

(a) ***Lender's Rights and Remedies.*** Upon the occurrence and continuance of an Event of Default, the Lender shall have the following rights and remedies which may be pursued:

(i) ***Receivership.*** Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Lender hereunder, the Lender shall be entitled as a matter of right to the appointment of a receiver or receivers of the Pledged Revenue, and of the revenues, income, product, and profits thereof pending such proceedings, subject however, to constitutional limitations inherent in the sovereignty of the Borrower; but notwithstanding the appointment of any receiver or other custodian, the Lender shall be entitled to the possession and control of any cash, securities, or other instruments constituting Pledged Revenue at the time held by, or payable or deliverable under the provisions of this Loan Agreement to, the Lender.

(ii) ***Suit for Judgment.*** The Lender may proceed to protect and enforce its rights under this Loan Agreement and any provision of law by such suit, action, or special proceedings as the Lender shall deem appropriate.

(iii) ***Mandamus or Other Suit.*** The Lender may proceed by mandamus or any other suit, action, or proceeding at law or in equity, to enforce its rights hereunder.

(b) ***Judgment.*** No recovery of any judgment by the Lender shall in any manner or to any extent affect the lien of this Loan Agreement on the Pledged Revenue or any rights, powers, or remedies of the Lender hereunder, but such lien, rights, powers, and remedies of the Lender shall continue unimpaired as before.

(c) ***Acceleration.*** Acceleration of the Loan shall not be an available remedy for an Event of Default. The foregoing sentence shall not be interpreted to alter the provisions of Section 2.04(a)(ii) hereof.

Section 8.03. Notice to Lender of Default. Notwithstanding any cure period described above, the Borrower will immediately notify the Lender in writing when it obtains knowledge of the occurrence of any Default or Event of Default.

Section 8.04. Termination of Disbursements; Additional Lender Rights. Upon the occurrence of an Event of Default, the Lender may at any time (a) Setoff (as defined below); and/or (b) take such other steps to protect or preserve the Lender's interest in the Pledged Revenue.

Section 8.05. Delay or Omission No Waiver. No delay or omission of the Lender to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient.

Section 8.06. No Waiver of One Default to Affect Another; All Remedies Cumulative. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon. All rights and remedies of the Lender provided herein shall be cumulative and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

Section 8.07. Other Remedies. Nothing in this Article VIII is intended to restrict the Lender's rights under any of the Financing Documents or at law, and the Lender may exercise all such rights and remedies as and when they are available.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Loan Agreement and Relationship to Other Documents. The warranties, covenants and other obligations of the Borrower (and the rights and remedies of the Lender) that are outlined in this Agreement and the other Financing Documents are intended to supplement each other. In the event of any inconsistencies in any of the terms in the Financing Documents, all terms will be cumulative so as to give the Lender the most favorable rights set forth in the conflicting documents, except that if there is a direct conflict between any preprinted terms and specifically negotiated terms (whether included in an addendum or otherwise), the specifically negotiated terms will control.

Section 9.02. Successors; Assignment. The rights, options, powers and remedies granted in this Agreement and the other Financing Documents will extend to the Lender and to its successors and permitted Lender assignees, will be binding upon the Borrower and its successors and will be applicable hereto and to all renewals and/or extensions hereof. This Loan Agreement shall be assignable by the Lender to any entity without the consent of the Borrower, provided that the assignee (unless an affiliate of the Lender) shall provide an opinion of legal counsel to the effect that the assignee is legally authorized to perform the obligations of the Lender hereunder.

Section 9.03. Indemnification. Except for harm arising from the Lender's willful misconduct, gross negligence or bad faith, and without waiving governmental immunity, the Borrower, to the extent allowed by law, hereby indemnifies and agrees, to defend and hold the

Lender harmless from any and all losses, costs, damages, claims and expenses of any kind suffered by or asserted against the Lender relating to claims by third parties as a result of, or arising out of, the negligence or other misconduct of the Borrower, or any claim made against the Borrower, in connection with the financing provided under the Financing Documents. To the extent permitted by law, this indemnification and hold harmless provision will survive the termination of the Financing Documents and the satisfaction of Borrower's obligations to the Lender.

Section 9.04. Notice of Claims against Lender; Limitation of Certain Damages. In order to allow the Lender to mitigate any damages to the Borrower from the Lender's alleged breach of its duties under the Financing Documents or any other duty, if any, to the Borrower, the Borrower agrees to give the Lender written notice no later than twenty (20) days after the Borrower knows of any claim or defense it has against the Lender, whether in tort or contract, relating to any action or inaction by the Lender under the Financing Documents, or the transactions related thereto, or of any defense to payment of the Borrower's obligations for any reason. The requirement of providing timely notice to the Lender represents the parties' agreed-to standard of performance regarding the duty of the Lender to mitigate damages related to claims against the Lender. Notwithstanding any claim that the Borrower may have against the Lender, and regardless of any notice the Borrower may have given the Lender, the Lender will not be liable to the Borrower for consequential and/or special damages arising therefrom, except those damages arising from the Lender's willful misconduct, gross negligence or bad faith. Failure by the Borrower to give notice to the Lender shall not waive any claims of the Borrower but such failure shall relieve the Lender of any duty to mitigate damages prior to receiving notice.

Section 9.05. Notices. Notice of any record shall be deemed delivered when the record has been (a) deposited in the United States Mail, postage pre-paid; (b) received by overnight delivery service; (c) received by telex; (d) received by telecopy; (e) received by electronic mail through the internet; or (f) when personally delivered at the following addresses:

If to the Borrower: Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Executive Director
Telephone: 303.658.2010
E-mail: RSmith@CityofWestminster.us

with copies to: Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Marty McCullough, City Attorney
Telephone: 303.658.2234

and:

Sherman & Howard
633 17th Street, Suite 3000
Denver, Colorado 80202
Attention: Dee Wisor
Telephone: (303) 299-8228

If to the Lender: Vectra Bank Colorado, National Association
2000 S. Colorado Blvd., Suite 1200
Denver, Colorado 80222
Attention: Conrad Freeman
Telephone: (720) 947-8802

with a copy to: Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Attn: Kristine Lay
Telephone: (303) 297-2400

Section 9.06. Payments. Payments due on the Loan shall be made in lawful money of the United States. All payments may be applied by the Lender to principal, interest and other amounts due under the Note and this Agreement in any order which the Lender elects, subject to the provisions of this Agreement.

Section 9.07. Applicable Law and Jurisdiction; Interpretation; Severability. This Agreement will be governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Agreement will not affect any other provision. THE BORROWER AND THE LENDER HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN DENVER, COLORADO, AND WAIVE ANY OBJECTIONS BASED ON *FORUM NON CONVENIENS*, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE NOTE, OR THE PLEDGED REVENUE OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING. Nothing in this Agreement will affect the Lender's rights to serve process in any manner permitted by law. This Agreement, the other Financing Documents and any amendments hereto (regardless of when executed) will be deemed effective and accepted only at the Lender's offices, and only upon the Lender's receipt of the executed originals thereof. Invalidity of any provision of this Agreement shall not affect the validity of any other provision.

Section 9.08. Copies; Entire Agreement; Modification. The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Financing Documents.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING, EXPRESSING CONSIDERATION AND SIGNED BY THE PARTIES ARE

ENFORCEABLE. NO OTHER TERMS OR PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS AGREEMENT MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE SHALL ALSO BE EFFECTIVE WITH RESPECT TO ALL OTHER CREDIT AGREEMENTS NOW IN EFFECT BETWEEN THE BORROWER AND THE LENDER. A MODIFICATION OF ANY OTHER CREDIT AGREEMENT NOW IN EFFECT BETWEEN THE BORROWER AND THE LENDER, WHICH OCCURS AFTER RECEIPT BY THE BORROWER OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO ANY SUCH CREDIT AGREEMENT ARE NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

Section 9.09. Waiver of Jury Trial. THE BORROWER AND THE LENDER HEREBY JOINTLY AND SEVERALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. EACH OF THE BORROWER AND THE LENDER REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Section 9.10. Attachments. All documents attached hereto, including any appendices, schedules, riders, and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 9.11. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Public Securities Act, if a member of the Board of the Borrower, or any officer or agent of the Borrower, acts in good faith in the performance of his duties as a member, officer, or agent of the Board or the Borrower and in no other capacity, no civil recourse shall be available against such member, officer or agent for payment of the principal of and interest on the Loan. Such recourse shall not be available either directly or indirectly through the Board of the Borrower, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the delivery of the Note evidencing the Loan and as a part of the consideration for such transfer, the Lender and any person purchasing or accepting the transfer of the obligations representing the Loan specifically waives any such recourse.

Section 9.12. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, the Note and this Agreement are entered into pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note and this Agreement after delivery for value.

Section 9.13. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Note or the Loan Agreement shall be commenced more than 30 days after the authorization of the Note and the Loan Agreement.

Section 9.14. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan provided herein and therein shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, this Agreement, the Note, and the Authorizing Resolution. The amounts pledged to the payment of the Loan shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have a first priority. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Borrower irrespective of whether such persons have notice of such liens.

Section 9.15. Payment on Non-Business Days. Except as provided herein, whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the amount due.

Section 9.16. Termination. This Agreement shall terminate at such time as no amounts are due and owing to the Lender hereunder or under any of the other Financing Documents.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Loan Agreement as of the date set forth above.

LENDER

VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association

By _____
Conrad Freeman, Senior Vice President

BORROWER

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By _____
Chairperson, Board of Commissioners

[SEAL]

Attest:

By _____
Secretary, Board of Commissioners

By _____
Executive Director, Board of Commissioners

[Signature Page to Loan Agreement]

EXHIBIT A
FORM OF NOTE

PROMISSORY NOTE

US \$[7,420,000]

September ____, 2012

FOR VALUE RECEIVED, WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado (hereinafter referred to as “Maker”), promises to pay to the order of VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association, its successors and assigns (hereinafter referred to as “Payee”), at the office of Payee or its agent, designee, or assignee, or such place as Payee or its agent, designee, or assignee may from time to time designate in writing, the principal sum of [SEVEN MILLION FOUR HUNDRED TWENTY THOUSAND] AND 00/100 DOLLARS (US \$[7,420,000].00) pursuant to the terms of the Loan Agreement dated of even date herewith (the “Loan Agreement”) by and between Maker and Payee, in lawful money of the United States of America. Unless and until otherwise designated in writing by Payee to Maker, all payments hereunder shall be made to Payee in accordance with the Loan Agreement.

Amounts received by Payee under this Promissory Note (this “Note”) shall be applied in the manner provided by the Loan Agreement. This Note shall bear interest, be payable, mature and be enforceable pursuant to the terms and provisions of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

This Note is governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Note will not affect any other provision.

Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to certain provisions of the Supplemental Public Securities Act, being Title 11, Article 57, of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery for value.

THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE WITH RESPECT TO THE SUBJECT MATTER HEREOF.

IN WITNESS WHEREOF, an authorized representative of Westminster Economic Development Authority, as Maker, has executed this Promissory Note as of the day and year first above written.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By _____
Chairperson, Board of Commissioners

[SEAL]

Attest:

By _____
Secretary, Board of Commissioners

By _____
Executive Director, Board of Commissioners

[Signature Page to Promissory Note]

EXHIBIT B

PRINCIPAL REPAYMENT SCHEDULE

Year	Principal Payment Due
12/01/2012	290,000
12/01/2013	305,000
12/01/2014	320,000
12/01/2015	335,000
12/01/2016	350,000
12/01/2017	365,000
12/01/2018	385,000
12/01/2019	405,000
12/01/2020	425,000
12/01/2021	445,000
12/01/2022	465,000
12/01/2023	490,000
12/01/2024	515,000
12/01/2025	540,000
12/01/2026	565,000
12/01/2027	595,000
12/01/2028	625,000

EXHIBIT C
URBAN RENEWAL AREA

EXHIBIT D

FORM OF SALES TAX RATE CERTIFICATE

SALES TAX RATE CERTIFICATE

1		Senior Debt Service Requirements		_____
2	+	Subordinate Debt Service Requirements	+	_____
3	=	Projected Debt Service	=	=====
4		Projected Pledged Property Tax Revenues		_____
5	-	Reserve Fund Deficit	-	_____
6	+	Supplemental Reserve Fund Balance	+	_____
7	+	Subordinate Obligations Fund Balance	+	_____
8	=	Projected Available Revenue	=	=====
9		Projected Debt Service <i>(Line 3)</i>		_____
10	-	Projected Available Revenue <i>(Line 8)</i>	-	_____
11	=	Required Sales Tax Revenue	=	=====
12		Prior Year Gross Sales Tax		_____
13	-	Sales Tax Base Amount	-	_____
14	=	Prior Year Sales Tax Increment	=	=====
15		Prior Year Sales Tax Increment <i>(Line 14)</i>		_____
16	/	Maximum Sales Tax Rate (3%)	/	_____
17	=	Projected Incremental Taxable Sales	=	=====
18		Required Sales Tax Revenue <i>(Line 11)</i>		_____
19	/	Projected Incremental Taxable Sales <i>(Line 17)</i>	/	_____
20	=	Proposed Pledged Sales Tax Rate	=	===== %

EXHIBIT E

FORM OF INTEREST RATE PERIOD SELECTION CERTIFICATE

INTEREST RATE PERIOD SELECTION CERTIFICATE

Pursuant to Section 2.04(a)(ii) of that certain Loan Agreement, dated as of September 13, 2012 (the "Loan Agreement"), by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (the "Borrower"), a public body corporate and politic duly existing under the laws of the State of Colorado, and **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association, in its capacity as lender (the "Lender"), the Borrower hereby selects the Interest Period set forth below, effective as of the Effective Date (defined below). Capitalized terms used and not otherwise defined herein shall have the respective meanings assigned to such terms in the Loan Agreement.

1. The last day of the Interest Period currently in effect is _____, ____, 20__.

2. The first day of the Interest Period selected by the Borrower pursuant to this Interest Rate Period Selection Certificate (this "Certificate") is _____, ____, 20__ (the "Effective Date").

3. The Interest Period selected by the Borrower, effective as of the Effective Date set forth in paragraph 2 above, is the [check one box below]:

- Ninety Day Interest Period
- Six Month Interest Period
- One Year Interest Period
- Five Year Interest Period

4. The undersigned certifies that [he] [she] is an Authorized Person under the Loan Agreement.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By _____
as Authorized Person

2012 COOPERATION AGREEMENT
(SOUTH SHERIDAN URBAN RENEWAL PROJECT)
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT (this "Agreement"), dated as of September 10, 2012, is made and entered into between the CITY OF WESTMINSTER, COLORADO (the "City") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the "Authority").

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes ("C.R.S.") (the "Urban Renewal Law"); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority South Sheridan Urban Renewal Plan (the "Plan") and the urban renewal project described therein (the "Urban Renewal Project"); and

WHEREAS, the Urban Renewal Project was undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to Section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Urban Renewal Project and carrying out the Plan; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007 in the original aggregate principal amount of \$8,320,000 (the "Prior Bonds"), for the purpose of financing the acquisition, construction and equipping of the Urban Renewal Project; and

WHEREAS, in order to refund the Prior Bonds, the Authority has previously entered into a Loan Agreement (the "2009 Loan Agreement") with Vectra Bank Colorado, National Association ("Vectra") to obtain a Loan in the total principal amount of \$8,075,000 (the "2009 Loan"); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to refund the 2009 Loan by entering into a 2012 Loan Agreement (the “2012 Loan Agreement”) with Vectra in the principal amount of not to exceed \$7,420,000 (the “2012 Loan”) in order to finance the costs of refunding the 2009 Loan (the “Refunding Project”); and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 12-26 (the “Replenishment Resolution”) declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Requirement, for the purpose of providing additional security for the payment of principal and interest on the 2012 Loan as defined in the 2012 Loan Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. LOAN. (a) If the Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

(b) The Authority acknowledges that the City Manager, City Staff and the City Attorney have provided and will continue to provide substantial administrative and legal services to the Authority in connection with the Plan, the Urban Renewal Project, the 2012 Loan and the Refunding Project. The Authority shall pay to the City, the City’s costs for services rendered to the Authority in connection with the Plan, the Urban Renewal Project, the 2012 Loan and the Refunding Project. The City shall provide written evidence of such costs to the Authority from time to time. To the extent that this annual debt is incurred, this obligation is hereby designated a loan from the City to the Authority to be repaid as provided herein.

(c) Any other amounts advanced or loaned to the Authority by the City or payments made or debts incurred by the City on behalf of the Authority relating to the Plan, the Urban Renewal Project, the 2012 Loan or the Refunding Project may be designated a loan from the City to the Authority to be repaid as provided herein.

2. PAYMENT. (a) All amounts payable by the Authority to the City hereunder shall constitute “Permitted Subordinate Debt” for purposes of the 2012 Loan Agreement. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenue (as defined in the 2012 Loan Agreement) available for the payment of Permitted Subordinate Debt in accordance with Section 5.11(d) of the 2012 Loan Agreement.

(b) The Authority agrees to pay the City interest in the amount of 5% on the principal balance of any amounts designated as a loan hereunder.

3. FURTHER COOPERATION. (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal

Law, the Plan, the Urban Renewal Project, the 2012 Loan or the Refunding Project, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenue for deposit with Vectra in accordance with the 2012 Loan Agreement. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenue.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues and any Pledged Sales Tax Revenues (each as defined in the 2012 Loan Agreement) when, as and if received by the City, but which are due and owing to the Authority pursuant to the Urban Renewal Plan.

4. SUBORDINATION. The Authority's obligations pursuant to this Agreement are subordinate to the Authority's obligations for the repayment of any current or future bonded indebtedness. For purposes of this Agreement, the term "bonded indebtedness," "bonds" and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the Authority, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by revenues of the Authority, and including the 2012 Loan.

5. ALLOCATION OF SALES TAX REVENUE. The City currently imposes a municipal sales tax at a rate of 3.85%, pertaining to, including without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services. Pursuant to the terms of the Urban Renewal Plan, the City and the Authority may provide for the method by which sales tax increments shall be allocated and paid to the Authority. The City and the Authority hereby agree that the incremental revenues derived from the City sales tax at a rate as specified any loan agreement, bond indenture, bond resolution or other agreement pursuant to which WEDA borrows money for the project, shall be allocated to the Authority. Pursuant to Section 31-25-107, C.R.S., the balance of the City's sales tax revenues shall be retained by the City.

6. GENERAL PROVISIONS.

(a) Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation prior to filing litigation.

(b) Separate Entities. Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations or liabilities of the other.

(c) Third Parties. Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than Vectra.

(d) Modifications. No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties with the prior written consent of Vectra and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(e) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(f) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(g) Assignment. This Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of Vectra.

(h) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

(i) The Prior Cooperation Agreements. This Agreement supersedes and replaces any and all prior cooperation agreements. Any amounts owing to the City by the Authority pursuant to such prior cooperation agreements shall be payable under the terms and conditions described in this Agreement and shall be payable on a subordinate basis to the payment due and owing under the 2012 Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date above.

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER, COLORADO

By: _____
Chairperson

By: _____
City Manager

ATTEST:

ATTEST:

Secretary

City Clerk

Executive Director

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

By: _____
City Attorney

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **145**

INTRODUCED BY COMMISSIONERS

SERIES OF 2012

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF
THE WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY AUTHORIZING, APPROVING AND
DIRECTING THE EXECUTION AND DELIVERY OF A
LOAN AGREEMENT FOR A LOAN IN THE ORIGINAL
PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,420,000,
AND CERTAIN OTHER DOCUMENTS IN CONNECTION
THEREWITH, FOR THE PURPOSE OF REFINANCING
THE ACQUISITION, CONSTRUCTION AND EQUIPPING
OF AN URBAN RENEWAL PROJECT**

WHEREAS, the Westminster Economic Development Authority (the “Authority”) is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, an urban renewal plan, known as the “South Sheridan Urban Renewal Plan” was duly and regularly approved by the City Council of the City pursuant to Resolution No. 21, adopted on March 29, 2004, as amended by Resolution No. 13 adopted on February 28, 2005 and Resolution No. 31 adopted on June 8, 2009 (as amended, the “Urban Renewal Plan”), pursuant to the Colorado Urban Renewal Law for an urban renewal project under the Act; and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, pursuant to Section 31-25-109 of the Act, the Authority has the power to issue refunding or other bonds (defined by the Act to mean any bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures or other obligations) from time to time in its discretion for the payment, retirement, renewal or extension of any bonds previously issued by it under the Act; and

WHEREAS, the Authority is authorized to issue bonds without an election; and

WHEREAS, the Authority has previously issued its Westminster Economic Development Authority, Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007 in the original aggregate principal amount of \$8,320,000, for the purpose of providing improvements contemplated by the Urban Renewal Plan (the “Prior Bonds”); and

WHEREAS, in order to refund the Prior Bonds, the Authority entered into a Loan Agreement (the “2009 Loan Agreement”) with Vectra Bank Colorado, National Association (“Vectra”) in the principal amount of \$8,075,000 (the “2009 Loan”); and

WHEREAS, the Authority has determined that it is in the best interests of the Authority and the citizens and taxpayers of the City that the 2009 Loan be refunded to effect certain economies of the Authority (the “Refunding Project”); and

WHEREAS, the Authority intends to enter into a Loan Agreement with Vectra (the “2012 Loan Agreement”) to obtain a loan in the principal amount of not to exceed \$7,420,000 (the “2012 Loan”) in order to finance the costs of the Refunding Project; and

WHEREAS, the proceeds derived from the 2012 Loan, after payment of the costs of issuance properly allocable thereto, along with such other legally available moneys of the Authority as may be necessary, shall be used to pay and cancel the 2009 Loan on the date of funding of the 2012 Loan, as more particularly hereinafter set forth; and

WHEREAS, the Authority specifically elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Act”) to the 2012 Loan; and

WHEREAS, the 2012 Loan shall be a limited obligation of the Authority payable solely from the Pledged Revenue (as defined in the 2012 Loan Agreement); and

WHEREAS, the Board desires to delegate to the Chairman of the Board of Commissioners and the Executive Director of the Authority the power to determine the terms of the 2012 Loan consistent with the provisions of this Resolution; and

WHEREAS, there are on file with the Secretary of the Board: (a) the proposed form of the 2012 Loan Agreement; (b) the proposed form of the promissory note, in the form attached to the 2012 Loan Agreement (the “2012 Note”), to be executed by the Authority and delivered to Vectra evidencing the Authority’s obligations to pay the 2012 Loan; and (c) the proposed form of the 2012 Cooperation Agreement between the Authority and the City (the “2012 Cooperation Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, COLORADO, THAT:

Section 1. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the Board and the officers of the Authority directed toward the Refunding Project and the entering into of the 2012 Loan Agreement, the 2012 Note and the 2012 Cooperation Agreement hereby are ratified, approved and confirmed.

Section 2. The forms, terms and provisions of the 2012 Loan Agreement, the 2012 Note and the 2012 Cooperation Agreement (collectively, the “Documents”) hereby are authorized and approved, and the Authority shall enter into the Documents in the respective forms as are on file with the Secretary of the Board, but with such changes therein as shall be consistent with this Resolution and as the Chair or Vice Chairperson of the Board or the Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Chair and/or the Vice Chairperson of the Board is hereby authorized and directed to execute and deliver the Documents, for and on behalf of the Authority. The Secretary of the Board is hereby authorized and directed to affix the seal of the Authority to, and to attest those Documents requiring the attestation of the Secretary.

Section 3. The officers of the Authority shall take all action which they deem necessary or reasonably required in conformity with the Act to enter into the Documents and refund the 2009 Loan, including the paying of incidental expenses, which are hereby authorized to be paid, and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution and the Documents, including, without limitation, the execution and delivery of any necessary or appropriate closing documents to be delivered in connection with the execution and delivery of the Documents and the refunding of the 2009 Loan.

Section 4. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Chairperson of the Board of Commissioners, the Vice Chairperson or Executive Director of the Authority the independent authority to make the following determinations with respect to the 2012 Loan, including the execution of any certificates necessary or desirable to evidence such determinations, which determinations shall be subject to the restrictions and parameters set forth below:

- (a) the rate or rates of interest and/or the interest rate period on the 2012 Loan;
- (b) the conditions on which and the prices at which the 2012 Loan may be redeemed before maturity;
- (c) the existence and amount of any reserve funds;
- (d) the principal amount of the 2012 Loan;
- (e) the amount of principal maturing in any particular year; and
- (f) the dates on which principal and interest shall be paid.

The foregoing authority shall be subject to the following restrictions and parameters:

- (1) the 2012 Loan shall mature not later than December 1, 2028;
- (2) the principal amount of the 2012 Loan shall not exceed \$7,420,000;
- (3) the initial interest rate on the 2012 Loan shall not exceed 3.50% per annum for the first interest rate period commencing on the Closing Date of the 2012 Loan; and

(4) the 2012 Loan may be prepaid as provided in the 2012 Loan Agreement.

Section 5. The 2012 Loan and the 2012 Note are special obligations of the Authority payable solely as provided in the 2012 Loan Agreement. The principal of, premium, if any, and interest on the 2012 Loan and the 2012 Note shall not constitute an indebtedness of the City or the State of Colorado or any political subdivision thereof, and neither the City, the State of Colorado nor any political subdivision thereof shall be liable thereon, nor in any event shall the principal of, premium, if any, and interest on the 2012 Loan and the 2012 Note, be payable out of funds or properties other than the Pledged Revenue, as such term is defined in the 2012 Loan Agreement. Neither the Commissioners of the Authority nor any persons executing the 2012 Loan Agreement or the 2012 Note shall be liable personally on the 2012 Loan Agreement or the 2012 Note.

Section 6. After the 2012 Loan Agreement and the 2012 Note are entered into, this Resolution shall be and remain irrevocable, and may not be amended except in accordance with the 2012 Loan Agreement, until the 2012 Loan and the 2012 Note shall have been fully paid, canceled and discharged in accordance therewith.

Section 7. The 2009 Loan and 2009 Note shall be paid and cancelled on the date of funding of the 2012 Loan, at a price equal to the par amount thereof plus accrued interest.

Section 8. If, for any reason, the funds on hand from the 2012 Loan shall be insufficient to make the payment of the principal of and accrued interest on the 2009 Loan, as the same shall be due and payable as provided in Section 7 above, the Authority shall forthwith deposit additional legally available funds as may be required fully to meet the amount due and payable on the 2009 Loan.

Section 9. The officers of the Authority are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including but not limited to the execution of such certificates and affidavits as may be reasonably required by Vectra.

Section 10. The Chair, the Executive Director, and the City's Finance Director are each hereby appointed as an Authorized Person, as defined in the 2012 Loan Agreement. Different or additional Authorized Persons may be appointed by resolution adopted by the Board and a certificate filed with Vectra.

Section 11. All costs and expenses incurred in connection with the 2012 Loan and the transactions contemplated by this Resolution shall be paid either from the proceeds of the 2012 Loan or from legally available moneys of the Authority, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 12. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 13. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution or part thereof.

Section 14. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this September 10, 2012.

(SEAL)

Chairperson of the Board of Commissioners

Attest:

Secretary

APPROVED AS TO LEGAL FORM:

Attorney for the Authority

STATE OF COLORADO)
) SS.
 WESTMINSTER ECONOMIC)
 DEVELOPMENT AUTHORITY)

I, Linda Yeager, the Secretary of the Westminster Economic Development Authority (the "Authority"), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of Commissioners of the Authority (the "Board") at a meeting held on September 10, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of September 10, 2012, by an affirmative vote of a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Faith Winter				
Herb Atchison				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				

3. The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chair or Vice Chairperson of the Board, sealed with the Authority seal, attested by the Secretary of the Board and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the meeting of September 10, 2012, in the form attached hereto as Exhibit A, was posted in at the Westminster City Hall, 4800 W. 92nd Street, in the City of Westminster, not less than twenty-four hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Authority affixed September 10, 2012.

(SEAL)

 Secretary

EXHIBIT A

(Form of Notice of Meeting)

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
September 10, 2012



SUBJECT: Orchard Parkway, 138th Avenue to 144th Avenue and 142nd Avenue Project -
Engineering Design Contract

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended Board Action:

Based upon the recommendation of the Executive Director make a finding that the public interest will best be served by authorizing the Executive Director to execute a sole source contract with Blue Sky Engineering, LLC in the amount of \$150,017.50 and authorize a design contingency in the amount of \$10,000 for the final design of the Orchard Parkway, 138th Avenue to 144th Avenue Project and 142nd Avenue from Huron Street to Orchard Parkway.

Summary Statement:

- Orchard Parkway, a proposed north-south roadway, will become the key means of access to the properties bounded by I-25 on the east, Huron Street on the west, 144th Avenue of the north and 138th Avenue on the south. In addition to Orchard Parkway, 142nd Avenue from Huron Street to Orchard Parkway is included in the project design and construction.
- The Saint Anthony's North Medical Pavilion project, located at the southwest corner of the intersection of 144th Avenue and I-25, is open for business. This exciting new development will likely attract much interest to the area from other developers. The construction of Orchard Parkway should help accelerate development along this corridor. For this reason, staff proposes that final design drawings be prepared for this minor arterial street with the intent that the actual construction of this road could follow in the near future.
- A cost proposal for this design work submitted by Blue Sky Engineering, LLC is less than any other consultant could realistically propose because this firm has already completed the preliminary engineering for the project through its role as the design consultant for certain private developers in this area. These preliminary design drawings are owned by Blue Sky, and the selection of a different consultant would require the preparation of a new preliminary design. Blue Sky's fee is approximately 2.5% of the expected cost of construction, and past experience has shown that a different consultant would likely charge in the 6% to 10% range for the complete design effort.
- Funds for the design work are available from Westminster Economic Development Authority bond proceeds.

Expenditure Required: \$160,017.50

Source of Funds: North Huron URA Bond Proceeds

Policy Issues

Should the Westminster Economic Development Authority (WEDA) proceed with the design work on the Orchard Parkway, 138th Avenue to 144th Avenue, and 142nd Avenue project and hire Blue Sky Engineering, LLC as the sole source consultant for this work?

Alternatives

Alternatives include postponing or abandoning the final design of this project. Given the strong desire of WEDA to accelerate development in this area and the availability of remaining North Huron URA bond proceeds to pay for this design effort, this alternative is not recommended.

A second alternative would be to solicit proposals from other design firms. Since Blue Sky Engineering has already completed the preliminary design and owns these documents as a consultant to private developers along the corridor, City staff is confident that no other design firm could complete this project for less than the fee proposal submitted by Blue Sky Engineering.

Background Information

Orchard Parkway will run in a north-south direction and bisect the property bounded by Huron Street, I-25, 144th Avenue and 138th Avenue. All of this property is located within the I-25 District Center, which is envisioned to be an upscale, urban mixed-use development providing a diversity of retail, commercial, entertainment, hospitality, restaurant, hospital, medical and office uses. The first phase of the Saint Anthony's Medical Pavilion is open with the full build out of this facility proposed in the near future.

This current and planned construction within the north I-25 corridor make it desirable to design and construct Orchard Parkway at this time. In addition, the construction of all of Orchard Parkway as one City-managed project will eliminate the less desirable, piecemeal approach of having each adjacent developer build Orchard Parkway in segments. Blue Sky Engineering is the consultant that worked for some of the private developers of property along this corridor. The company has completed the preliminary design and owns the rights to these drawings, so only the final design and bid package is needed in order for the City to proceed with construction. The fee proposed by Blue Sky Engineering is approximately 2.5% of the estimated cost of construction, which is very reasonable.

The design and construction of the Orchard Parkway, 138th Avenue to 144th Avenue, and 142nd Avenue Project fulfills WEDA's and the City of Westminster's goals of providing a Strong, Balanced Local Economy and Vibrant Neighborhoods In One Livable Community by furnishing good access to developable parcels at a reasonable cost.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment - Orchard Parkway Exhibit

