



CITY COUNCIL AGENDA

NOTICE TO READERS: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given. Many items have been previously discussed at a Council Study Session.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meeting
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
 - A. Financial Report for January 2012
 - B. First City Council Meeting in March Date Change
 - C. Release ReadingRecord as Open Source Software
 - D. Special Legal Counsel Services
 - E. 2012 Library Materials Purchases Over \$50,000
 - F. 2012 Golf Courses' Cumulative Purchases Over \$50,000
 - G. Second Reading Councillor's Bill No. 4 re Westminster Sports Center Lease Agreement
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing re Northeast Comprehensive Development Plan Dissolution
 - B. Terminate the Northeast Comprehensive Development Plan IGA with Jefferson County
 - C. Resolution No. 8 re Recovery Contract Interest Rate
 - D. Councillor's Bill No. 5 re Proposed Economic Development Agreement with Trimble Navigation Limited
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.



WESTMINSTER

Strategic Plan

2011-2016
Goals and Objectives

FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Institutionalize the core services process in budgeting and decision making
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



STRONG, BALANCED LOCAL ECONOMY

- Maintain/expand healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Develop business-oriented mixed use development in accordance with Comprehensive Land Use Plan
- Retain and expand current businesses
- Develop multi-modal transportation system that provides access to shopping and employment centers
- Develop a reputation as a great place for small and/or local businesses
- Revitalize Westminster Center Urban Reinvestment Area



SAFE AND SECURE COMMUNITY

- Citizens are safe anywhere in the City
- Public safety departments: well equipped and authorized staffing levels staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own safety and well being
- Manage disaster mitigation, preparedness, response and recovery
- Maintain safe buildings and homes
- Protect residents, homes, and buildings from flooding through an effective stormwater management program



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

- Develop transit oriented development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Have HOAs and residents taking responsibility for neighborhood private infrastructure
- Develop Westminster as a cultural arts community
- Have a range of quality homes for all stages of life (type, price) throughout the City
- Have strong community events and active civic engagement



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

- Have energy efficient, environmentally sensitive city operations
- Reduce energy consumption citywide
- Increase and maintain greenspace (parks, open space, etc.) consistent with defined goals
- Preserve vistas and view corridors
- A convenient recycling program for residents and businesses with a high level of participation



Mission statement: We deliver exceptional value and quality of life through SPIRIT.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, FEBRUARY 13, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor McNally led the Council, Staff and audience in the Pledge of Allegiance.

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Faith Winter, and Councillors Herb Atchison, Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of January 23, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that City Council would not meet on February 20 and City Hall would be closed in observance of Presidents' Day.

Following adjournment of the Council meeting, the Council would conduct a post-meeting in the Board Room to hear a Staff presentation on an Employee Wellness Clinic. The public was welcome to attend.

CITY COUNCIL COMMENTS

Councillor Briggs reported that the South Westminster Arts Group's Interactive Night at the Arts dinner the past weekend had been an excellent event. He urged others to attend next year's event to celebrate Valentine Day.

Mayor Pro Tem Winter invited residents to attend the Council Dessert at 7 P.M. on February 21 at DeVry University. It was an opportunity to meet with City Council and discuss any issues or concerns.

Mayor McNally reported that she served as a verifier for an entry into the Guinness Book of World Records being submitted by local resident, Tommy Haffey. Mr. Haffey had previously held the record for stacking the most pennies in a design. His record had been broken by someone else, and he was attempting to regain his title by stacking 646,780 pennies. Mayor McNally reported that she was a witness to the feat and it was truly amazing.

PRESENTATIONS

Councillor Lindsey read a proclamation designating March 31, 2012, between 8:30 and 9:30 p.m. as Earth Hour in the City of Westminster. A World Wildlife Fund global initiative, Earth Hour was held to focus communities on the impact that one hour could have on the environment. At 8:30 p.m. on March 31, the City Hall clock tower would be turned off for one hour. Residents and business owners were urged to turn off lights during that hour, too, in a massive collective effort to reduce energy consumption. Councillor Lindsey presented the proclamation to Lisa Bressler, Chairman of the Environmental Advisory Board.

Lori Daniel, the Manager of Recreation Services for the City of Aurora and a local representative and past president of the National Recreation and Park Association, presented the 2011 Dorothy Mullen Arts and Humanities Award to Mayor McNally and Laurie Brandt for the South Westminster Arts Group. This award honored the most innovative and effective arts and humanities programs across the nation and recognized the agencies that provided them. Members of the South Westminster Arts Group (SWAG) were in attendance to observe the presentation, and Ms. Brandt, Executive Director of SWAG, recognized their contributions to SWAG's success.

CONSENT AGENDA

The following actions were submitted for Council's consideration on the consent agenda: based on results of the State of Colorado bid, award the bid for three Police Department patrol vehicles to Lakewood Fordland and Mike Shaw Chevrolet in the amount of \$114,873; based on results of the State of Colorado light-duty vehicle bid, award the bid for five Toyota Prius hybrids, totaling \$123,845, to Go Toyota Scion; upon recommendation of the City Manager, find that the public interest would best be served by authorizing the City Manager to sign a contract with the sole source provider, Great Lakes Marine, in the negotiated amount of \$73,500 for the purchase of a Montauk Boston Whaler replacement patrol boat for Standley Lake Regional Park; award the bids for the purchase of ferric chloride to PVS Technologies, lime to Mississippi Lime Company, sodium hypochlorite to DPC Industries and polymer to Polydyne Inc. and authorize total purchases on an as-needed basis of \$693,760, plus a 10% contingency of \$69,376 for a total expenditure not to exceed \$763,136; authorize the City Manager to execute a contract for 2012, with options for two additional one-year renewals in 2013 and 2014, for the Wastewater Collection System Maintenance Program with the low bidder, Guildner Pipeline Maintenance, in the amount of \$431,200 and authorize a 10% contingency of \$43,120 for a total budget of \$474,320; find that the Western States Contracting Alliance pricing meets City Charter bidding requirements and authorize Staff to proceed with 2012 calendar year purchases of desktop PCs, laptop PCs, storage hardware, computer servers, printers and software through Dell Computer Corporation in an amount not to exceed \$262,400; find that the US General Services Administration pricing meets City Charter bidding requirements and authorize staff to proceed with 2012 calendar year purchases of phone system maintenance, procurement of additional hardware and professional services through Axess Communications in an amount not to exceed \$84,000; based on the recommendation of the City Manager, find that the public interest would be best served by authorizing the City Manager to execute a sole source contract with CH2M-Hill for consulting services and technical oversight of the gasoline recovery system in an amount not to exceed \$75,000; authorize the purchase of the approximately 2.4-acre Holstein property located at 9849 Yarrow Court for open space for \$260,000 plus closing costs not to exceed \$5,000 and authorize the City Manager to execute all documents required to close on the purchase of the property; authorize the purchase of the approximately 31.87-acre Bonnie Stewart property located at 8390 West 108th Avenue for open space for \$836,000 plus closing costs not to exceed \$5,000, and authorize the City Manager to execute all documents required to close on the purchase of the property; pass Councillor's Bill No. 2 on second reading amending the zoning for the Westminster Reformed Presbyterian Church parcel from Open to Planned Unit Development based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code had been met; and pass Councillor's Bill No. 3 on second reading authorizing the City Manager to sign four lease agreements for two homes, one trailer pad and one agricultural lease at the City's Strasburg Natural Resource Farm.

Councillor Major removed Agenda Item 8E concerning the 2012 Wastewater Collection System Maintenance Program for individual consideration and moved to approve the consent agenda excluding Agenda Item 8E. Mayor Pro Tem Winter seconded the motion, and it carried unanimously.

2012 WASTEWATER COLLECTION SYSTEM MAINTENANCE PROGRAM (AGENDA ITEM 8E)

Councillor Major moved, seconded by Mayor Pro Tem Winter, to authorize the City Manager to execute a contract for 2012, with options for two additional one-year renewals in 2013 and 2014, for the Wastewater Collection System Maintenance Program with the low bidder, Guildner Pipeline Maintenance, in the amount of \$431,200 and authorize a 10% contingency of \$43,120 for a total budget of \$474,320. The motion passed on a 6:1 vote with Councillor Kaiser abstaining due to a possible conflict of interest.

COUNCILLOR'S BILL NO. 4 APPROVING WESTMINSTER SPORTS CENTER LEASE AGREEMENT

Upon a motion by Mayor Pro Tem Winter, seconded by Councillor Atchison, the Council voted unanimously at roll call to pass Councillor's Bill No. 4 on first reading approving a lease agreement with Westminster AFC, Inc., for office space at the Westminster Sports Center, a City-owned indoor soccer facility located at 6051 West 95th Avenue.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser and seconded by Councillor Major to adjourn. The motion carried and the meeting adjourned at 7:18 P.M.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Financial Report for January 2012
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

Accept the Financial Report for January as presented.

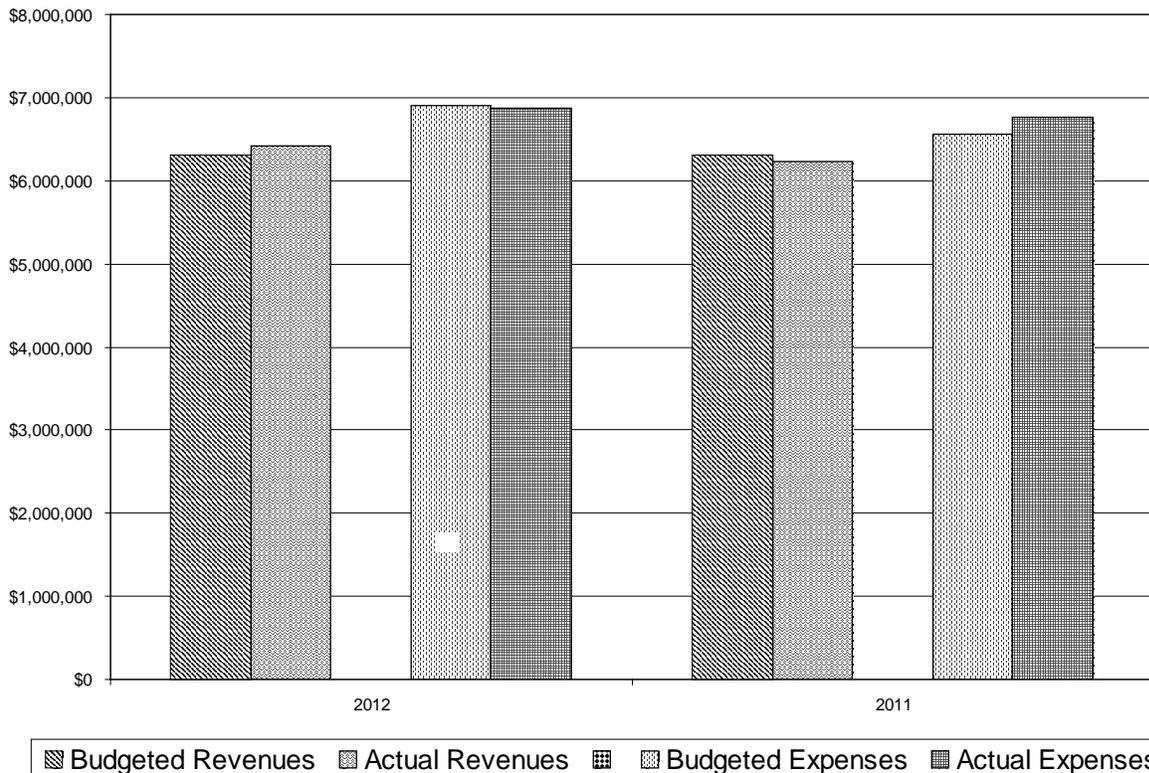
Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, "budget" refers to the pro-rated budget. The budget numbers that are presented reflect the City's amended adopted budget.

The revenues are pro-rated based on 10-year historical averages. Expenses are also pro-rated based on 10-year historical averages. A third payroll is reflected in the January expenses, causing actual expenses to exceed budgeted expenses in several areas. Payroll expenses will even out through the year.

The General Fund expenditures exceed revenues by \$447,053. The following graph represents Budget vs. Actual for 2011-2012.

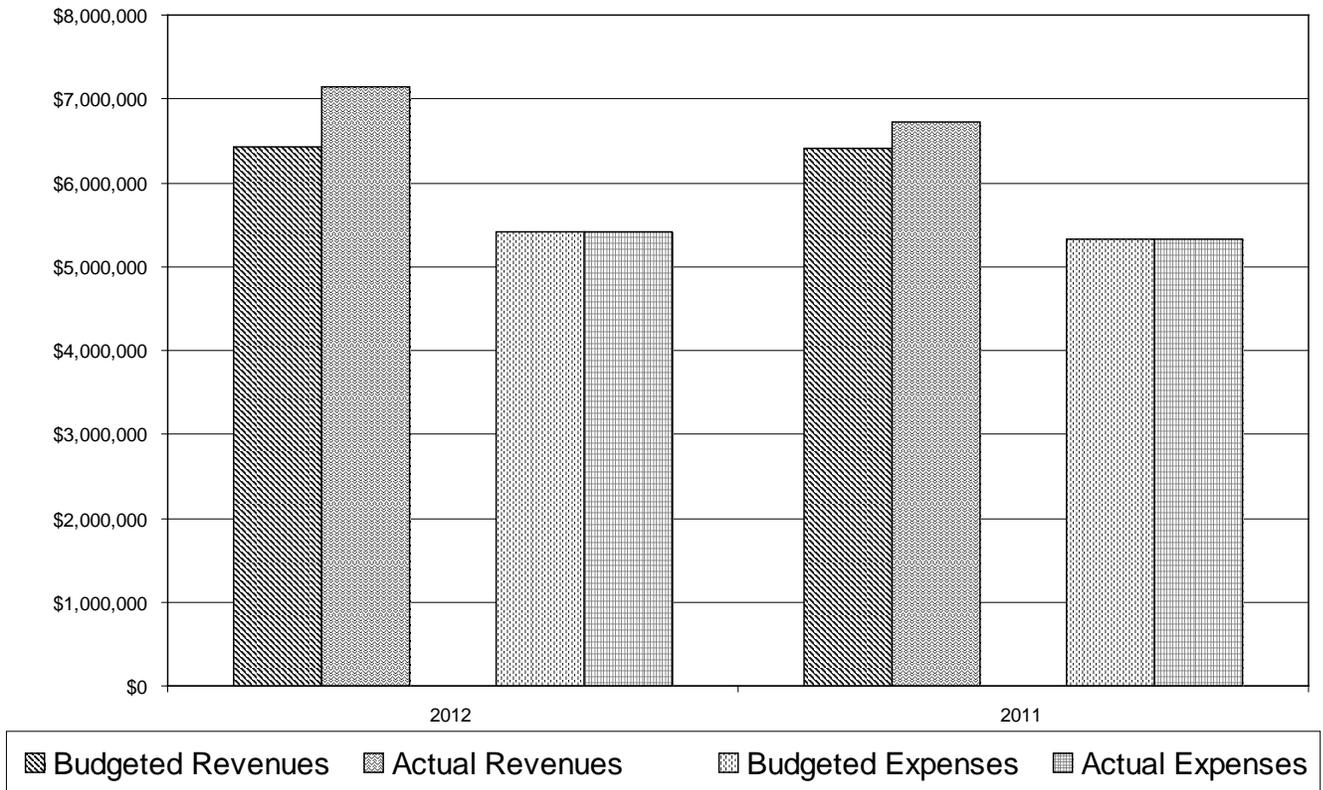
**General Fund
Budget vs Actual**



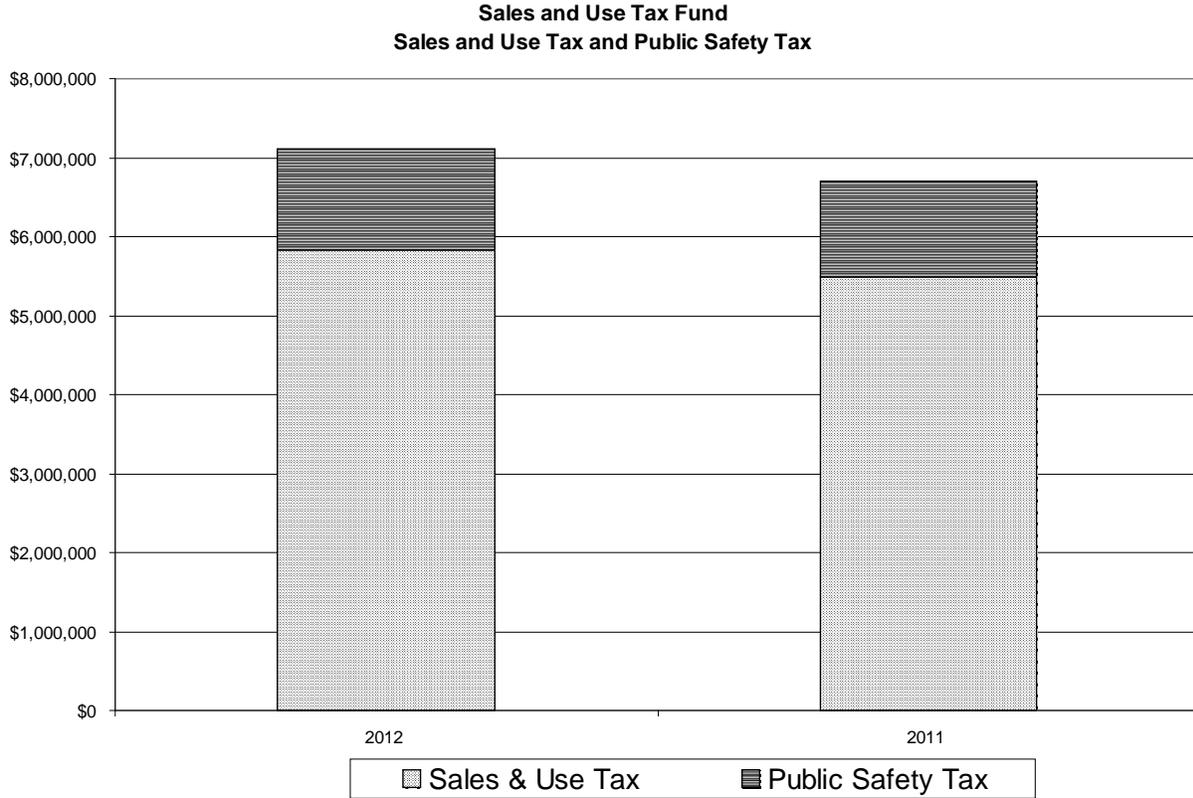
The Sales and Use Tax Fund revenues exceed expenditures by \$1,723,637. On a year-to-date cash basis, total sales and use tax is up 6.3% from 2011. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are down 1.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 62.8% of all collections, are up 3.8% for the month.
- Urban renewal areas make up 41.2% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 79.0% of this money is being retained for General Fund use.

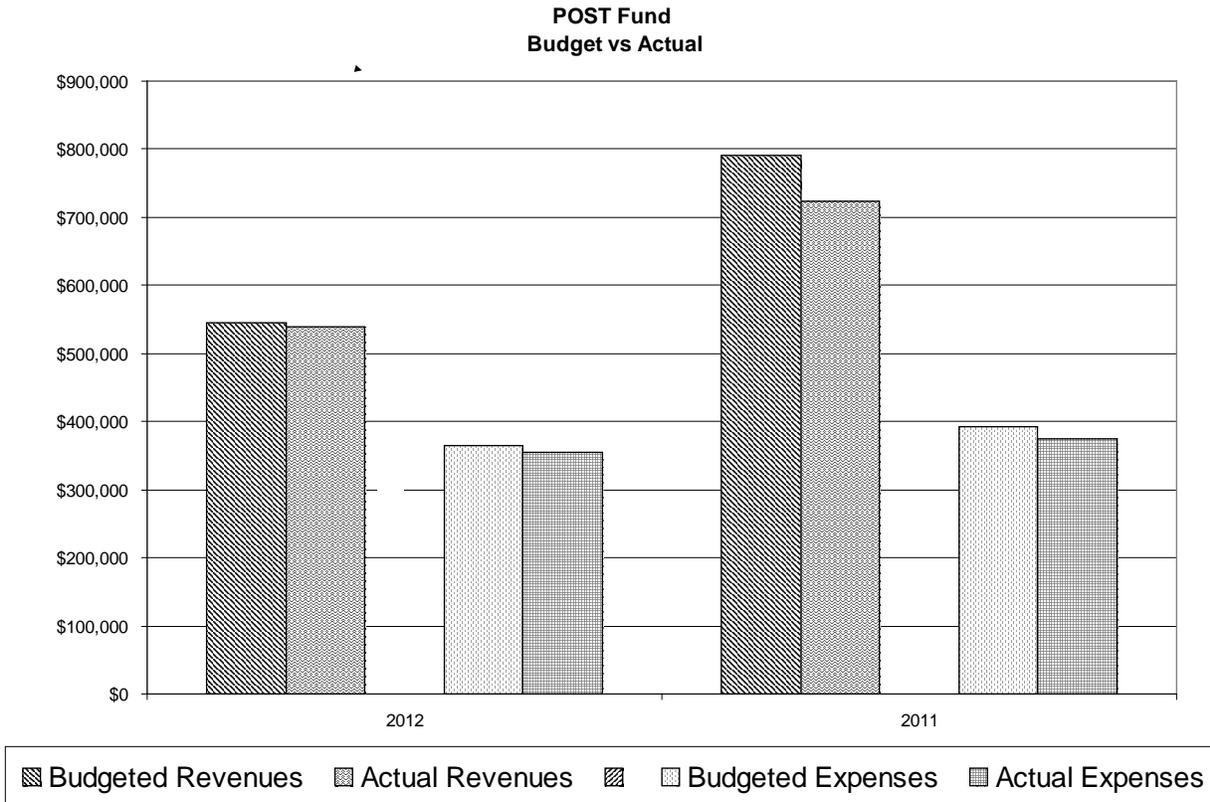
**Sales & Use Tax Fund
Budget vs Actual**



The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.

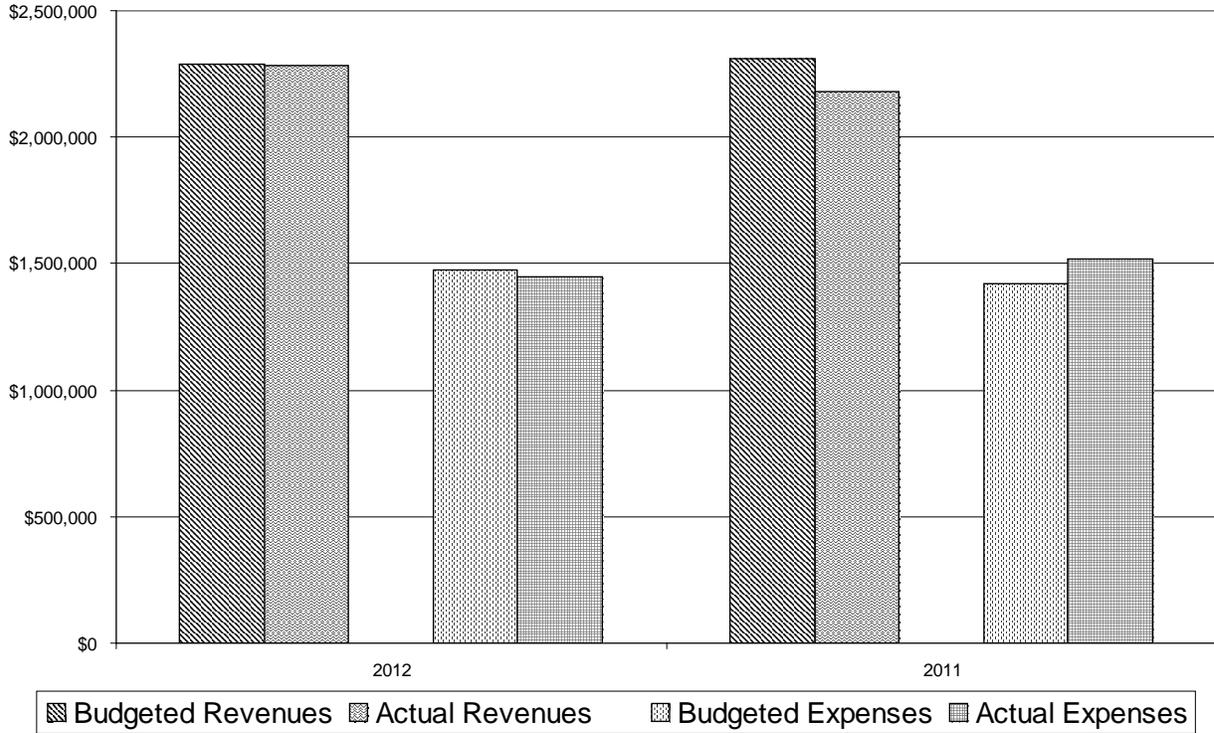


The Parks Open Space and Trails Fund revenues exceed expenditures by \$183,479.



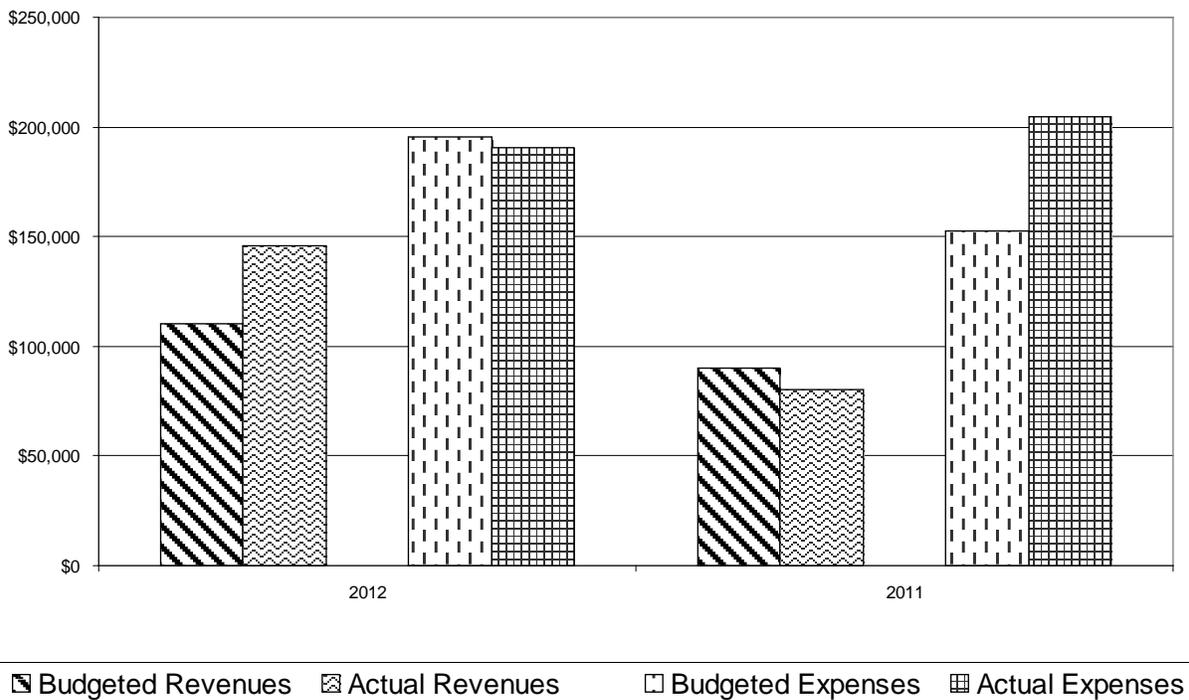
The combined Water & Wastewater Fund revenues exceed expenses by \$1,632,518. Operating revenues exceed operating expenses by \$833,558. \$14,860,000 is budgeted for capital projects and reserves.

**Combined Water and Wastewater Funds
Operating Budget vs Actual**



The combined Golf Course Fund expenditures exceed revenues by \$45,001.

**Golf Course Enterprise
Operating Budget vs Actual**



Policy Issue

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

Background Information

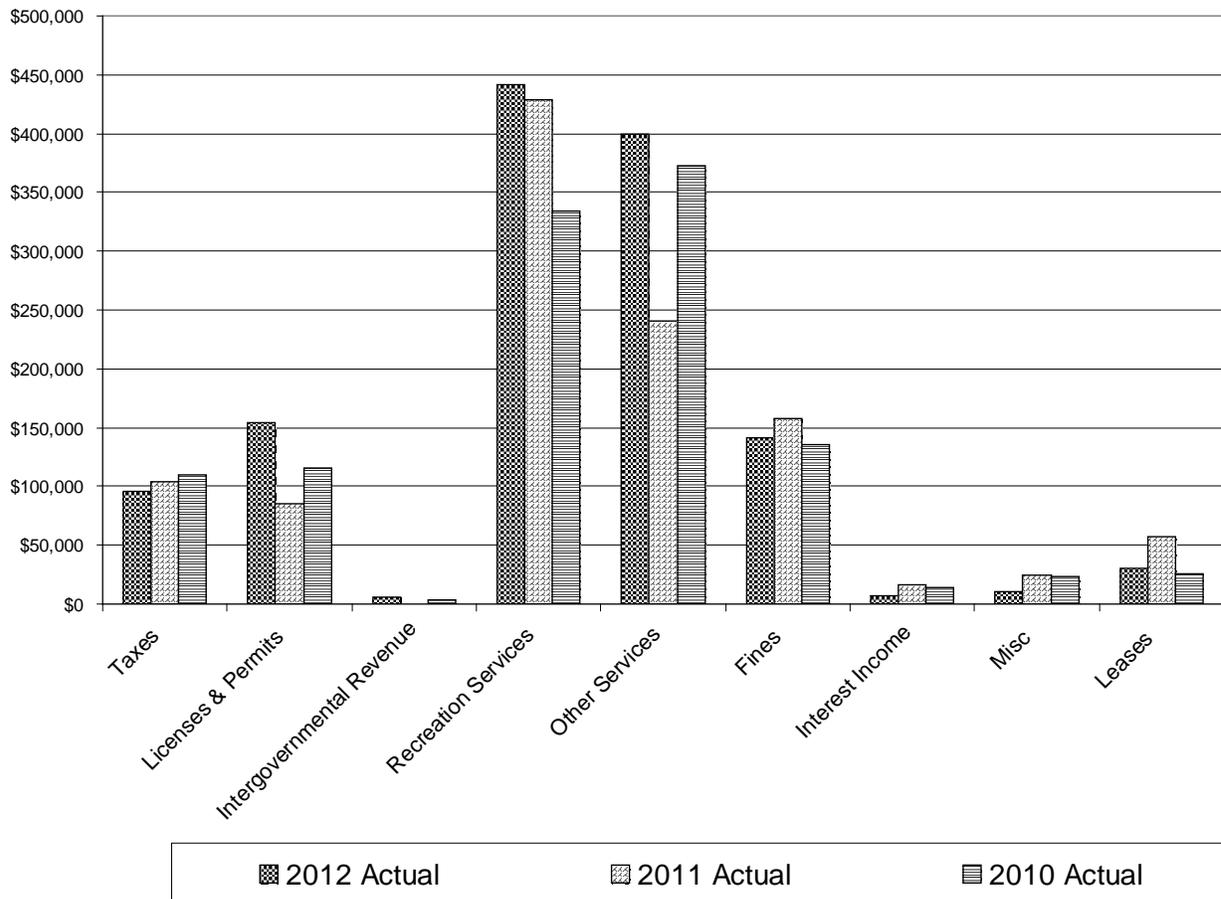
This section includes a discussion of highlights of each fund presented.

General Fund

This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

The following chart represents the trend in actual revenues from 2010-2012 year-to-date.

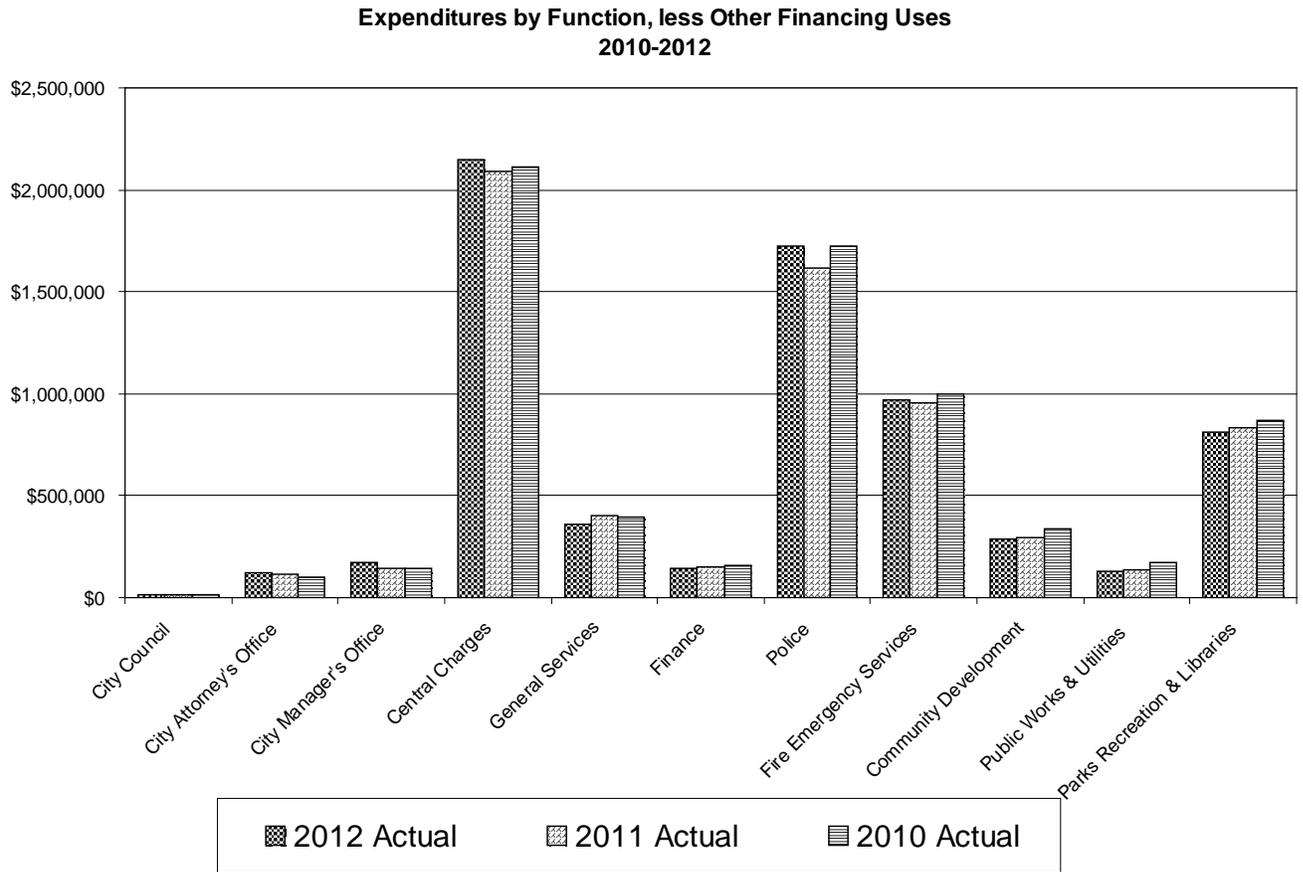
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2010-2012**



Significant differences between years in General Fund revenue categories are explained as follows:

- The License and Permit variance is due mostly to a large increase in commercial building permit activity.
- The variance in Other Services is due to a timing difference in the posting of EMS revenue between years.

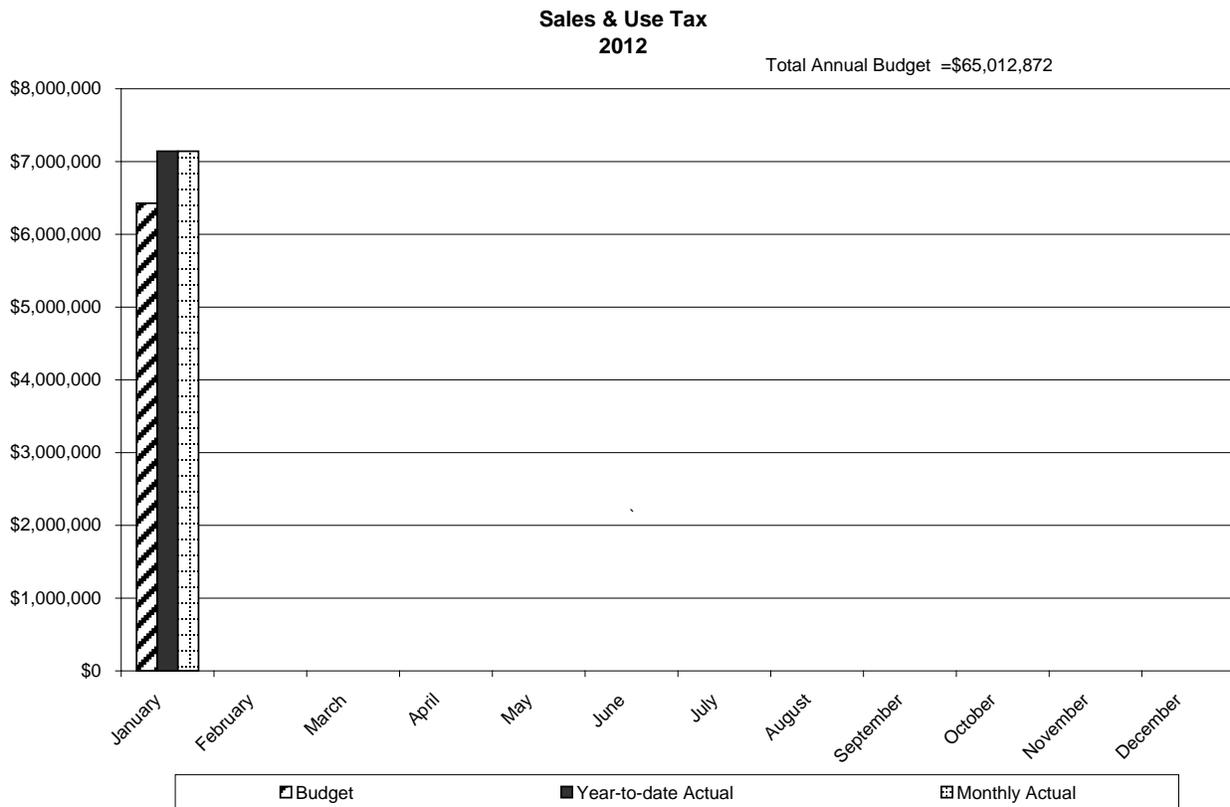
The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2010-2012.



Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

These funds are the repositories for the 3.85% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, and the Debt Service Fund. The Parks, Open Space, and Trails Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

This chart indicates how the City's Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.

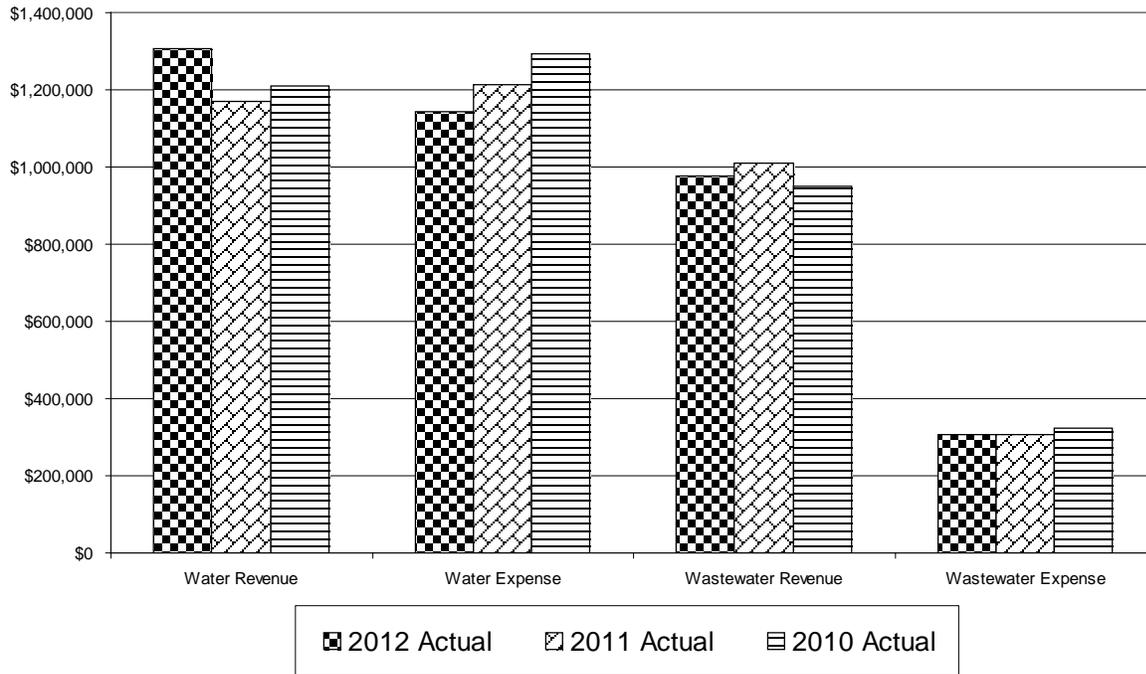


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects and reserves.

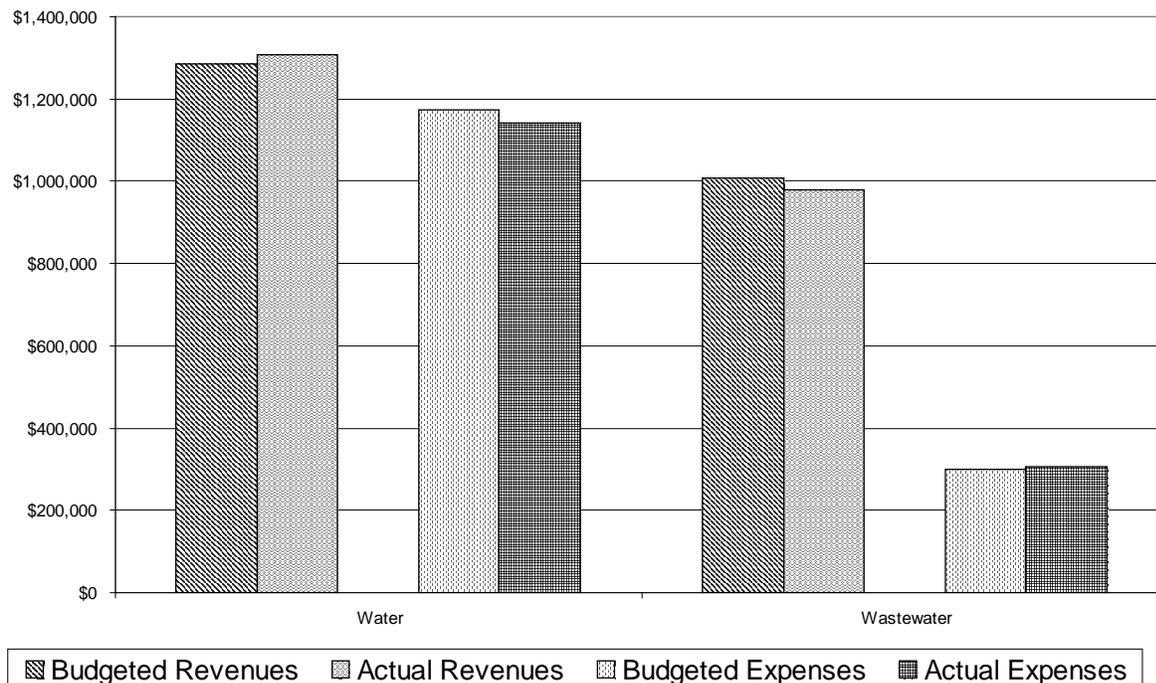
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2010-2012**



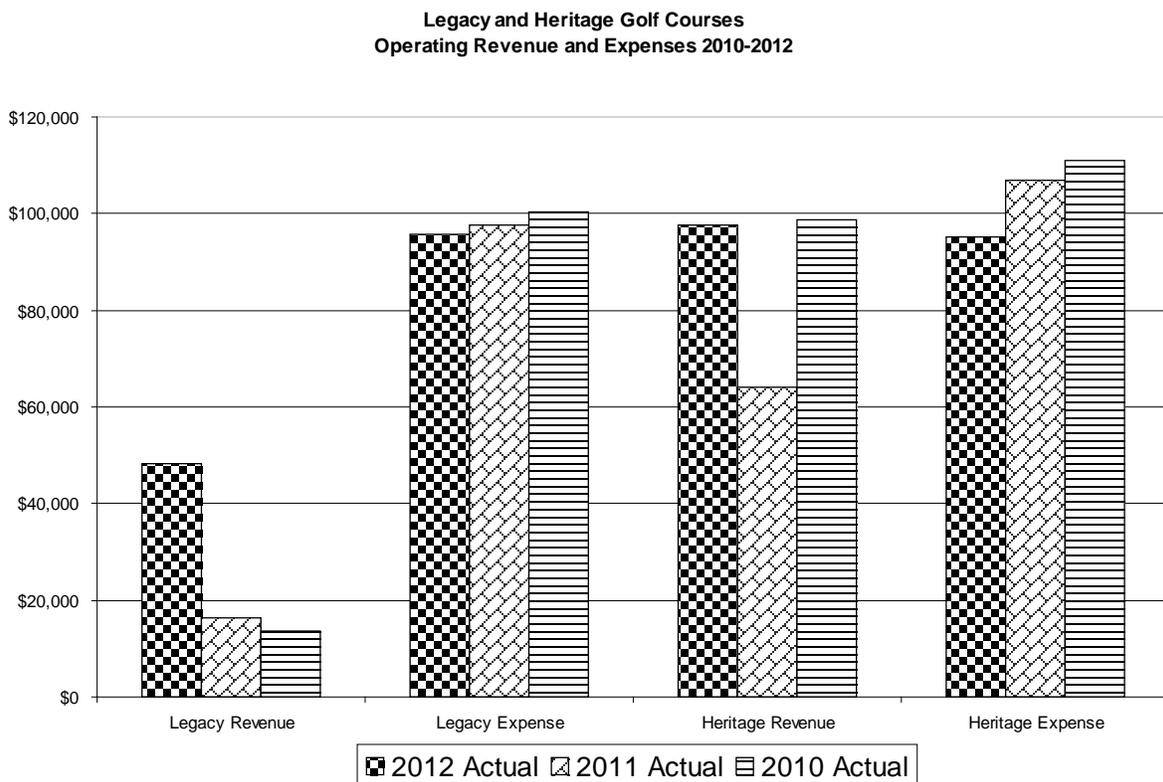
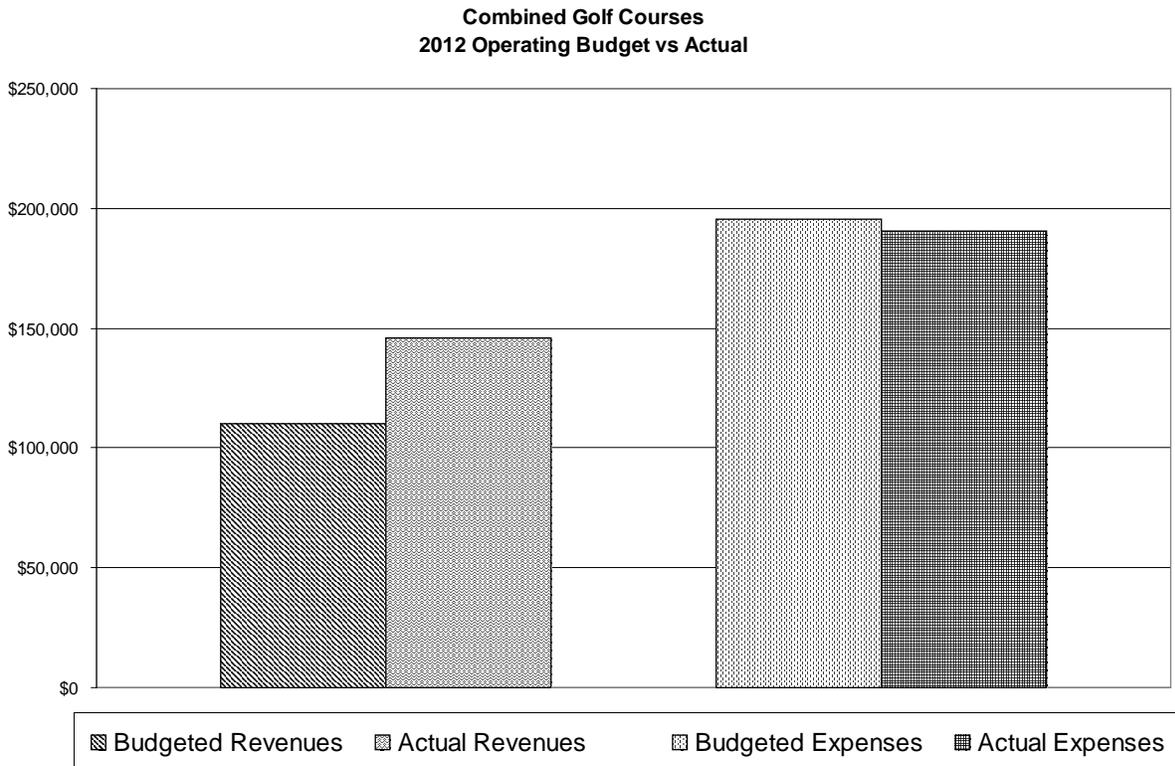
The Water Fund revenue variance between years is due to the effect of climatic variations on water consumption as well as changes in billing rates.

**Water and Wastewater Funds
2012 Operating Budget vs Actual**



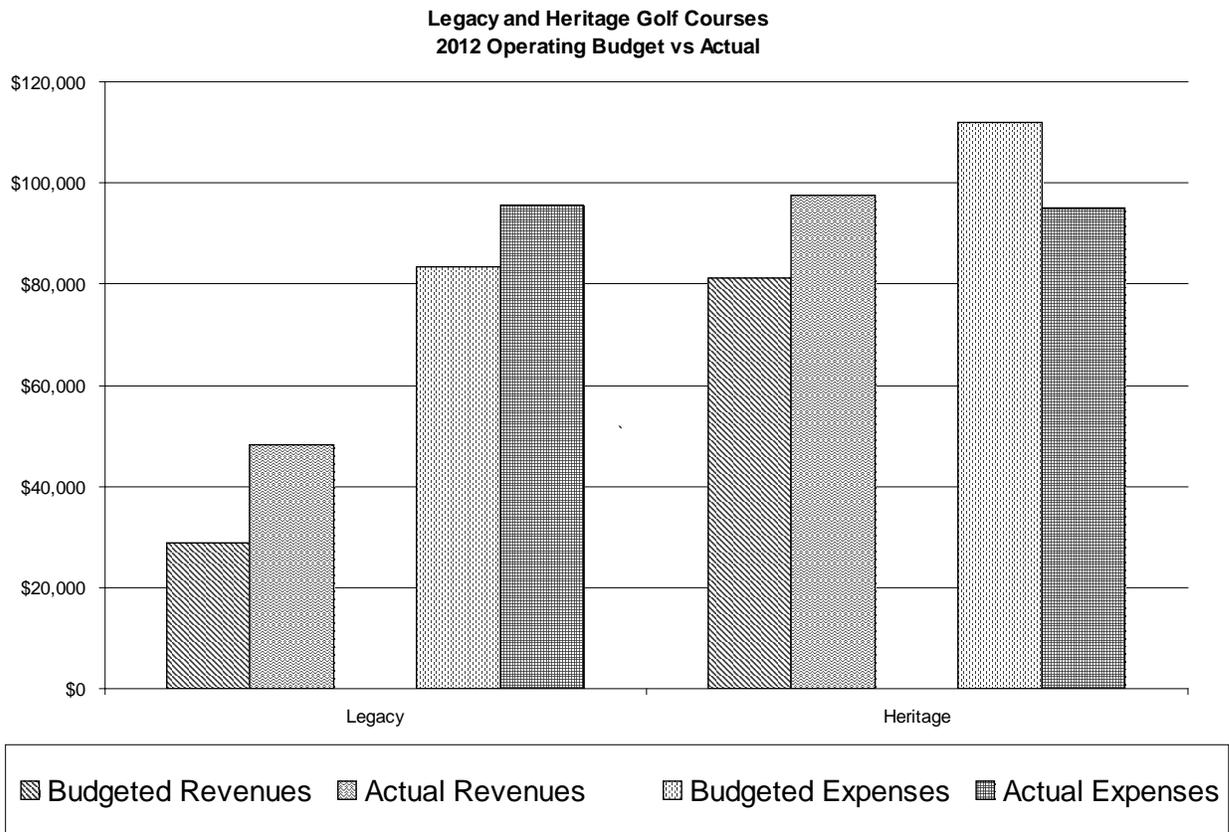
Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City's two municipal golf courses.



Operating activities including green fees, cart rental and driving range fees account for the increase in revenues from both courses. In addition, the golf course transfers in have increased about \$22,000 from 2011.

The following graphs represent the information for each of the golf courses.



This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Statements for Council
- Shopping Center Report

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,575,590	67,321		95,549	28,228	141.9%
Licenses & Permits	1,415,000	104,669		153,714	49,045	146.9%
Intergovernmental Revenue	5,041,200	32,001		5,334	(26,667)	16.7%
Charges for Services						
Recreation Services	6,418,338	365,841		441,239	75,398	120.6%
Other Services	9,530,020	355,021		399,741	44,720	112.6%
Fines	2,110,000	163,337		141,063	(22,274)	86.4%
Interest Income	180,000	13,449		6,800	(6,649)	50.6%
Miscellaneous	1,733,562	32,642		10,543	(22,099)	32.3%
Leases	386,208	30,693		30,693	0	100.0%
Interfund Transfers	61,684,647	5,140,387		5,140,387	0	100.0%
Total Revenues	94,074,565	6,305,361		6,425,063	119,702	101.9%
Expenditures						
City Council	240,119	17,134		12,625	(4,509)	73.7%
City Attorney's Office	1,197,089	96,007		123,452	27,445	128.6%
City Manager's Office	1,492,443	123,693		171,790	48,097	138.9%
Central Charges	25,031,200	2,109,385		2,149,657	40,272	101.9%
General Services	5,825,352	419,090		357,031	(62,059)	85.2%
Finance	1,994,706	157,700		141,503	(16,197)	89.7%
Police	20,379,206	1,634,786		1,721,913	87,127	105.3%
Fire Emergency Services	11,777,934	983,834		966,440	(17,394)	98.2%
Community Development	4,125,271	310,698		290,049	(20,649)	93.4%
Public Works & Utilities	7,767,031	175,650		128,264	(47,386)	73.0%
Parks, Recreation & Libraries	14,244,214	877,319		809,392	(67,927)	92.3%
Total Expenditures	94,074,565	6,905,296		6,872,116	(33,180)	99.5%
Revenues Over(Under)						
Expenditures	0	(599,935)		(447,053)	152,882	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	44,669,579	4,602,467		5,247,371	644,904	114.0%
Sales Tx Audit Revenues	719,000	59,677		29,112	(30,565)	48.8%
S-T Rev. STX	<u>45,388,579</u>	<u>4,662,144</u>		<u>5,276,483</u>	<u>614,339</u>	113.2%
Use Tax						
Use Tax Returns	7,193,750	421,145		541,768	120,623	128.6%
Use Tax Audit Revenues	785,000	65,155		14,440	(50,715)	22.2%
S-T Rev. UTX	<u>7,978,750</u>	<u>486,300</u>		<u>556,208</u>	<u>69,908</u>	114.4%
Total STX and UTX	<u><u>53,367,329</u></u>	<u><u>5,148,444</u></u>		<u><u>5,832,691</u></u>	<u><u>684,247</u></u>	113.3%
Public Safety Tax						
PST Tax Returns	10,985,043	1,223,015		1,272,661	49,646	104.1%
PST Audit Revenues	308,500	25,606		8,707	(16,899)	34.0%
Total Rev. PST	<u>11,293,543</u>	<u>1,248,621</u>		<u>1,281,368</u>	<u>32,747</u>	102.6%
Interest Income	95,000	7,917		5,900	(2,017)	74.5%
Interfund Transfers	257,000	21,417		21,417	0	100.0%
Total Revenues and Carryover	<u><u>65,012,872</u></u>	<u><u>6,426,399</u></u>		<u><u>7,141,376</u></u>	<u><u>714,977</u></u>	111.1%
Expenditures						
Central Charges	<u>65,012,872</u>	<u>5,417,739</u>		<u>5,417,739</u>	<u>0</u>	100.0%
Revenues Over(Under) Expenditures	<u><u>0</u></u>	<u><u>1,008,660</u></u>		<u><u>1,723,637</u></u>	<u><u>714,977</u></u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	4,814,510	536,043		533,766	(2,277)	99.6%
Interest Income	3,400	283		2,000	1,717	706.7%
Sale of Assets	0	6,146		0	(6,146)	
Miscellaneous	85,030	940		940	0	100.0%
Interfund Transfers	19,000	1,582		1,583	1	100.1%
Total Revenues	<u>4,921,940</u>	<u>544,994</u>		<u>538,289</u>	<u>(6,705)</u>	98.8%
Expenditures						
Central Charges	4,644,100	356,834		349,066	(7,768)	97.8%
Park Services	277,840	8,129		5,744	(2,385)	70.7%
	<u>4,921,940</u>	<u>364,963</u>		<u>354,810</u>	<u>(10,153)</u>	97.2%
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>180,031</u>		<u>183,479</u>	<u>3,448</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	6,250		6,420	170	102.7%
Rates and Charges	43,153,638	2,248,357		2,268,145	19,788	100.9%
Miscellaneous	435,000	36,250		9,080	(27,170)	25.0%
Total Operating Revenues	<u>43,663,638</u>	<u>2,290,857</u>		<u>2,283,645</u>	<u>(7,212)</u>	99.7%
Operating Expenses						
Central Charges	5,875,355	489,613		571,105	81,492	116.6%
Finance	669,344	61,580		61,680	100	100.2%
Public Works & Utilities	20,349,992	695,877		591,215	(104,662)	85.0%
Parks, Recreation & Libraries	132,272	3,307		2,135	(1,172)	64.6%
Information Technology	2,778,352	225,047		223,952	(1,095)	99.5%
Total Operating Expenses	<u>29,805,315</u>	<u>1,475,424</u>		<u>1,450,087</u>	<u>(25,337)</u>	98.3%
Operating Income (Loss)	<u>13,858,323</u>	<u>815,433</u>		<u>833,558</u>	<u>18,125</u>	
Other Revenue and Expenses						
Tap Fees	3,700,000	211,000		438,208	227,208	207.7%
Interest Income	553,600	46,134		30,127	(16,007)	65.3%
Interfund Transfers	3,967,501	330,625		330,625	0	100.0%
Debt Service	(7,219,424)	0		0	0	
Total Other Revenue (Expenses)	<u>1,001,677</u>	<u>587,759</u>		<u>798,960</u>	<u>211,201</u>	
Increase (Decrease) in Net Assets	<u>14,860,000</u>	<u>1,403,192</u>		<u>1,632,518</u>	<u>229,326</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	6,250		6,420	170	102.7%
Rates and Charges	30,892,138	1,242,914		1,290,825	47,911	103.9%
Miscellaneous	425,000	35,417		8,870	(26,547)	25.0%
Total Operating Revenues	<u>31,392,138</u>	<u>1,284,581</u>		<u>1,306,115</u>	<u>21,534</u>	101.7%
Operating Expenses						
Central Charges	4,152,445	346,037		412,908	66,871	119.3%
Finance	669,344	61,580		61,680	100	100.2%
Public Works & Utilities	14,246,761	538,526		441,878	(96,648)	82.1%
PR&L Standley Lake	132,272	3,307		2,135	(1,172)	64.6%
Information Technology	2,778,352	225,047		223,952	(1,095)	99.5%
Total Operating Expenses	<u>21,979,174</u>	<u>1,174,497</u>		<u>1,142,553</u>	<u>(31,944)</u>	97.3%
Operating Income (Loss)	<u>9,412,964</u>	<u>110,084</u>		<u>163,562</u>	<u>53,478</u>	148.6%
Other Revenue and Expenses						
Tap Fees	3,000,000	175,300		339,859	164,559	193.9%
Interest Income	365,600	30,467		22,127	(8,340)	72.6%
Interfund Transfers	2,984,511	248,709		248,709	0	100.0%
Debt Service	(5,715,075)	0		0	0	
Total Other Revenues (Expenses)	<u>635,036</u>	<u>454,476</u>		<u>610,695</u>	<u>156,219</u>	
Increase (Decrease) in Net Assets	<u>10,048,000</u>	<u>564,560</u>		<u>774,257</u>	<u>209,697</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	12,261,500	1,005,443		977,320	(28,123)	97.2%
Miscellaneous	10,000	833		210	(623)	25.2%
Total Operating Revenues	<u>12,271,500</u>	<u>1,006,276</u>		<u>977,530</u>	<u>(28,746)</u>	97.1%
Operating Expenses						
Central Charges	1,722,910	143,576		158,197	14,621	110.2%
Public Works & Utilities	6,103,231	157,351		149,337	(8,014)	94.9%
Total Operating Expenses	<u>7,826,141</u>	<u>300,927</u>		<u>307,534</u>	<u>6,607</u>	102.2%
Operating Income (Loss)	<u>4,445,359</u>	<u>705,349</u>		<u>669,996</u>	<u>(35,353)</u>	95.0%
Other Revenue and Expenses						
Tap Fees	700,000	35,700		98,349	62,649	275.5%
Interest Income	188,000	15,667		8,000	(7,667)	51.1%
Interfund Transfers	982,990	81,916		81,916	0	100.0%
Debt Service	(1,504,349)	0		0	0	
Total Other Revenues (Expenses)	<u>366,641</u>	<u>133,283</u>		<u>188,265</u>	<u>54,982</u>	
Increase (Decrease) in Net Assets	<u>4,812,000</u>	<u>838,632</u>		<u>858,261</u>	<u>19,629</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,050,000	170,833		165,753	(5,080)	97.0%
Interest Income	82,000	6,833		4,100	(2,733)	60.0%
Miscellaneous	0	0		11	11	
Total Revenues	<u>2,132,000</u>	<u>177,666</u>		<u>169,864</u>	<u>(7,802)</u>	95.6%
Expenses						
General Services	86,200	1,810		1,824	14	100.8%
Community Development	169,090	13,020		13,103	83	100.6%
PR&L Park Services	200,000	3,600		0	(3,600)	
Public Works & Utilities	322,710	323		0	(323)	
Total Expenses	<u>778,000</u>	<u>18,753</u>		<u>14,927</u>	<u>(3,826)</u>	79.6%
Increase (Decrease) in Net Assets	<u>1,354,000</u>	<u>158,913</u>		<u>154,937</u>	<u>(3,976)</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined						
Revenues						
Charges for Services	2,745,022	47,620		83,189	35,569	174.7%
Interfund Transfers	751,143	62,595		62,595	0	100.0%
Total Revenues	<u>3,496,165</u>	<u>110,215</u>		<u>145,784</u>	<u>35,569</u>	132.3%
Expenses						
Central Charges	208,427	17,003		22,052	5,049	129.7%
Recreation Facilities	3,287,738	178,386		168,733	(9,653)	94.6%
Total Expenses	<u>3,496,165</u>	<u>195,389</u>		<u>190,785</u>	<u>(4,604)</u>	97.6%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(85,174)</u>		<u>(45,001)</u>	<u>40,173</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Revenues						
Charges for Services	1,456,167	21,843		41,180	19,337	188.5%
Interfund Transfers	85,000	7,083		7,083	0	100.0%
Total Revenues	<u>1,541,167</u>	<u>28,926</u>		<u>48,263</u>	<u>19,337</u>	166.8%
Expenses						
Central Charges	109,383	9,079		12,242	3,163	134.8%
Recreation Facilities	1,431,784	74,453		83,395	8,942	112.0%
Total Expenses	<u>1,541,167</u>	<u>83,532</u>		<u>95,637</u>	<u>12,105</u>	114.5%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(54,606)</u>		<u>(47,374)</u>	<u>7,232</u>	

**City of Westminster
Financial Report
For One Month Ending January 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Charges for Services	1,288,855	25,777		42,009	16,232	163.0%
Interfund Transfers	666,143	55,512		55,512	0	100.0%
Total Revenues	<u>1,954,998</u>	<u>81,289</u>		<u>97,521</u>	<u>16,232</u>	120.0%
Expenses						
Central Charges	99,044	7,924		9,810	1,886	123.8%
Recreation Facilities	1,855,954	103,933		85,338	(18,595)	82.1%
Total Expenses	<u>1,954,998</u>	<u>111,857</u>		<u>95,148</u>	<u>(16,709)</u>	85.1%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(30,568)</u>		<u>2,373</u>	<u>32,941</u>	

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH AND YEAR-TO-DATE JANUARY 2012

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	629,846	15,739	645,585	587,528	26,701	614,230	7	-41	5
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	498,458	1,618	500,075	491,147	2,686	493,833	1	-40	1
SHOPS AT WALNUT CREEK 104TH & REED TARGET	323,029	1,339	324,368	320,244	3,256	323,500	1	-59	0
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	242,983	1,093	244,075	242,738	571	243,308	0	92	0
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	239,369	1,763	241,132	216,892	1,153	218,045	10	53	11
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	239,074	288	239,362	235,258	746	236,005	2	-61	1
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	224,073	2,054	226,126	217,219	1,900	219,119	3	8	3
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	209,728	717	210,445	216,773	517	217,290	-3	39	-3
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	201,636	1,699	203,335	181,057	7,565	188,623	11	-78	8
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	164,672	17,840	182,512	148,815	41,009	189,824	11	-57	-4
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	178,466	2,026	180,492	182,019	1,095	183,115	-2	85	-1
WESTMINSTER MALL 88TH & SHERIDAN 2 DEPARTMENT STORES	156,703	1,731	158,434	227,368	1,440	228,808	-31	20	-31
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	132,968	543	133,511	140,956	604	141,560	-6	-10	-6
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	126,122	343	126,465	147,065	129	147,194	-14	165	-14
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	20,168	56,953	77,121	4,205	90,734	94,940	380	-37	-19

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH AND YEAR-TO-DATE JANUARY 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	70,626	300	70,926	76,163	359	76,522	-7	-17	-7
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	54,653	261	54,915	55,124	262	55,386	-1	0	-1
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	54,766	122	54,888	62,857	629	63,485	-13	-81	-14
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	45,834	180	46,014	48,711	232	48,943	-6	-22	-6
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	40,754	986	41,739	37,602	486	38,088	8	103	10
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	37,553	286	37,838	29,992	10,843	40,835	25	-97	-7
WILLOW RUN 128TH & ZUNI SAFEWAY	35,473	1,062	36,535	34,714	508	35,222	2	109	4
WESTMOOR NW OF 108TH AND WADSWORTH GE ACCESS	6,343	27,809	34,152	7,446	28,961	36,407	-15	-4	-6
PAVILION COURT 122ND & PECOS WESTERN ELECTRONICS	1,609	31,837	33,445	2,024	8,183	10,207	-21	289	228
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	27,450	0	27,450	30,329	0	30,329	-9	*****	-9
	3,962,353	168,588	4,130,941	3,944,246	230,569	4,174,816	0	-27	-1



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: First City Council Meeting in March Date Change

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Change the date of the first regularly scheduled City Council meeting in March from March 12 to March 19, 2012.

Summary Statement

- City Council normally conducts regular meetings on the second and fourth Mondays of each month. This year the majority of City Council will be attending the National League of Cities Annual Conference on the second Monday of March. To avoid the potential lack of a quorum on March 12, Staff recommends the meeting normally held on the second Monday be rescheduled to the third Monday in March, March 19, 2012.
- If approved, City Council will conduct a study session on March 5 and regular meetings on March 19 and 26, 2012.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

Council could decide to leave the March 12 regular meeting date unchanged or choose to move the meeting to a different day.

Background Information

Occasionally, conflicts arise with dates of regularly scheduled City Council meetings and holidays, important civic events, and/or conferences that the Council traditionally attends. To accommodate these conflicts, Council's scheduled meetings are changed. In 2012, the first Council meeting in March (March 12) conflicts with the Annual Conference of the National League of Cities. Due to potential conference attendance by Council members and to avoid a potential lack of quorum, Staff recommends the March 12 meeting be rescheduled to March 19.

The public is aware that regular Council meetings and study sessions are held on Mondays, making it reasonable to reschedule meetings to a different Monday in the month.

Changing the March 12, 2012 City Council meeting date supports all of City Council's Strategic Plan Goals by ensuring work on the Plan continues even when conflicts in meeting scheduling arise.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Release ReadingRecord as Open Source Software

Prepared By: Kate Skarbek, Library Services Manager
Veronica Smith, Automation Services Coordinator
Eric Sisler, Network Specialist

Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will be best served by disclaiming a copyright interest and transferring the copyright for the in-house developed “ReadingRecord” software to the Free Software Foundation so that other libraries may benefit by having the right to download and use this software as an open source solution.

Summary Statement

- The “ReadingRecord” software was developed by the City’s Library Network Specialist Eric Sisler and provides excellent tracking records for the City’s Summer Reading Program.
- Westminster Municipal Code, Section 15-2-1(A)1, states “The trade, sale, donation, or discarding of City personal property with an estimated value of \$5,000 or more per item shall be approved by City Council.” Staff interprets this requirement to include the ReadingRecord software as personal property, and although the market value is unclear, it is likely above \$5,000.
- Transfer of the ReadingRecord software copyright, currently owned by the City, to the Free Software Foundation (FSF) is required in order to make this software available as open source software to other libraries across the United States.
- By transferring the copyright and converting this software to open source, it is likely that other libraries will customize and make improvements to the software. Those modifications and improvements would then become available and benefit other libraries using the software, including Westminster.
- Requests to use the ReadingRecord software have been received from at least 26 libraries across the United States from Anchorage, Alaska to West Nyak, New York. Westminster has hosted the software for libraries in Colorado as a way of contributing to the state library network, but expanding the service to libraries outside of Colorado would be inconsistent with Westminster library priorities and resources. Consequently, no libraries outside of Colorado have been able to use the software to assist their communities with promoting summer literacy.
- The City Attorney’s Office and Information Technology Staff have reviewed this request and are in agreement with Staff’s recommendation.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council allow City-created software to be released as open-source software to be freely available for other library systems to use?

Alternatives

1. Do not approve the release as recommended and prohibit any other library to use the software, whether hosted by Westminster or not. This alternative is not recommended for the reasons outlined in the background information of this agenda memorandum.
2. Do not approve the release as recommended and charge other library systems to use the software, whether hosted by Westminster or not. This would lead to ongoing maintenance, support, upgrade and liability issues. It would also move the library away from its core services. For these reasons and others outlined in the background information section of this agenda memorandum, this not recommended.

Background Information

For more than 50 years, the Westminster Public Library has proudly offered a Summer Reading Program aimed at ensuring children in the community do not lose the reading skills they work so hard to achieve during the school year during summer vacation. Studies demonstrate that if a child does not read during the summer months, reading skills are lost and students also regress in their math and science skills by as much as three months.

In 2005, several families whose children participated in the Westminster Public Library Summer Reading Program registered the same child multiple times to receive as many prizes as possible. They did so by altering names and going to both libraries. Others made photocopies of prize coupons, falsely redeeming them at local businesses that donated prizes. This fraudulent use negatively affected not only the City's relationship with the generous business community that donated prizes but also threatened the existence of the Summer Reading Program for all since all of the prizes come from local donations.

Staff members met with business owners to ensure that the donated prizes would not be able to be photocopied successfully in the future. At the same time, staff members sought a way to better track program participation to ensure multiple registrations could not happen in the future.

In 2007, City staff members began development of a custom software program, entitled ReadingRecord, in an effort to better track registrations and reduce misuse of the program. Once the software was completed, Westminster offered the opportunity for other Colorado libraries to use the software hosted on Westminster's computer system. Several libraries took advantage of the opportunity, including: Aurora Public, Littleton, Elbert County, Longmont, Mesa County, Rangeview, Wellington, and Westminster. During the first summer, the system tracked 14,214 readers who completed 27,314 reading levels across all eight library systems.

ReadingRecord software usage continued to grow through word of mouth recommendations from participating libraries. Enhancements to the software continued, and by 2011, the software was used by 24 libraries to track 103,393 registered readers who collectively completed 150,025 reading levels. Libraries using the software found that the software helped them to streamline the statistical tracking and increased library efficiency by enabling library patrons to register for the program from home before the first day of the summer reading program.

The Colorado library community is collaborative in nature. There is voluntary sharing of resources across the state, giving any Colorado citizen who helps fund a public library system access to all other public libraries in the state, not just the one public library system the citizen funds directly through taxes. Providing this software through an open source license supports and promotes that collaboration.

Charging other libraries for the software or hosting service would unlikely generate sufficient revenue to offset the costs associated with charging for it such as invoicing, supporting, maintaining, and administering all take considerable staff time.

Several libraries in Colorado using ReadingRecord have in-house IT personnel. Once released as open source, larger libraries will likely customize and make improvements to the software. Under the GNU Affero General Public License, it is highly probable that such improvements and modifications would be available to and benefit other libraries using the software. Westminster library staff will continue to host ReadingRecord for any of the smaller Colorado public libraries who do not have the computer resources or staff expertise to self host the application. Westminster staff members spend approximately two hours per year in setting up, customizing and testing the software for each library.

Requests to use the ReadingRecord software have been received from at least 26 libraries across the United States from Anchorage, Alaska to West Nyak, New York. While Westminster has hosted the software for libraries in Colorado as a way of contributing to our state library network, Westminster library priorities and resources do not afford the ability to provide hosting services for libraries outside of Colorado.

Releasing ReadingRecord as open source software would assist libraries nationwide by providing a no-cost software tool to help in supporting literacy through summer reading programs. City staff representatives from the City Attorney's Office, Libraries, and Information Technology Department reviewed the best method to share this software, and concluded that the software should be released as open source under GNU Affero General Public License.

Releasing ReadingRecord as open source software supports the City's Strategic Plan Goal of "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 D

Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Special Legal Counsel Services

Prepared By: Martin R. McCullough, City Attorney

Recommended City Council Action

Authorize the City Manager to enter into agreements for special legal counsel services as follows:

- (1) An agreement with Kathleen Odle of Sherman and Howard, in substantially the same form as attached, in an amount not to exceed \$6,000 for a tax opinion on the tax treatment of the City's injury leave benefit.
- (2) An agreement for legal services with such counsel as may be recommended by the City Attorney's Office in an amount not to exceed \$5,000 to advise the Finance Director in tax assessment and refund hearings held pursuant to W.M.C. § 4-1-26.

Summary Statement

- City Council has previously found merit in approving special legal counsel to assist the City Attorney's Office as needed, rather than expanding staff.
- Staff is recommending that City Council authorize the City Manager to execute a legal services agreement with Kathleen Odle of Sherman and Howard for a tax opinion on the required tax treatment of the City's work-related injury leave benefit. Ms. Odle has assisted the City in the past with benefit-related legal issues. Her opinion in this instance will be relied upon by the City to avoid possible IRS penalties should the IRS challenge the City's position on this matter.
- The City's Finance Director desires legal advice on evidentiary and procedural matters during tax assessment and refund hearings. The City Attorney's Office has determined that, under the Attorneys Code of Professional Responsibility, it is not able to both represent the City and advise the Finance Director in contested hearings such as these. No tax assessment or refund hearings are currently pending, however, such hearings are likely to be requested throughout the year.

Expenditure Required: Not to exceed \$6,000 with regard to Kathleen Odle agreement
Not to exceed \$5,000 with regard to special counsel for tax hearings

Source of Funds: **Kathleen Odle agreement:**
Workers Compensation Self Insurance Fund

Tax Appeals:
Audit Revenue Contra Account

Policy Issue

Should the City retain special legal counsel to assist with these legal issues?

Alternative

City Council could elect not to retain this type of special legal counsel assistance or seek such assistance from another source. Staff believes this outside assistance is critical to providing a reliable tax-related opinion, and in assisting the Finance Director during City tax hearings.

Background Information

Regarding Tax Opinion from Kathleen Odle:

The City would like a legal opinion on whether or not the City should be reporting as taxable income the full amount of the City's injury leave benefit that the City pays to employees who are injured on the job in lieu of paying benefits pursuant to the Colorado Workers' Compensation Act, C.R.S. § 8-42-105. This statute requires an employer to pay an employee $66 \frac{2}{3}$ of an employee's average weekly wage for any lost time from work due to a work-related injury. The amount paid pursuant to state statute is considered non-taxable by IRS regulations. However, the City has what it considers to be a more generous program pursuant to our Personnel Policies and Rules, Section IX(Y). This provision provides an employee "injury leave" at FULL pay in the event of a work-related injury. The City treats this continuation of wages as fully taxable, just like normal wages.

The issue has arisen as to whether the City should be reporting all or part of its injury leave compensation as non-taxable wages.

Regarding Special Counsel for Tax Hearings:

Outside counsel is needed to advise the Finance Director on evidentiary and procedural matters in conducting formal tax hearings pursuant to W.M.C. § 4-1-26. The City Attorney's Office will be representing the City at these hearings and it would be a conflict of interest to both represent the City and advise the Finance Director. The proposed approval of \$5,000 for these services is intended to cover any tax hearings that may arise during 2012. Funds are available for these services in the Audit Revenue Contra Account, which is the account designated for the deposit of contested tax liabilities.

City Council action on this item addresses two Strategic Plan Goals: Strong, Balanced Local Economy and Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Contract with Exhibit A

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this ____ day of February, 2012, by and between **SHERMAN & HOWARD, L.L.C., ATTORNEYS AT LAW** (the "Firm") and the **CITY OF WESTMINSTER, COLORADO** (the "City").

RECITALS

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

AGREEMENT

1. The Firm shall furnish special legal services to the City related to the tax implications associated with the City's work-related injury leave benefit (the "Services"), as more specifically detailed on the attached Exhibit "A."

2. Kathleen A. Odle of the Firm shall be principally responsible for the Services.

3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.

4. The City shall pay for the Services at the rate of \$475 per hour for Kathleen Odle, and \$235 per hour for associate Claire Rowland.

5. This Contract may be terminated by the City with or without cause.

6. No payments to the Firm shall be made prior to the approval of this Contract by the Westminster City Council.

7. Payments pursuant to this Contract shall not exceed \$6,000 without further written authorization by the City.

8. The Westminster City Council authorized this contract on February 27, 2012.

9. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the Firm shall not enter into a contract with a subcontractor that fails to certify to the Firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Firm shall notify the subcontractor and the City within three (3) days that the Firm has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, the Firm shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that the Firm shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Firm certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). The Firm shall not use either the E-verify Program or the Colorado Verification

Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

The Firm shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Firm certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Firm will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

SHERMAN & HOWARD, L.L.C.

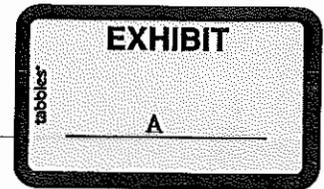
By _____
Kathleen A. Odle

CITY OF WESTMINSTER, COLORADO

By _____

Approved as to legal form:

City Attorney's Office



Annand, Leslie

From: Annand, Leslie
Sent: Monday, January 23, 2012 11:06 AM
To: 'Odle, Kathy'
Cc: Erichson, Martee
Subject: RE: Request for Legal Opinion

Yes, both state and federal.

From: Odle, Kathy [mailto:kodle@shermanhoward.com]
Sent: Monday, January 23, 2012 10:50 AM
To: Annand, Leslie
Subject: RE: Request for Legal Opinion

Hello Leslie,

Would you please confirm that you want an opinion on both federal and Colorado state income taxation of those benefits?

Kathleen A. Odle

Sherman & Howard L.L.C.
633 17th Street, Suite 3000, Denver, CO 80202
Direct: 303-299-8116

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From: Annand, Leslie [mailto:LAnnand@CityofWestminster.us]
Sent: Thursday, January 19, 2012 3:42 PM
To: Odle, Kathy
Subject: RE: Request for Legal Opinion

Kathy,
Thanks for your response. After discussing this with the City's Risk Manager, we will seek counsel approval for the full opinion letter. You indicate the estimate is \$6,000. May I count on that as the cap and seek approval for \$6000?
Thanks,
Leslie

From: Odle, Kathy [mailto:kodle@shermanhoward.com]

1/26/2012

Sent: Wednesday, January 18, 2012 3:12 PM
To: Annand, Leslie
Subject: RE: Request for Legal Opinion

Hello Leslie,

Are you looking for an opinion on both federal income taxation and state income taxation of those benefits?

For a full opinion letter, I would estimate the cost to be about \$6,000.

When I use the term "full" opinion letter, I mean an opinion letter that can be relied on to avoid IRS penalties should the IRS challenge the position taken in the opinion letter.

The Internal Revenue Service's regulations pertaining to the conduct of tax practitioners (referred to as Circular 230) governs our representation of you in this matter. These regulations address specifically our ability to issue tax opinions to you upon which you can rely to avoid penalties that otherwise could be imposed if a subsequent IRS audit resulted in additional taxes being owed. Historically, if a taxpayer had obtained an opinion of counsel, penalties would not be imposed because, in obtaining the opinion of counsel, the taxpayer established a reasonable cause and good faith defense to penalties. Under recent modifications to IRS regulations, however, a taxpayer can avoid penalties only if the opinion of counsel complies with a set of extensive and burdensome standards. Without going into detail here, in order to comply with these standards, Sherman & Howard must perform additional work and write a longer and more elaborate opinion in order for clients to obtain a reasonable cause defense to IRS penalties. It is compliance with these requirements that causes full opinion letters to be so expensive.

Alternatively, if you desire an interpretation of the applicable laws, without rising to the level of a Circular 230-compliant opinion letter, my estimate would be about \$2,500.

Please let me know if you have any questions about this distinction or the work involved. Thank you for the opportunity to work with the City of Westminster again.

Kathleen A. Odle

Sherman & Howard L.L.C.
633 17th Street, Suite 3000, Denver, CO 80202
Direct: 303-299-8116

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From: Annand, Leslie [mailto:LAnnand@CityofWestminster.us]
Sent: Tuesday, January 17, 2012 4:10 PM
To: Odle, Kathy
Subject: Request for Legal Opinion

Kathy,
You have given opinions in the past to the City of Westminster on pension, benefit and tax related issues. A new issue has arisen and I would like to know if you can assist the City on this new issue.

Please note that, at this point, I would just need for you to please provide me an estimate of the cost of the work involved if you are willing to do it, as I will need to seek permission from the Westminster City Council to engage outside counsel.

The issue is as follows: The City would like a legal opinion on whether or not the City should be exempting from income tax the portion of the City's Worker's Compensation wage continuation benefit that is a substitute for the amount a Colorado employer is required to pay under the Colo. Workers' Compensation Act, C.R.S. section 8-42-105. This statute requires an employer to pay an employee $66 \frac{2}{3}$ of an employee's average weekly wage for any lost time from work due to a work-related injury. This amount paid pursuant to state statute is considered non-taxable by IRS regulations.

The City has what it considers to be a more generous program pursuant to our personnel policies and rules, section IX,Y. This provision provides an employee leave with FULL pay in the event of a work-related injury. The City treats this continuation of wages as fully taxable, just like normal wages.

The issue has arisen as to whether the City should be exempting any portion of this wage continuation benefit as non-taxable wages.

Please note that there is no plan document with respect to the City's injury leave benefit, only the couple paragraphs describing the benefit in the City's personnel policies and rules.

Please let me know if you need additional information in order to provide me a bid for providing the requested opinion.

Sincerely,
Leslie Annand

Leslie C. Annand, Assistant City Attorney
lannand@cityofwestminster.us
Office: (303) 658-2239

City of Westminster
Office of the City Attorney
4800 West 92nd Avenue
Westminster, CO 80031

Leslie C. Annand, Assistant City Attorney
lannand@cityofwestminster.us
Office: (303) 658-2239

City of Westminster
Office of the City Attorney
4800 West 92nd Avenue
Westminster, CO 80031



Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: 2012 Library Materials Purchases Over \$50,000

Prepared By: Kate Skarbek, Library Services Manager

Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will be best served by awarding contracts to Baker and Taylor not to exceed \$260,500; Gale Cengage not to exceed \$60,000; and Midwest Tapes not to exceed \$60,000; for a grand total not to exceed \$380,500 for the purchase of library books and electronic resources.

Summary Statement

- The Westminster Municipal Code requires all purchases over \$50,000 be authorized by City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceed \$50,000.
- As with past practices, these are negotiated contracts with Baker & Taylor, Gale Cengage, and Midwest Tapes; formal bidding was not used. However, these contracts are consistent with the City's book and electronic media purchases over several years, and Staff will continue to compare prices with other vendors and where lower prices can be obtained, another vendor will be used. In most instances, however, Baker and Taylor, Gale Cengage and Midwest Tapes have consistently offered the lowest prices on the items ordered when compared to other suppliers.
- Funds were previously appropriated in the 2012 Budget and are available in the General Fund for the purchases.

Expenditure Required: \$260,500 - Library Materials
\$ 60,000 - Gale Cengage
\$ 60,000 - Midwest Tapes
\$380,500 - Total

Source of Funds: General Fund - Parks, Recreation and Libraries Operating Budget

Policy Issue

Should City Council waive formal bidding requirements and approve the purchase of library materials and electronic resources that total over \$50,000 from three vendors in 2012?

Alternative

Do not approve the purchase as recommended and request that Staff go out to bid on this purchase. This alternative is not recommended for the reasons outlined in the background information section of this agenda memorandum.

Background Information

In 2011, library materials purchased from Baker and Taylor (B&T) constituted 50.8% of the library materials budget expenditures. Staff anticipates that purchases from B&T will likely rise substantially in 2012 over what has been purchased in past years due in large part to changes in the publishing industry including the rising popularity of downloadable electronic books.

For the better part of the last two decades, the Westminster Public Library leased books through the McNaughton Program currently offered by Brodart. For the majority of that time period, this program saved the City money since it allowed the library to lease more copies of popular materials than it could afford to purchase. Unfortunately, Staff found in its 2010 annual evaluation of this program that these leased materials now cost \$28 per item, substantially more than it costs to purchase most adult titles. Therefore, as of August 2011, Westminster Public Library ended its contract with Brodart. Many of these materials are available for a lower cost from other vendors, including B&T. Since 2012 will be the first full calendar year with no payment being made to Brodart for McNaughton, this will likely increase the amount the City will be purchasing from B&T and other print book vendors over that purchased in past years. The City's former contract with Brodart was for \$29,205 annually. Staff will continue to purchase specific titles from Brodart when those costs are the lowest.

Baker and Taylor consistently provides the City with good customer service and low prices. Their procedures coordinate well with the City's procedures, so using them improves Staff efficiency. The discounts that B&T offers the City are very competitive pricewise. In instances where Staff receives a better discount from a different vendor, materials are ordered from the other vendor. The City receives the majority of its standing orders from B&T because they are the most competitive. In addition, B&T maintains an interactive website that Staff can use to manage the City's library orders.

In late 2009, B&T negotiated a deal with Gale Cengage Press to distribute this popular publisher's ebook versions of print titles the library has traditionally purchased directly from Gale. This offering was introduced in mid-2011. However, there were technical issues with additional software modules needing to be licensed in order to have a process for ordering ebooks that exactly mirrors the print ordering process. Staff members are evaluating whether this is a worthwhile investment to make. If so, invoices will be sent from B&T. If not, invoicing for similar titles that are not downloadable will come from Gale.

In 2011, the Westminster Public Library purchased \$36,998.05 from Gale Cengage including databases from the electronic resources budget and print materials from the library materials budget, an increase of 12% over the previous year. This increase was a result of purchasing Gale ebooks that only Gale offers. If they continue to make ebooks from extremely popular publishers like Dorling-Kindersley (DK) Publishing available, purchases may exceed \$50,000 total in 2012. For these databases and titles, Gale Cengage is a single source vendor. The library does subscribe to other database vendors including Ebsco as well.

Each year the Library compares pricing and services among the large library vendors of B&T, Ingram, Amazon.com and Midwest Tapes and others. Service considerations are the ease of online ordering, technological coordination with our database and shipment practices that include invoicing and turn-around time. Pricing considerations are noted for overall discount prices. B&T continues to offer the most competitive services, in terms of format and discounts, which can be up to 45%.

Unlike Baker & Taylor, Midwest Tape specializes in selling only audiovisual materials and supplies to public libraries. Consequently, they excel in this area, offering lower prices and good service on audiovisual material. Midwest therefore receives the bulk of Westminster library's audiovisual orders. Midwest provides electronic records to include in the online catalog as well as a single-disc replacement service should only one disc in a multivolume set become inoperable. Midwest also does not charge shipping costs so the item costs are kept to a bare minimum. Staff has found Midwest's services to be timely, accurate, and efficient. In 2011, Westminster purchases from Midwest totaled \$41,262.70. Given how close this amount is to the \$50,000 threshold, Staff is requesting Council's approval to possibly exceed \$50,000 in purchases with Midwest Tapes in 2011 should patron demand require increasing the library's DVD, music CD, and audiobook collections at a higher rate than in the past.

These purchase requests support the City's Strategic Plan Goal of "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: 2012 Golf Courses' Cumulative Purchases Over \$50,000

Prepared By: Chris Swinhart, Head Golf Pro – Legacy Ridge Golf Course
Brian Carlson, Head Golf Pro – The Heritage Golf Course at Westmoor

Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will be best served by awarding contracts and approve 2012 expenditures to the following vendors: Titleist not to exceed \$70,000, Nike U.S.A. Golf Division not to exceed \$60,000, and Oakley not to exceed \$60,000.

Summary Statement

- These purchases are for routine commodities that are provided for sale at the golf course pro shops and for the driving ranges.
- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council for authorization. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- Adequate funds were previously appropriated in the 2012 Budget and are available in the Golf Course Funds for the purchases.

Expenditure Required: Not to exceed \$190,000

Source of Funds: Golf Course Fund Operating Budget

Policy Issue

Should Council approve the purchase of golf course commodities from the recommended vendors that total over \$50,000 for 2012?

Alternative

Do not approve the purchases as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more conservative and prudent approach is to treat the cumulative smaller transactions as larger purchases making them subject to Council approval.

Background Information

Staff has identified all three vendors, Titleist, Nike and Oakley, as potentially having aggregate amounts exceeding \$50,000 by the end of 2012. Funds are available in the appropriate budgets for these expenditures. These products are ordered directly from the manufacturer. They are the sole source and cannot be purchased from any other entity. Based on the quality of purchases with all three vendors, the golf shops receive the best pricing available based upon the scope/size of the City's golf shops.

The details of these purchases are as follows:

- The City anticipates expenses not to exceed \$70,000 from Titleist for both of the City's golf courses combined. The City purchases high-quality Pinnacle Range Balls (Legacy Ridge) from Titleist and merchandise for resale including 40% of the golf gloves; golf balls (Pro-v, Pro-v 1x, NXT, NXT Tour and Pinnacle); and a limited number of clubs for stock in the golf shop (woods, wedges, putters). Most irons, drivers, fairway woods, and hybrid purchases are done on a special-order basis with Staff providing the customer with a custom club fit. Titleist is the number one golf ball in the market and is the number one-selling golf ball and merchandise in the City's golf shops. Titleist also provides the best quality range balls at a comparable price to other vendors.
- The City anticipates expenses from Nike USA Golf Division not to exceed \$60,000. The golf courses also purchase Nike USA Golf Division merchandise for resale including golf balls (Mojo, Nike One Platinum and Nike One Black); 60% of the shoe inventory, clothing and a limited number of clubs and special-order all iron sets. In 2011, Staff will purchase approximately 50% of the golf shop's clothing line for resale from Nike USA Golf Division (shirts, jackets, wind shirts, socks). Nike is the golf courses' top-selling merchandise line.
- The City anticipates expenses from Oakley not to exceed \$60,000. The golf courses also purchase Oakley merchandise for resale including 30% of the shoe inventory at Legacy Ridge and 100% at The Heritage at Westmoor, clothing and sunglasses and special-order clothing, shoes, and sunglasses. In 2012, Staff will purchase approximately 40% of the golf shops' clothing line for resale from Oakley (shirts, jackets, wind shirts, socks, and sunglasses). Oakley is the number one sunglass manufacturer in the golf industry and is the number three top product sold in the City's golf shops.

These purchases support City Council's Strategic Plan Goal of "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Second Reading of Councillor's Bill No. 4 re Westminster Sports Center Lease Agreement

Prepared By: Sean Layfield, Recreation Supervisor/Sports

Recommended City Council Action

Pass Councillor's Bill No. 4 on second reading approving a lease agreement with Westminster AFC, Inc., for office space at the Westminster Sports Center, a City-owned indoor soccer facility located at 6051 W. 95th Avenue.

Summary Statement

- The Westminster AFC, Inc. (WAFC) currently leases an office located in the south portion of offices within the facility on a month to month basis, with an option to renew at a monthly rate of \$200.
- City Staff would like to lease to WAFC the vacant office directly next to the current office WAFC is leasing under the 2008 lease agreement. Staff recognizes that proper protocol requires City Council approval for leasing space at City facilities and, therefore, requests Council approval of the lease.
- The new lease agreement for both offices is for a twelve-month period, with an option to renew, at a monthly rental rate of \$400 (Approximately 264 sq ft at \$18 per square foot equaling \$4,800 annually). Staff has recently surveyed the surrounding market and this rate is very competitive with other comparable office space of this type in the area.
- Leasing of property owned by the City must be ratified by ordinance under Section 13.4 of the City's Charter.
- This Councillor's Bill was passed on first reading on February 13, 2012.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectively submitted,

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **4**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Winter - Atchison

A BILL

**FOR AN ORDINANCE AUTHORIZING A RENTAL LEASE AGREEMENT AT THE CITY'S
WESTMINSTER SPORTS CENTER WITH WESTMINSTER AFC, INC.**

WHEREAS, the City owns the Westminster Sports Center, located at 6051 W. 95th Avenue; and

WHEREAS, it is in the City's interest to maximize the income generated from such operation by collecting rental income from the office space located in the Westminster Sports Center.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The lease agreement, attached hereto as Exhibit A, with the following party is approved and the City Manager is hereby authorized to execute the same:

Westminster AFC, Inc. for office space located in the Westminster Sports Center at 6051 W. 95th Avenue, Jefferson County, Colorado at a rental rate of \$400 per month.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 13th day of February, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 27th day of February, 2012.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this _____ day of _____, 2012, between the CITY OF WESTMINSTER, a Colorado home rule municipality (the "Lessor"), and Westminster AFC, Inc. whose registered address is 825 Logan Street, Denver, Colorado 80203 (the "Lessee").

In consideration of the payment of the rent and the keeping and performance of the mutual promises set forth below, the Lessor hereby agrees to lease to the Lessee the premises as shown on Exhibit "A" attached hereto and incorporated herein, consisting of approximately 264 square feet marked "Westminster AFC" (the "Premises"). The Premises are within the building known as the Westminster Sports Center located at 6051 W. 95th Avenue, Westminster, Colorado (the "Facility").

This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither Party shall be bound by the terms of this Agreement.

B. TERM OF LEASE

1. Lessor leases to Lessee the described Premises, on a month to month basis for the period from noon on March 1, 2012 to noon on March 1, 2013.
2. At the end of said Term, the Lease may continue on a month to month basis upon the payment of the rental amount, provided, however, that either party may terminate such extended lease upon providing written notice to the other party at least 30 days prior to the proposed date of termination.

C. RENTAL PAYMENTS

1. Lessee shall pay rent to Lessor at the rate of \$400.00 (Four hundred) dollars per month for twelve (12) months.
2. Payments shall be due on the first day of each month and payable in advance, at the City Hall of the Lessor at 4800 West 92nd Avenue, Westminster, Colorado, 80031, in monthly installments, and continuing thereafter in monthly installments for the entire term of twelve months. Payments not received by the fifteenth of the month shall be subject to a late fee, until such payment is received, equal to 1.25% of the amount unpaid per month. The late fee may be abated in whole or in part by the City Manager for good cause.
3. If Lessee vacates the Premises for any reason before the end of the Term and ceases to pay rent to Lessor as provided in this Lease, Lessor may, at its option and without notice, and using such force as may be necessary, enter said Premises, remove any equipment, fixtures, personal and effects of Lessee therefrom, and re-let the same, or any part thereof, as it may see fit, for the account of Lessee, without thereby avoiding or terminating this Lease, and for the purpose of such re-letting, Lessor is authorized to make any repairs, changes, alterations or additions in or to said premises, as may, in the opinion of Lessor, be necessary or desirable for the purpose of such re-letting, and if a sufficient sum shall not be realized from such re-letting each month to equal the quarterly installments agreed to be paid by Lessee under the provisions of this Lease, then Lessee agrees to

pay such deficiency each quarter. However, Lessor shall have no obligation to re-let the Premises. Lessee shall remain obligated to continue Lease payments for the full twelve month period. Lessor may, at its option, terminate the Lease upon terms negotiated and agreed to by both Parties. Notwithstanding any provision of this Lease to the contrary, in the event that Lessor elects to use the Premises for its own purposes, such as, but without limitation, expansion of the public recreation facilities, then Lessee's liability under this Lease shall end.

D. OBLIGATIONS OF LESSEE

In consideration of the lease of the Premises, the Lessee covenants and agrees as follows:

1. To use the Premises for the operation and management of a youth soccer club or other soccer/sports purposes, if such other soccer/sports purposes have been approved by the City Manager, which approval shall not be unreasonably withheld.
2. To pay the rent for said Premises as provided above.
3. To use the Premises for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster;
4. To allow the Lessor at any reasonable hour of the day to enter into and go through the Premises. Except in cases of emergency, Lessor will provide notice of entry, such notice to be reasonable under the circumstances. Lessor shall not interfere with the operations of Lessee during such entry. Notwithstanding this paragraph, Lessor shall have no duty to inspect the premises or make repairs except as provided herein.
5. Not to permit the Premises, or the walls or floors thereof, to be endangered by overloading, or the Premises to be used for any purpose that would render the insurance thereon void or the insurance risk more hazardous. Lessee shall take all such action as may be necessary to prevent the Premises from ever being occupied in excess of City and State limits of occupancy.
6. Not to make any alterations to, or modifications in or upon the Premises, including the installation or removal of attached fixtures, without first obtaining the Lessor's written consent, which will not be unreasonably withheld and which shall include provisions for removal of the alterations or modifications if desired by Lessor. No such alterations or modifications shall be made, except pursuant to plans submitted by Lessee to the City Manager or his designee. All such alterations or modifications shall be done in conformance with all applicable laws, codes, regulations, and rules of the City and the State of Colorado. All such alterations or modifications shall be done at the Lessee's expense. All such expenses shall be the sole financial responsibility of the Lessee.
7. To exercise reasonable care in the supervision of its employees, officers, directors, and staff coaches at all times when they are in or upon the Premises.
8. To reimburse Lessor for any expense incurred by it in repairing any damage to the Premises caused by Lessee, its directors, officers, employees or agents, or any person in their care, or present with their permission, unless Lessee makes the repairs, to the reasonable satisfaction of Lessor.
9. To indemnify, defend, and hold harmless the Lessor from and against any claim for

personal injury or property damage resulting from any negligent act or omission of Lessee or its employees or agents, to carry liability insurance covering bodily injury and property damage in the minimum amount of \$1,000,000 per occurrence, and to make Lessor an additional insured under its policy of liability insurance, and to provide the Lessor with a certificate of insurance as evidence of coverage prior to Lessee's occupancy of the Premises.

10. To sublet no part of the Premises, nor assign this lease or any interest therein without Lessor's specific written consent, and the use is compatible with other uses of the Facility. Lessor's consent to sublet or assign shall not be unreasonably withheld.
11. Not to permit any disorderly conduct or nuisance whatever about the Premises, the building in which they are located, or on the building grounds, having a tendency to annoy, disturb or interfere with other occupants of the building.
12. At the expiration or termination of this Lease, to surrender and deliver up the Premises in as good order and condition as when the same were entered upon, loss by fire or other casualty, inevitable accident and ordinary wear excepted.
13. To furnish and equip the space it occupies on the Premises. Lessee may remove fixtures it has installed if removal can be done so that floors, walls, or structures are in substantially the same condition as at the beginning of Lease, fire or other casualty, inevitable accident and ordinary wear excepted.
14. If Lessee desires such signage, to pay for and place signage on the Facility building designating it as the "Westminster AFC, Inc." with approval of the City of sign design and quality.
15. To repair and maintain standard items such as paint and tile surfaces, window glass, lighting fixtures and plumbing fixtures, which are not the responsibility of Lessor as provided below.
16. Notwithstanding any provision in this Lease Agreement to the contrary, to perform all repairs of an emergency nature necessary to protect the Premises from undue and avoidable injury or damage.
17. To arrange and pay for all telephone installation and internet connections Lessee deems necessary for its use and the service charges therefore.
18. Lessee accepts the Premises "as is" and acknowledges that Lessor shall have no obligation for maintenance or repair of the Premises except as described in Paragraph E.

E. OBLIGATIONS OF LESSOR

In consideration of the receipt of rent and the covenants of Lessee, the Lessor covenants and agrees as follows:

1. To provide free parking for the use of Lessee on the site.
2. To provide or cause to be provided, all normal utility services for the Premises, including water (including adequate hot water), sanitary sewer, electric and gas; but not including telephone or television. Lessor will also provide adequate heating and ventilation systems for the Premises, as well as smoke alarms and fire sprinklers to the extent required by the International Building Code. The Lessor will pay all charges for gas, electricity, insurance, taxes and water used on the premises, except as otherwise herein provided.

3. To provide trash removal, snow removal, grounds maintenance, and exterior building maintenance.
4. To provide maintenance and repair for structural systems, heating and ventilation systems, water supply lines, waste water lines and electrical and gas systems.
5. Lessee may quietly hold and enjoy the premises without any interruption by the Lessor or any person claiming under the Lessor.

F. MISCELLANEOUS TERMS

1. Lessor shall have no responsibility or liability for any loss or damage to any personal property of the Lessee or any fixtures installed by the Lessee.
2. Lessee shall store no flammable, toxic, dangerous, hazardous or obnoxious materials anywhere in the Premises.
3.
 - (a) If the Premises becomes so damaged by fire, flood, act of God or any other casualty so as to render the Premises untenable, the Lessee may terminate this Lease without further obligation, unless the repairs for damage are started within ninety (90) days, in which case the Lease will continue under the existing terms and conditions.
 - (b) The rent payable under this Lease shall abate following any damage to the Premises, to the extent all or part of the Premises is rendered untenable, until such damage has been repaired by Lessor.
 - (c) Within thirty (30) days after the occurrence of the damage, Lessor shall give written notice to Lessee of Lessor's best estimate of the time that will be required to repair, the damage (without the payment of overtime or any premium). Lessor may also notify Lessee of the availability of other portions of the Facility or other temporary premises, if any. Notwithstanding the offer of alternate premises, if the estimated time to repair is more than ten (10) months, and Lessee rejects alternate premises, Lessee may terminate this Lease without further obligation. If Lessee does not so terminate, this Lease will continue under the existing terms and conditions, subject to paragraph (b) above.
 - (d) Notwithstanding the above paragraphs, if the Premises are damaged more than fifty percent (50%) of its full insurable value, as reasonably determined by Lessor, Lessor may terminate this Lease. Lessor shall give Lessee written notice of termination or Lessor's decision to continue the Lease within thirty (30) days of the occurrence of the damage. If Lessor chooses to continue the Lease, Lessee may terminate the Lease by giving notice to Lessor in writing within thirty (30) days of Lessor's notice to continue.
4. If the Premises are left vacant and Lessee ceases to pay rent to Lessor, the Lessor may, at its option, either retake possession of the Premises, terminating the Lease and Lessor's and Lessee's obligations thereunder, or it may re-rent the Premises, subject to the provisions of paragraph C.3 above.
5. If the Lessee becomes insolvent, or is declared bankrupt, the Lessor may terminate this Lease forthwith, and all rights of the Lessee hereunder shall thereupon terminate, subject to the provisions of paragraph C.3 above.

6. At the expiration of the term of this Lease, whether by passage of time or by act of the Lessor as provided in this Lease Agreement, the Lessee shall surrender and deliver up the Premises peaceably to the Lessor, and if the Lessee shall remain in possession after termination of this Lease, the Lessee shall be deemed guilty of a forcible detainer of the Premises under the statute, and shall be subject to eviction and removal in accordance with state law.
7. If default shall be made in any of the covenants or agreements contained in this Lease Agreement to be kept by Lessee, Lessor shall provide written notice to Lessee of the default. Lessee shall have thirty (30) days after the notice to cure the default. If Lessee fails to cure the default within said thirty days, Lessor may, but need not, declare the term ended and repossess the Premises in accordance with state law. If the nature of the default is such that it cannot be cured with reasonable diligence within thirty (30) days, then Lessee shall not be in default if it commences to cure such default within thirty (30) days and thereafter diligently prosecutes such cure.
8. No any failure to act regarding nor any assent, express or implied, to any breach of any one or more of the covenants or agreements contained in this Lease Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.
9. Nothing herein contained, either in the method of computing rent or otherwise, shall create between the parties hereto, or be relied upon by others as creating any relationship of partnership, association, joint venture, or otherwise. The sole relationship of the parties hereto shall be that of Landlord and Tenant.
10. If either Party shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default thereunder, the unsuccessful party in such action or proceeding agrees to reimburse the successful party its reasonable attorney fees.
11. This Lease shall be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns, administrators, legal representatives and executors.
12. There are no oral agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements or representations and understandings, if any, between the parties hereto with respect to the subject matter hereof.
13. If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.
14. Except as otherwise provided in this Lease, any prevention, delay or stoppage due to strike, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.
15. The following persons are hereby designated by the parties as the persons responsible for the implementation of this Lease. Should Notices need to be sent or problems arise concerning this Lease the parties agree to contact:

For the Lessee: Jeff Ruebel
Paul Mulvany
For the Lessor: Sean Layfield
Ken Watson

- 16. Lessee agrees to execute any and all documents subordinating this Lease as requested by Lessor.
- 17. This lease shall bind the Lessor and the Lessee and their respective assigns, administrators, legal representatives and executors.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this _____ day of _____, 20____.

LESSEE: Westminster AFC, Inc.

By: *Jeffrey Clay Ruebel*
Printed Name: Jeffrey Clay Ruebel
Title: President

Attest: *Paul Mulvany*
Secretary

(Corporate Seal,
if applicable)

LESSOR: CITY OF WESTMINSTER

By: _____
Printed Name: _____
Title: _____

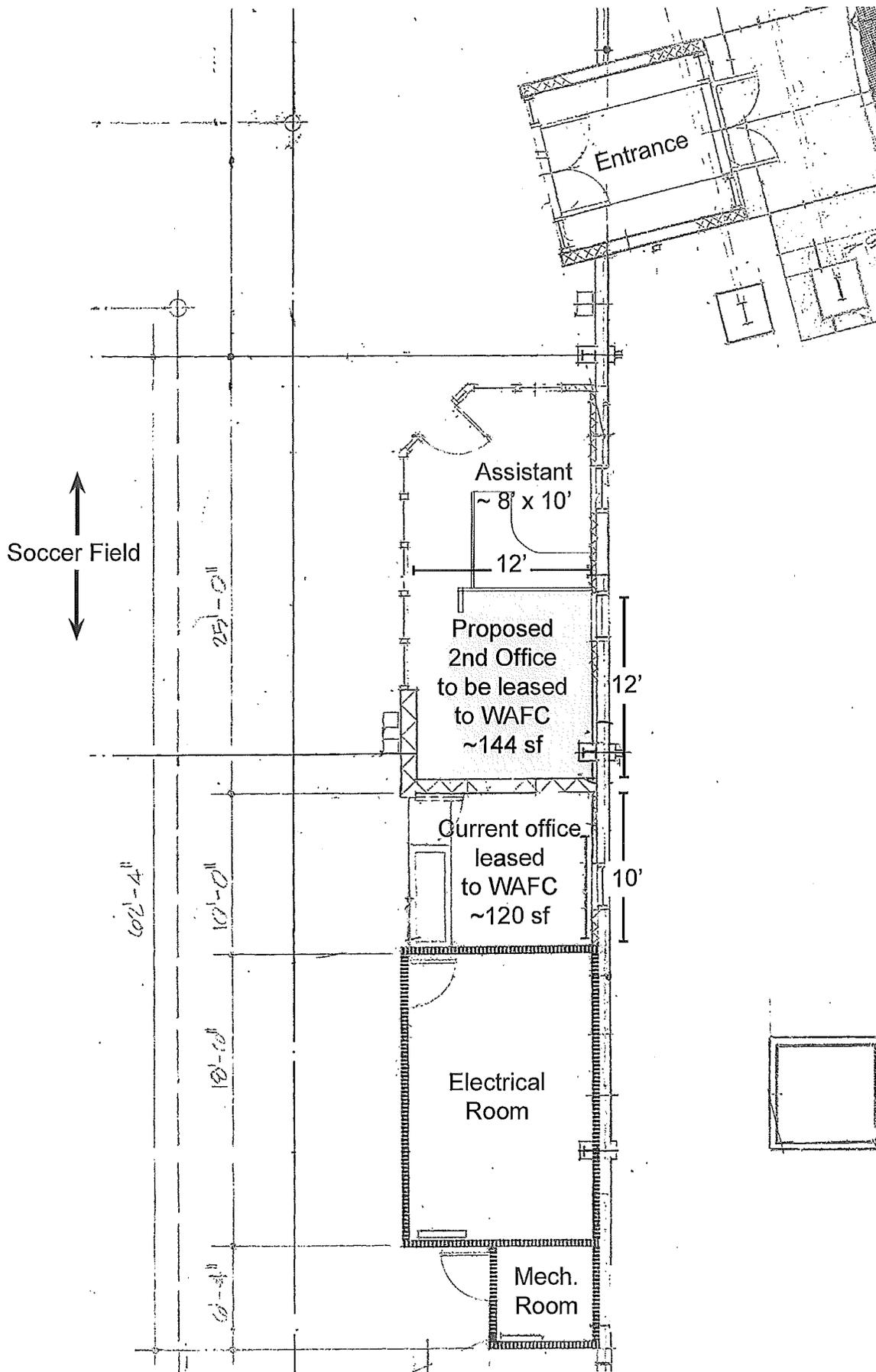
Attest: _____
City Clerk

(Seal)

Approved as to legal form:

By: _____
Office of the City Attorney

WESTMINSTER SPORTS CENTER - EXHIBIT A





Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Northeast Comprehensive Development Plan Dissolution

Prepared By: Walter Patrick, Planner II

Recommended City Council Action

1. Hold a public hearing.
2. Recommend City Council authorize the Mayor to execute a Termination Agreement dissolving the Northeast Comprehensive Development Plan Intergovernmental Agreement with Jefferson County.

Summary Statement

- The “Northeast Comprehensive Development Plan” (NECDP) was adopted in 1996, and amended/readopted in 2006, to be in effect for 10 years, terminating in 2016. The NECDP was adopted by an intergovernmental agreement (IGA) with Jefferson County and is binding on all properties covered within the plan. The plan addresses land use, design, and general planning principles for those properties in the plan.
- At the time of the original adoption, the City had significant concerns about property at or near US36, particularly the parcels that became the Shops at Walnut Creek. At the same time, Jefferson County had concerns about a perceived “intrusion” of City development toward the rural lifestyle of some of the large lot residential properties in this portion of the County. The plan was enacted, and effectively locked in zoning and design standards that protected those interests. Over the past 15 years, the parcels and land uses of which the City of Westminster was primarily concerned have developed in a manner consistent with the City’s policy objectives.
- The issue of the NECDP dissolution was discussed at a City Council Post Briefing on March 21, 2011. At that time, Council indicated willingness to dissolve the plan, if Jefferson County wished to dissolve the plan, but not before. In January 2012, the Jefferson County Board of County Commissioners voted to dissolve the IGA and terminate the plan.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Westminster dissolve the IGA with Jefferson County regarding the Northeast Comprehensive Development Plan?

Alternative

Do not dissolve the IGA with Jefferson County regarding the Northeast Comprehensive Development Plan. This option is not supported, as Jefferson County has already dissolved the plan, and staff believes the plan has served its purpose and is no longer necessary to control land use in this area. The properties that remain in unincorporated Jefferson County that were covered by the plan are now covered by the North Plains Community Plan, a Jefferson County document. As properties annex into the City, a Comprehensive Land Use Plan designation and zoning will be established.

Background Information

The NECDP was approved in 1996 and readopted in 2006. The area covered by the plan includes unincorporated areas generally bounded on the east and west by Highway 36 and Wadsworth Parkway and on the north and south by the airport and 92nd Avenue (see attachment B). It puts in place expectations and regulations for development in portions of unincorporated Jefferson County regarding land use and design considerations, as well as how properties develop once they are annexed into the City. In addition, the plan was meant to maintain the existing character of the large lot residential and preserve natural resources, such as wildlife habitat and water quality. It also allowed for a higher quality of development than might have occurred if parcels were allowed to develop in the County. Finally, regulations were established for areas within the airport critical zone, such as limiting residential uses. There is an existing airport plan in place that the City references when considering development in the critical zone, and referrals of projects near the airport are sent to the airport for comment.

Over the years, City staff has had development requests from property owners, covered by the NECDP, who would like to petition both the City of Westminster and Jefferson County to have the designation on their property changed to allow additional land uses. This dialogue has created a significant burden on staff's time and resources as to how such a change would be carried out and the process issues of amending the NECDP. Staff has had many discussions about the relative "worth" of the NECDP to either Jefferson County or the City of Westminster at this time. Staff concerns were previously discussed with Council in a March 2011 Post Brief Council meeting during which the Council directed staff to bring back consideration of dissolving the NECDP, if the plan was first dissolved by Jefferson County.

In January 2012, the Jefferson County Board of Commissioners formally terminated the plan. Jefferson County staff has indicated the NECDP was the only mandatory compliance "plan" that the County had adopted, and that the plan did not align with the Jefferson County elected officials' goals of having these sorts of "plans" be advisory only, and not require mandatory compliance. In contrast, the City's Comprehensive Land Use Plan (CLUP) requires mandatory compliance.

Prior to dissolving the plan, as part of its subarea plan updates, Jefferson County created a section within its North Plains Community Plan (NPCP) for properties located within unincorporated Jefferson County and covered by the NECDP, in the event the NECDP was dissolved. The NPCP was adopted in November 2011. The NECDP Area Land Use section of the NPCP and a map relating to the NECDP are attached hereto. The uses in the NPCP are consistent with the uses within the NECDP.

City of Westminster staff has evaluated the pros and cons of considering such dissolution. Staff believes that the pros for such an action outweigh the cons. The primary property that the City of Westminster was concerned about at the time of the adoption of this document (the Walnut Creek area) has developed in a

manner satisfactory to the City of Westminster. The remaining unincorporated parcels are nearly all large lot residential. If there was an interest in more dense or intense development on any of those unincorporated parcels, it is likely the County would recommend annexing to the City, at which time zoning and land uses would be established and only after public notification and hearing. Also, though the City may be concerned with how unincorporated parcels are ultimately developed, the current system is very unwieldy. To process a development request in the County consistent with the NPCP would be relatively straightforward; however, to process a change to the NECDP is very cumbersome in terms of staff resources, since it requires both the City of Westminster City Council and the Jefferson County Board of County Commissioners coordination, agreement and approval.

Staff has had discussions with Jefferson County staff on how these parcels would be developed if the plan were to be dissolved. County staff have pointed out that Jefferson County has less overall design requirements than the City of Westminster and the development that may occur on those parcels may not be what City of Westminster is used to accomplishing through our design review process. While that is true, there is a history of a strong relationship with Jefferson County, both at the staff and the elected official levels. The typical referral process can accomplish most of the City's concerns; and, at this point in time, staff believes that the City referral comments would be considered by the County.

Another possible concern is that, by dissolving this plan, the City would relinquish control of zoning and land use in the enclaves previously covered by the NECDP, solely to Jefferson County. The current county zoning on nearly all of the parcels covered by the NECDP is large lot residential. The anomalies to this are generally Planned Unit Developments (PUD's) approved by the County years ago that allow for some commercial zoning and were legally nonconforming to the NECDP. These parcels would be allowed to develop commercially or would go through a County zoning/development review process (or City process, if annexed) prior to development. Staff's conclusion concerning these parcels is the same as described above. Staff believes the referral process would address most potential issues that may arise, and, at this point in time, staff is confident in our relationship with Jefferson County.

County staff has also indicated that, as they were revising their long term planning documents, they discovered that this plan is the "only" plan that requires mandatory compliance. All of their other documents are advisory only. As such, the dissolution of the plan, is in keeping with their philosophy of having advisory long-range plans, not regulatory compliance plans.

Given this analysis, staff's recommendation is to dissolve the IGA and NECDP. Jefferson County has already dissolved the plan and has replaced it with the North Plains Community Plan, which basically covers the land at the base of the Front Range foothills out to the eastern edge of Jefferson County.

Public Notification:

Notice was published in the Westminster Window on February 16, 2012.

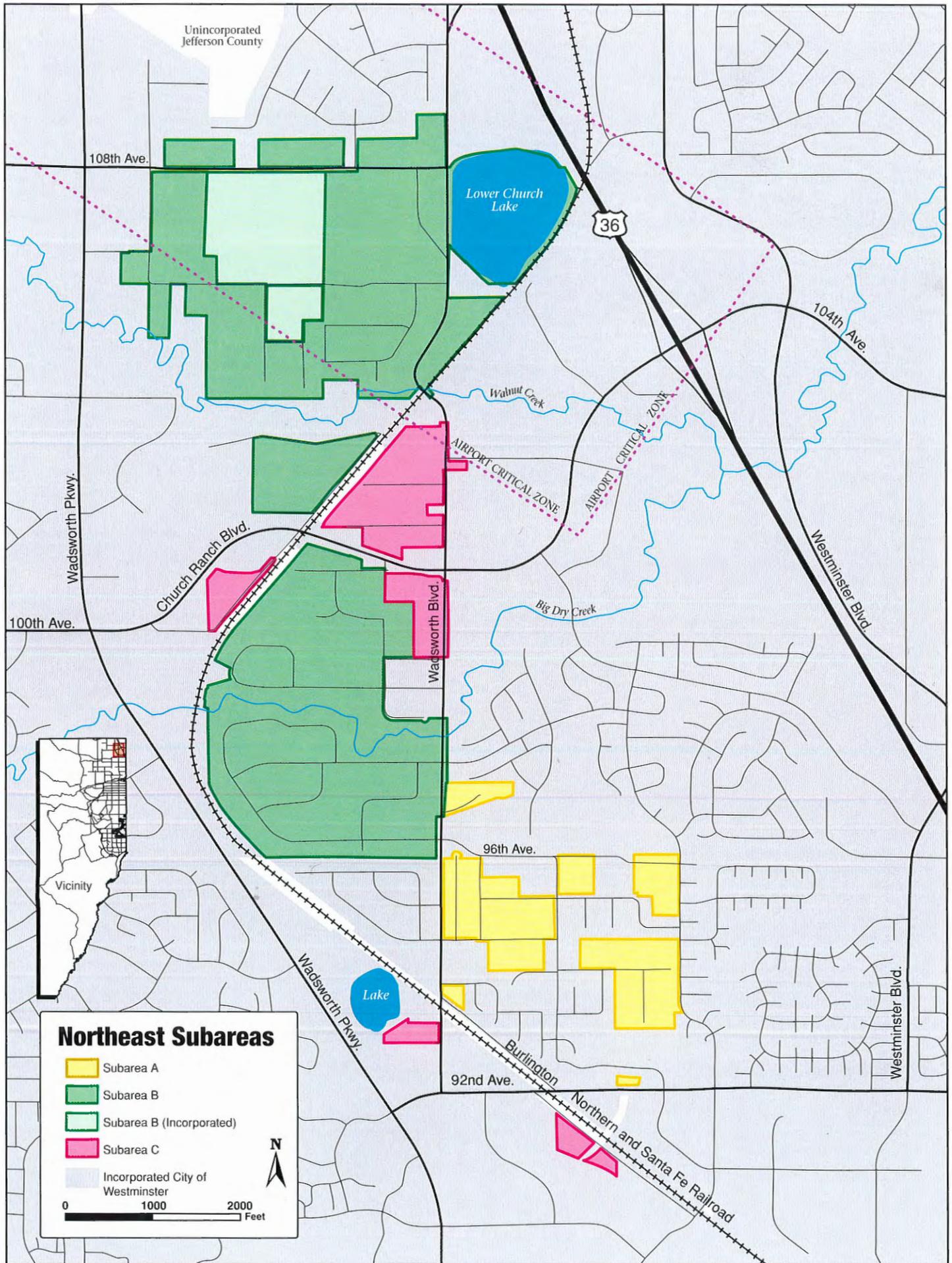
This proposed action would meet City Council's Strategic Goals of Vibrant Neighborhoods in One Livable Community and a Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments
A. NECDP Map

- B. NECDP Area Land Use Section of North Plains Community Plan and Descriptions
- C. North Plains Plan Map
- D. Termination Agreement



Land Uses

The permitted and prohibited land uses listed apply to future development proposals that would require a change in existing zoning.

Land Use Designation Area A

Land use designation area A is bounded on the north, east and south by the City of Westminster, and on the west by Old Wadsworth Boulevard, with the exception of one tract of land east of Old Wadsworth Boulevard. Current land use is residential. As annexations have occurred, the number of residences per acre has increased. Recognition of this trend underlies the residential densities recommended by the land use designation area A group.

Recommended Land Uses

1. Residential development south of West 96th Avenue may be up to 2.5 units per acre, with a minimum lot size of 12,500 square feet.
2. Residential development north of West 96th Avenue may be a minimum lot size of 7,000 square feet.
3. Home occupation.

Prohibited Land Uses

Commercial, industrial, and institutional uses.

Land Use Designation Area B

Area B extends from Church Ranch Blvd on the north to West 96th Avenue on the south, Wadsworth Boulevard on the east and the Westminster city limit on the west. Area B also includes an area of land east of Wadsworth Boulevard, along 94th Ave and Quay St. Current land use is large single family development, zoned A-1 and A-2, which permits livestock and other agricultural land use. Preservation of the rural character of this area is the underlying intent of this area.

Recommended Land Uses

1. Residential development with a minimum lot size of 1 acre.
2. Home occupation.

Prohibited Land Uses

Non-residential land uses.

Public Improvements

Sidewalks, street lights, curb and gutter, and road widenings should not be required public improvements to local streets within this land use designation area, and the county should not provide them. The residents of this land use designation area will be responsible for providing these public improvements, if they are desired in the future.

Trails, Open Space, Parks & Recreation

1. The planning and development of the Big Dry Creek Trail should continue to involve residents and property owners within this land use designation area.
2. Owners of property along Big Dry Creek are encouraged to maintain the natural vegetation and setting, and, if possible, provide further plantings to enhance the wildlife habitat.

Land Use Designation Area C

Land use designation area C is bordered generally by the railroad tracks on the north and west, by the City of Westminster boundary on the east, and by 99th Place on the south. Another portion of land use designation area C exists west of Wadsworth Blvd and north of 92nd Ave. New development or redevelopment in this area may be required to annex into the City of Westminster.

Recommended Land Uses

1. Retail.
2. Office.
3. Mixed use retail/residential.
4. Other similar uses that are not specifically prohibited below.

Prohibited Land Uses

1. Car dealerships
2. Warehousing
3. Mini storage
4. Outdoor storage
5. Pawn shops
6. Vehicular repair
7. Vehicle demolition
8. Heavy industrial/manufacturing
9. RV/boat storage
10. Kennels

Land Use Designation Area D

Area D extends from West 108th Avenue on the north to Church Ranch Blvd on the south, the railroad tracks on the east and the Westminster city limit on the west. The Critical Zone of the Rocky Mountain Metropolitan Airport overlays a large portion of this land use designation area. Protection of the Rocky Mountain Airport Critical Zone is the principle goal of this area. Development in this area should also refer to the *Rocky Mountain Metropolitan Airport* portion of this plan.

Recommended Land Uses

1. Outside the Rocky Mountain Metropolitan Airport Critical Zone, residential development with a minimum lot size of 1 acre is recommended.
2. Within the Rocky Mountain Metropolitan Airport Critical Zone:
 1. Residential development allowed by existing zoning may be developed. Units may be clustered to preserve larger open areas. The minimum lot size should be 1 acre.
 2. Home occupation
 3. Open Space, parks, golf courses, trails and community scale equestrian facilities.
 4. Commercial, industrial and agricultural uses in keeping with the policies of the Airport Environs Land Use Plan in the Airport Master Plan.

Prohibited Land Uses

1. Outside the Rocky Mountain Metropolitan Airport Critical Zone, commercial and industrial land uses should not be allowed.

2. Within the Rocky Mountain Metropolitan Airport Critical Zone, the following uses should be prohibited:
 - a. Residential development in excess of the number of units allowed by existing zoning.
 - b. Religious assemblies, event centers, schools, hospitals, and other noise-sensitive land uses or uses that would allow large numbers of people to gather in a concentrated area.
 - c. Land uses which would generate smoke emissions, building heights, exterior lighting, electrical equipment, communication systems which interfere with airport instrumentation or communications systems, or create other impediments to safe movement of aircraft, as determined by the Rocky Mountain Metropolitan Airport Environs Land Use standards.
 - d. Manufacturing, processing or storing of explosives, toxic or radioactive materials in the Primary Approach and Departure Zone of the Airport.
 - e. Structures within the Runway Protection Zones, formerly called Clear Zones, defined by the Rocky Mountain Metropolitan Airport Environs Master Plan.

Land Use Designation Area E

Land use designation area E is south and west of the railroad, south of 92nd Ave. Current land use is residential. This area is surrounded on three sides by multi-family development.

Recommended Land Uses

1. Multi-family residential.
2. Mixed use retail/residential.
3. Home occupation.

Prohibited Land Uses

Commercial, industrial, and institutional uses, with the exception of commercial/residential mixed use.

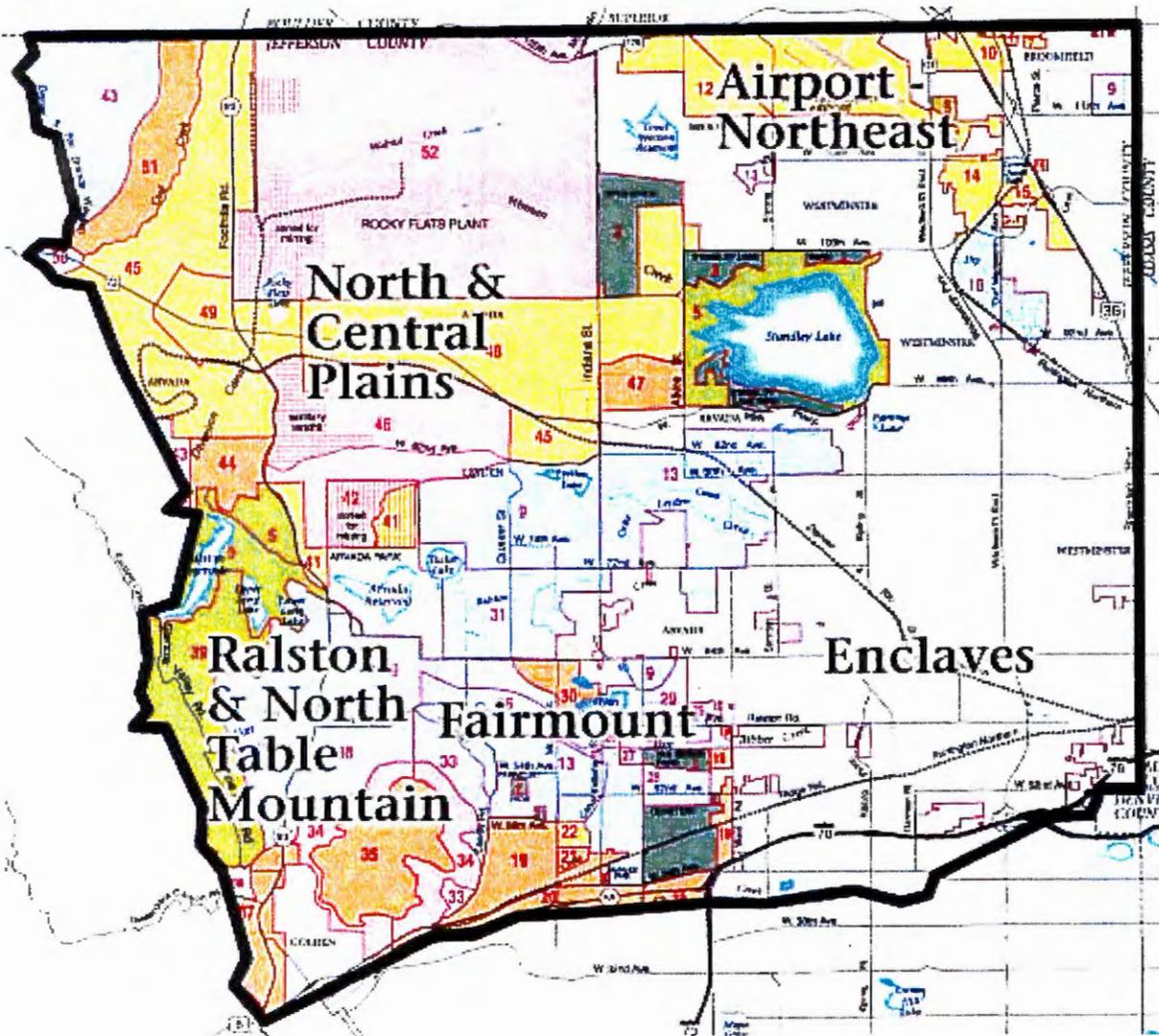
The North Plains Community Plan Study Area Summary Map

Refer to the following legend for land use recommendations.

Area and type of land use chart

Legend

- Enclaves
- Mixed Use: Residential & Retail, or Office, or Industrial
- Nonresidential: Retail, or Office, or Industrial
- Open Space, Parks & Recreation Areas, Schools, & Cemetery
- Open Space & Rural Residential 1 du/5 to 35 acres
- Residential up to 4 du/ ac
- Special Use



**TERMINATION OF INTERGOVERNMENTAL AGREEMENT
FOR THE
NORTHEAST JEFFERSON COUNTY/WESTMINSTER ENCLAVES AREA
(a.k.a. NORTHEAST COMPREHENSIVE DEVELOPMENT PLAN)**

This Termination of Intergovernmental Agreement for the Northeast Jefferson County/Westminster Enclaves Area (this "Termination"), dated for reference purposes this 17th day of January, 2012, is by and between County of Jefferson, State of Colorado, a body politic and corporate (the "County"), and the City of Westminster, a Colorado municipal corporation (the "City").

RECITALS

- A. Pursuant to Article 20 of Title 29 of the Colorado Revised Statutes, as amended, the City and the County are permitted to enter into intergovernmental agreements for the purpose adopting mutually binding and enforceable comprehensive development plans.
- B. The City and the County identified certain enclave areas within the northeastern portion of the County as an area of mutual interest. The County and the City were interested in protecting the economic viability of the Jefferson County Airport by prohibiting an increase in residential units beyond existing zoning within the Jefferson County Airport Critical Zone and preserving the community character of the area.
- C. The City and the County worked together to development the Northeast Comprehensive Development Plan to provide for long-range joint planning for the northeast area by requiring the City and the County to adhere to a comprehensive development plan for development proposals in the area for a reasonable period of time.
- D. At a joint hearing with the City of Westminster City Council and the Jefferson County Board of County Commissioners on July 23, 1996, the Comprehensive Development Plan for the northeast enclaves area was approved and the County authorized the Chairman to execute the Intergovernmental Agreement between the City and the County for the Northeast Jefferson County/Westminster Enclaves Area (the "IGA").
- E. The IGA contained a provision that the agreement would remain in place for 10 years with an automatic extension for an additional 10 years unless the City or the County notified the other party of the desire to terminate the IGA.
- F. In October 2006, the City and the County approved certain amendments to the Northeast Comprehensive Development Plan and extended the IGA for an additional 10 years until 2016.

G. At this time the original goals of the IGA have been achieved and the County and the City desire to make the planning process simpler in each jurisdiction by terminating the IGA and the dissolving the Northeast Comprehensive Development Plan.

AGREEMENT

Now, therefore, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City hereby agree as follows:

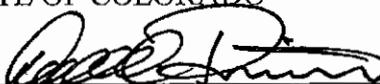
1. Termination. As of the date of full execution of this Termination (the "Termination Date"), the IGA shall be terminated and no longer in force and effect. The City and the County shall each follow the applicable jurisdiction's processes and master plan for any applications falling within the Northeast Comprehensive Development Plan area from and after the Termination Date.

2. Counterparts. This Termination may be executed in one or more separate counterparts but each separate counterpart, when assembled with the other signature pages from the corresponding counterpart signature pages, shall constitute one original executed Termination.

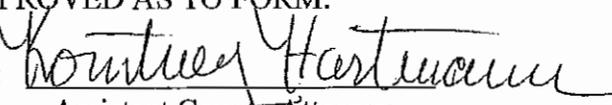
The parties hereby execute this Termination of Intergovernmental Agreement for the Northeast Jefferson County/Westminster Enclaves Area.

Attest: 
By:  Deputy Clerk
Date: 1-18-2012

COUNTY OF JEFFERSON,
STATE OF COLORADO

By: 
Donald Rosier, Chairman
Board of County Commissioners

APPROVED AS TO FORM:

By: 
Assistant County Attorney

CITY OF WESTMINSTER,
a Colorado municipal corporation

Attest:

By: _____
City Clerk

By: _____
_____, Mayor

Date: _____

APPROVED AS TO FORM:

By: Martin McCall
City Attorney



Agenda Item 10 C

Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Resolution No. 8 re Recovery Contract Interest Rate

Prepared By: Frances A. Velasquez, Secretary

Recommended City Council Action

Adopt Resolution No. 8 establishing the 2012 calendar year interest rate for non-City funded public improvement recovery contracts at 5.25 percent and an interest rate of 3.88 percent for City-funded public improvements.

Summary Statement

- In accordance with Section 7(F) of Title XI, Chapter 6, of the City Code, Staff requests that City Council establish interest rates on recovery agreements for 2012. For the past several years, it has been City practice to add two percent to the Prime Rate for non-City funded recovery contracts. The Prime Rate on January 1, 2012, was 3.25 percent. It is proposed that the recovery interest rate for 2012 on non-City funded public improvements be the Prime Rate plus two percent, or 5.25 percent.
- Staff is proposing that the recovery interest rate on City-funded projects for 2012 be set at 3.88 percent in accordance with the average Bond Buyer 20 Index for 2010, which is consistent with the methodology used to set the rate for the past six years.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the City Council concur with the proposed methods of assessing interest on recoveries associated with new private developments and City-funded projects?

Alternative

Council could establish different interest rates for recovery agreements than the proposed rates. This is not recommended as the proposed rates are tied to the established indexes that provide good credibility for the recovery interest paid to developers or the City.

Background Information

Several years ago, City Council established a recovery system that enables developers to recover a portion of certain costs associated with public improvements installed with their developments that also benefit adjacent, undeveloped properties. Recovery contracts are executed between the City and the developer. When subsequent development occurs in those areas benefited by the improvements and installed by the original developer, the new development is assessed its proportionate share plus interest, which is then returned to the original developer. The recovery system has also allowed the City to be reimbursed for public improvements installed by the City when subsequent private development occurred abutting the improvements.

Prior to 1993, the interest rate used in calculations for recoveries owed on City-funded public improvements was equal to that used on privately funded improvements (i.e., prime rate plus two percent). However, the actual cost of money used to fund City Capital Improvement Projects is usually less than that charged to private developers. Since the philosophy behind the City's recovery system is one of cost reimbursement, not profit making, in the past City Council has felt that it is more equitable to select an interest rate for City-funded projects that more closely approximates the actual cost of money to the City. From 1993 through 2004, Council approved the use of the Municipal Bond Index as the recovery interest rate for City projects. Because this Index is set weekly and can fluctuate greatly throughout the year, Staff proposed a different approach seven years ago. In 2005, Council selected the average Bond Buyer 20 Index for the preceding year as a more representative benchmark of the City's true cost of borrowing money. Staff recommends that this method of calculating the interest rate for recoveries associated with City-funded projects be used again this year.

This authorization meets Council's Strategic Plan goals of a Financially Sustainable City Government with revenues to support defined City services and service levels as a mature city.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. **8**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION
ESTABLISHING THE 2012 RECOVERY CONTRACT INTEREST RATE**

WHEREAS, Section 11-6-7 (F) 1 of the Westminster Municipal Code provides that City Council shall, from time to time, establish the interest rates to be utilized for the assessment of interest costs relating to recovery costs for public improvements; and

WHEREAS, such interest rates have traditionally been calculated at the beginning of each calendar year.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the 2012 calendar year interest rate for any non-City funded public improvement recovery contract shall be 5.25 percent and the 2012 calendar year interest rate for City-funded public improvements shall be 3.88 percent.

PASSED AND ADOPTED this 27th day of February 2012.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 10 D

Agenda Memorandum

City Council Meeting
February 27, 2012



SUBJECT: Councillor's Bill No. 5 re Proposed Economic Development Agreement with Trimble Navigation Limited

Prepared By: Chris Gray, Economic Development Officer

Recommended City Council Action

Pass Councillor's Bill No. 5 on first reading authorizing the City Manager to execute and implement the Economic Development Agreement with Trimble Navigation Limited.

Summary Statement

- Trimble Navigation plans to relocate from its current 99,000 square feet of leased space in Westmoor Technology Park and has considered alternative sites in Broomfield, Boulder and Louisville.
- The company has a contract on approximately 15 acres of land in Westmoor Technology Park and is processing plans to build a new 125,000 square foot office building with the ability to construct a second building in the next five years.
- The company currently employs 362 workers at its Westminster location and expects to add another 125 workers by 2016.
- The average annual wage is expected to be \$97,000.
- The proposed assistance is based on the City's goal to retain one of its major primary employers in one of the City's key industry sectors.
- All of the proposed assistance will come from taxes and fees generated by the company's construction of its new office building.
- Should the company decide to move out of Westminster any time prior to December 31, 2016, the company is required to reimburse the City any taxes and fees rebated under the Economic Development Agreement (EDA).

Expenditure Required: Approximately \$311,574 (Sales & Use Tax and Fee Rebates)

Source of Funds: The EDA with Trimble Navigation will be funded through the rebating of sales and use taxes and building permit fees generated by the Company's construction of its new office building and its purchase of new equipment, furniture and fixtures.

Policy Issue

Should the City provide assistance to Trimble Navigation Limited based on the retention and expansion of the Company in the City and the resulting retention of 362 high paying technical jobs and the addition of 125 more over the next five years?

Alternatives

1. Do Nothing: One alternative to offering the business assistance package is to offer nothing to this Company. Though the City may not lose the project if assistance is not provided, the result would be that the City's goal of retaining quality businesses would not be supported.
2. Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is consistent with other business assistance packages.
3. Provide More: A third alternative would be to provide a greater amount of assistance than recommended. It is Staff's opinion that additional assistance is not needed; as, this package is consistent with other business assistance packages and reflects what the City previously agreed to with similar primary employment projects.

Background Information

Trimble Navigation began doing business in Sunnyvale, California in 1978. The company is known best for its GPS technology applications although it also integrates a wide range of positioning technologies including GPS, laser, optical and inertial technologies in its products.

The company's Westminster offices started out initially in Church Ranch Corporate Center in September, 2000, with approximately 68 employees. Subsequent growth resulted in a move to Westmoor Technology Park where the company now employs 362 people. The Westminster offices are the "nerve center" of the company's sales, marketing and R&D efforts related to agricultural and heavy construction vehicle applications. Clients from all over the world visit the Westminster location.

In January, 2011, Trimble issued a Request for Information (RFI) soliciting submittal of land and/or development services for a new 125,000 square foot facility consisting of office, R&D, conferencing and data center capabilities. The RFI was issued to developers along the US 36 corridor. Ultimately, selection was whittled down to a 15 acre site on the south side of Westmoor Drive in Westmoor Technology Park in Westminster. The company has a contract to purchase the site and currently has site and building plans moving through the City's development review process. The company's site plan calls for a new building to break ground in the 2nd Quarter of 2012. The \$22 million facility will be a 4-story building with a small outdoor track to facilitate R&D efforts and provide a showcase location for marketing and training purposes. The company anticipates moving into the building by early summer, 2013. The company anticipates constructing a second building on the site within the next five years.

The Jefferson County Board of Commissioners has approved a rebate of personal property taxes for the project valued at about \$80,000 over ten years.

Trimble is a publicly traded company on NASDAQ with the symbol TRMB. Its website is www.trimble.com.

Proposed Assistance

Staff recommends that the following assistance be provided to Trimble Navigation:

	<u>Approximate Value</u>
<u>Building Permit Fee Rebate</u> 60% of the building related fees (excluding water and sewer tap fees) will be rebated (\$144,290 x 60% = \$86,574)	\$86,574
<u>Construction Use Tax Rebate</u> 60% of the Use Taxes on construction materials for this project will be rebated (\$330,000 x 60% = \$198,000)	\$198,000
<u>Sales/Use Tax on Equipment & Furnishings</u> 60% of the Sales/Use Taxes on purchased equipment and furnishings 6 months prior and 6 months after the certificate of occupancy will be rebated (Estimated sales & use tax \$45,000 x 60% = \$27,000)	<u>\$27,000</u>
Total Proposed Assistance Package	\$311,574

The rebate will only be paid from tax dollars generated by Trimble’s construction and equipping of its new office building.

This assistance package is based upon the City’s Strategic Plan Goals of a Financially Sustainable City Government Providing Exceptional Services and Strong, Balanced Local Economy with the key objective to attract and retain primary employers. Staff believes that this investment in Trimble’s retention and development of a new office building in Westminster will help the company achieve its overall goal to expand its R&D and administrative presence in the Rocky Mountain West.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Ordinance with Exhibit A - Economic Development Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **5**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT
WITH TRIMBLE NAVIGATION LIMITED**

WHEREAS, the successful retention of expanding primary businesses in the City of Westminster maintains and increases the pool of high paying jobs and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for businesses to expand or relocate in the City; and

WHEREAS, Trimble Navigation Limited plans to construct and occupy a new 125,000 square foot office building in Westmoor Technology Park; and

WHEREAS, a proposed Economic Development Agreement between the City and Trimble Navigation Limited is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with Trimble Navigation Limited in substantially the same form as the one attached as Exhibit "A" and, upon execution of the Agreement, to fund and implement said Agreement.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of February, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 19th day of March, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**ECONOMIC DEVELOPMENT AGREEMENT
FOR
TRIMBLE NAVIGATION LIMITED**

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2012, by and between the CITY OF WESTMINSTER, a Colorado home rule city (the "City"), and TRIMBLE NAVIGATION LIMITED, a California corporation authorized to do business in the State of Colorado (the "Company").

WHEREAS, the City wishes to provide assistance to aid in the relocation and expansion of the Company in the City; and

WHEREAS, the Company plans to build and furnish approximately 125,000 square feet of office space in Westmoor Technology Park, thus continuing to provide primary job growth within the City; and

WHEREAS, City Council finds the execution of this Economic Development Agreement will benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and the Company agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to the Company 60% of the building permit fees that are otherwise required under W.M.C. Section 11-10-3 (E) for the construction of the Company's new office building in Westmoor Technology Park. This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$86,600.

2. Use Tax Rebate--Construction. The City shall rebate to the Company 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on construction materials collected from the Company for the construction of its new office building in Westmoor Technology Park that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The use tax rebate will be approximately \$198,000.

3. Sales and Use Tax Rebate--Furniture and Fixtures. For the period of 6 months prior and 6 months after the Company obtains a Certificate of Occupancy for its new facility in Westmoor Technology Park, the City will rebate 60% of the Westminster General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected from the Company on the purchased equipment and furnishings. Rebates will be based on the documentation prescribed by the City and provided by the Company which illustrates purchases or delivery of any such furnishings, fixtures, or equipment that occurred within the City of Westminster and that taxes were paid to and collected by the City. The rebate will be approximately \$27,000.

4. Payments of Rebates.

a) The total rebate is not to exceed \$311,600. The rebates to the Company by the City shall be paid in quarterly installments from revenue actually collected and received by the City in connection with the move by the Company into the new facility. Payments of each quarterly installment shall be paid to the Company by the City within thirty (30) days following the end of each calendar quarter. All payments by the City shall be made electronically to the Company's designated financial institution or other account.

b) In the event the Company fails to comply in any material respect with provisions of the City regulations or code relative to the development, use, occupancy or operation of the project the City may, after providing the Company with not less than ten (10) days advance written notice, suspend payment of the quarterly installments until the Company complies with such provisions of the City regulations or code.

5. Entire Agreement. This Agreement shall constitute the entire agreement between the City and the Company and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if the Company has not moved into the new Westmoor offices by December 31, 2013.

7. Business Termination. In the event the Company ceases business operations within the City at any time prior to December 31, 2016, then the Company shall pay to the City the total amount of fees and taxes that were paid by or for the Company to the City and were subsequently rebated by the City to the Company pursuant to this Agreement.

8. Subordination. The City's obligations pursuant to this agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, 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 sales and use tax revenues of the City.

9. Annual Appropriation. Nothing in this agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article 10, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

10. Governing Law; Venue. This agreement shall be governed and construed in accordance with the laws of the State of Colorado. This agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation they shall first engage, in good faith, the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.

11. Authority. The undersigned represent on behalf of their respective parties that the execution, delivery and performance of this agreement has been duly authorized by all necessary corporate or governmental action and is not prohibited by any provision of law or other, applicable governing documents.

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, February 27, 2012

AT 7:00 P.M.

1. Roll Call

2. Minutes of Previous Meeting (January 23, 2012)

3. Purpose of Special WEDA Meeting is to

- A. Authorize a Westminster Center Urban Reinvestment Project Snow Removal Contract
- B. Authorize Special Legal Counsel Services Agreements with Barbara Banks and Dee Wisor
- C. Adopt Resolution No. 137 approving a Loan Agreement and Associated Documents regarding the Sears Acquisition

4. Executive Session

Discussion of strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and the possible sale, acquisition, trade or exchange of property interests, including future leases, and provide instructions to the Authority's negotiators as authorized by CRS 24-6-402 (4)(a) and 24-6-402(4)(e). *Verbal*

5. Adjournment

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JANUARY 23, 2012, AT 7:16 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 Lindsey, to approve the minutes of the meeting of January 9, 2012, as written. The motion carried unanimously.

AMENDED LOAN AGREEMENT WITH GATEWAY PLAZA LLC

It was moved by Board Member Major, seconded by Board Member Kaiser, to authorize the Executive Director to execute an amended loan agreement with Gateway Plaza, LLC, a subsidiary of the Community Resources and Housing Development Corporation, relative to a loan provided by the Westminster Economic Development Authority for the construction and acquisition of the commercial building at 7305 Lowell Boulevard. The motion carried with all members voting affirmatively.

PHASE 2 CONTRACT AMENDMENT WITH SMITH ENVIRONMENTAL FOR MALL DEMO

It was moved by Board Member Briggs and seconded by Board Member Kaiser to authorize the Executive Director to execute a contract amendment with Smith Environmental in the amount of \$21,934 for the Westminster Mall Demolition Phase 2 Project bringing the total contract amount to \$71,934. The motion carried with all members of the Authority voting affirmatively.

ACQUISITION OF LOT 1, BLOCK 11, WESTMINSTER MALL 2ND AMENDED PLAT (SEARS)

Board Member Atchison moved to authorize the Executive Director to: (1) enter into a purchase and sale agreement for the acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, County of Jefferson, State of Colorado, in substantially the same form as distributed in the agenda packet and containing such other terms as might be approved by the Executive Director and the Authority Attorney, to the extent such terms would not effect the purchase price for this property; (2) enter into a loan agreement for the financing of this acquisition on commercially acceptable terms and conditions deemed acceptable to the Executive Director, the Finance Director and the City Attorney; and (3) enter into such other agreements and make such related court filings as may be approved by the Executive Director and the Authority Attorney to formally settle and dismiss the litigation related to this property. Board Member Lindsey seconded the motion, and it carried unanimously.

ADJOURNMENT

There was no further business for the Authority's consideration, and the meeting adjourned at 7:21 P.M.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
February 27, 2012



SUBJECT: Westminster Center Urban Reinvestment Project Snow Removal Contract

Prepared By: Jerry Cinkosky, Facility Manager

Recommended Board Action

Based on the recommendation of the Executive Director, find the public interest would best be served by authorizing the Executive Director to enter into an agreement with American Demolition for snow removal services at the Westminster Mall property in an amount not to exceed \$90,000.

Summary Statement

- Though the majority of the Westminster Mall property will be demolished by May 2012, snow removal services are necessary for remaining tenants and surrounding property.
- American Demolition has successfully provided snow removal services at the Mall property since October 2011.
- Staff recommends the award of a sole source contract to American Demolition for snow removal services through 2012.

Expenditure Required: Not to exceed \$90,000

Source of Funds: WEDA – Westminster Center Urban Reinvestment Project

Policy Issue

Should the Westminster Economic Development Authority (WEDA) award a sole source contract to American Demolition for the purpose of snow removal services at the Westminster Mall property?

Alternative

The Board could direct staff to publish another request for proposals (RFP) for snow removal services at the Mall property. Staff is not recommending this action based on the lack of response to the RFP process in September 2011 and American Demolition's competitive pricing and successful performance since October 2011.

Background Information

As the owner of the Westminster Mall property, the Westminster Economic Development Authority (WEDA) assumed some maintenance responsibilities for remaining tenants including snow removal.

On September 10, 2011, based on a list provided by the Street Maintenance Division, thirteen companies were sent a request for proposal (RFP) to provide snow removal services. As part of the RFP, interested companies were required to attend a pre-bid meeting on September 22, 2011. None of the thirteen companies attended the pre-bid meeting. Staff was interested to understand why companies had not attended the meeting. Each company was contacted and staff learned the overwhelming reason was that companies did not want to commit a significant amount of equipment to one project for occasional snow removal. They preferred responding to emergency calls to the property for snow removal on an as needed/available basis.

On September 26, 2011, during a Mall demolition progress meeting, the owner of American Demolition inquired about plans for continued snow removal at the Mall property and asked to be considered as a vendor for snow removal services. Having no snow removal contractor and with snow season approaching, Staff asked American Demolition to submit a list of equipment and associated hourly pricing for each snow removal function (e.g. hand shoveling, plows, heavy equipment). Staff compared American Demolition's pricing with Street Maintenance's emergency snow removal contractor's rates and found American Demolition's pricing to be much less. American Demolition attributed their cost savings to already having all of their equipment on site, avoiding staging or mobilization fees charged by the other snow removal companies. Additionally, during snow events demolition employees are sent home leaving equipment idle. The snow removal effort provides a complementary business opportunity for the company and its employees during this weather-related down time. Staff recommends the award of a one-year sole source contract to American Demolition to continue snow removal services at the Westminster Mall property. This recommendation is based on American Demolition's successful completion of services in 2011, Staff's knowledge of American Demolition's lower pricing compared to competing emergency as needed snow removal companies and the ease at which the company can immediately switch priorities from demolition to snow removal on site.

Awarding this contract to American Demolition supports the City's Goal of a financially sustainable City government providing exceptional services by maintaining the City's infrastructure investment. This contract award also supports the City's Goal of a strong, balanced local economy by supporting the revitalization efforts of the Westminster Center Urban Reinvestment Area.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
February 27, 2012



SUBJECT: Special Legal Counsel Services Agreements with Barbara Banks and Dee Wisor

Prepared By: Martin R. McCullough, Authority Attorney

Recommended Board Action

Authorize the Executive Director to enter into the following special counsel agreements in a form acceptable to the Authority Attorney: (1) an agreement with Barbara Banks of Banks & Imatani, P.C. in an amount not to exceed \$30,000 for work related to the Westminster Urban Reinvestment Project, the South Westminster Transit-Oriented Development, and general real estate legal advice as may be required by the Authority; and (2) an agreement with Dee Wisor of Sherman & Howard in an amount not to exceed \$15,000 for special legal counsel services related to the anticipated loan financing of the purchase of the Sears Department Store through Vectra Bank.

Summary Statement

- Staff is recommending that WEDA authorize the Executive Director to execute a legal services agreement with Ms. Barbara Banks, of Banks and Imatani, for assistance on non-routine real estate law issues that arise from time to time in the course of negotiating and preparing more complex agreements relative to such projects as the Westminster Urban Reinvestment Project and the South Westminster Transit Oriented Development (TOD).
- Staff is also recommending that WEDA authorize the Executive Director to execute a legal services agreement with Sherman & Howard for special counsel services related to the anticipated \$4.2M loan financing for the purchase of the Sears Department Store for the Westminster Center Urban Reinvestment Project (WURP).

Expenditure Required: Not to exceed \$45,000 total

Source of Funds: WEDA - Westminster Center Urban Reinvestment Project

Policy Issue

Should WEDA authorize the Executive Director to enter into legal services agreements with Barbara Banks of Banks & Imatani, P.C., and Dee Wisor of Sherman & Howard?

Alternative

WEDA could elect not to retain this type of special legal counsel assistance or seek such assistance from another source. Staff believes that the recommended legal service arrangements are important in accomplishing the objectives of the WURP and South Westminster Transit Oriented Development projects and other Authority goals in a timely and cost-effective manner. The proposed fees are reasonable and competitive within the Denver area market.

Background Information

Ms. Banks is an experienced attorney specializing in real estate law. Ms. Banks is a current member and past chairperson of the Real Estate Section of the Colorado Bar Association. She has written and presented papers on a wide variety of complex real estate issues, including such matters as lender law and “mortgageable ground leases.”

Ms. Banks has previously assisted the City in the acquisition of the Westminster Mall property and the ICON property, and the acquisition and lease-back of the JH Barnum property. She was also instrumental in completing the joint development agreement and the conference center lease for the Westin Hotel project. Under the proposed agreement, Ms. Banks is willing to provide her services to the City at a discounted rate of \$275 per hour.

Sherman & Howard has acted as special counsel for the Authority on several past financings, including the Mandalay, South Westminster, and South Sheridan Urban Renewal Financings. Mr. Dee Wisor of Sherman & Howard has served as the City’s and the Authority’s bond counsel on numerous other issues and is a nationally recognized public finance expert. As a condition to issuing this loan, WEDA is required to provide Vectra Bank an opinion from nationally rated bond counsel that the loan is a binding and enforceable obligation of the Authority. Staff believes that the proposed fee of not to exceed \$15,000 for these services is fair and reasonable based on prevailing fees for similar services in the Denver area market.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 C

Agenda Memorandum

Westminster Economic Development Authority Meeting
February 27, 2012



SUBJECT: Resolution No. 137 re Loan Agreement and Associated Documents - Sears Acquisition

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst

Recommended Board Action

Adopt Resolution No. 137 approving a loan not to exceed \$4,300,000 for the purchase of the Sears' property at the former Westminster Mall Site, and authorizing the Chair, Vice Chairperson, or the Executive Director to execute the Loan, in substantially the same form as the attached agreements, between the Westminster Economic Development Authority and Vectra Bank.

Summary Statement

- The Board approved the purchase and financing of the Sears' property on January 23, 2012.
- A term sheet requesting financing options was sent to four banks.
- A Commitment Letter was signed with Vectra Bank to provide the short-term financing for the property purchase.
- At this time the Bank has not provided the Westminster Economic Development Authority (WEDA) with the information required to complete the Resolution. Staff will provide the completed Resolution on February 23, 2012, once the Bank has provided the required information.

Expenditure Required: Not to exceed \$375,000 in closing and financing costs

Source of Funds: Westminster Center Urban Reinvestment Project

Policy Issue

Should WEDA enter into a Loan Agreement with Vectra Bank for the purchase of the Sears' property located on the former Westminster Mall site?

Alternative

The alternative would be to not approve the Loan Agreement. This alternative is not recommended. Without the Loan Agreement WEDA would not be in a position to purchase the Sears' property, as cash funds are not available to complete this critical transaction.

Background Information

On April 13, 2009, the City approved the Westminster Center Urban Reinvestment Plan (the "2009 Plan"). The main objective of the 2009 Plan is to create a new Westminster Center that will be a transit-oriented mixed-use neighborhood including residential, retail, entertainment and employment uses, all adjacent to a new multi-modal transit station. The 2009 plan also designated the location of the Westminster Mall as an urban renewal area (the "2009 Area"). Finally, the 2009 plan determined that the 2009 Area is appropriate for one or more projects and other undertakings of the Authority, as authorized in the Urban Renewal Law, and designated the Central Subarea as an urban renewal project known as WURP.

Since the approval of the 2009 Plan, WEDA acquired the majority of the Mall property with available cash in the project account. The purchase of the Sears' property is the remaining parcel to complete the required acquisitions needed to redevelop the Mall site. The cost of the Sears' property acquisition is \$4.2 million, which will be financed by a loan from Vectra Bank to WEDA.

Under the terms of the Loan Agreement, the loan will be collateralized by the following properties owned by WEDA: the former Mervyn's and Macy's properties along with the Sears' property. The loan term is for 2 years with interest only payments made semi-annually and a bullet principal payment of \$4.2 million due on February 28, 2014 plus accrued interest. Funding for the principal payment due is anticipated to be paid from proceeds out of the sale of property(ies) to a developer. All closing and financing costs will be covered from funds appropriated in the Westminster Center Urban Reinvestment Project account.

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 securing the last land parcel attached to the former Mall structure to complete the assemblage of land needed to sell the land owned by WEDA to a developer to fulfill the long-term strategic goals of the redevelopment project.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Loan Agreement
- Deed of Trust
- Resolution to be attached 2/23/12

LOAN AGREEMENT

by and between

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
as Borrower

and

VECTRA BANK COLORADO, NATIONAL ASSOCIATION
as Lender

regarding

\$4,200,000
Westminster Economic Development Authority
Acquisition Loan
(Sears Redevelopment Project)
Series 2012

Dated as of February 29, 2012

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EXHIBIT A FORM OF PROMISSORY NOTE

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of the 29th day of February, 2012, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a public body corporate and politic duly existing under the laws of the State of Colorado, as borrower (the “Authority”), and **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association, as lender (the “Lender”).

WITNESSETH:

WHEREAS, 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 (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 Authority 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, the Authority is undertaking certain activities for the purpose of redeveloping the property within the City previously known as the Westminster Mall; and

WHEREAS, in connection with such activities, the Authority has entered into a purchase and sales agreement with Sears for the acquisition of the certain real property on which a Sears retail store currently exists, together with the improvements thereon (as more particularly defined in Section 1.01 hereof, the “Sears Parcel”); and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has determined that it is in the best interests of the Authority to obtain financing from the Lender in the form of a loan for the purpose of funding the acquisition of the Sears Parcel; and

WHEREAS, the Lender is willing to make a loan to the Authority for such purpose payable from and secured by the Collateral and otherwise issued subject to the terms and conditions contained in this Agreement.

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

ARTICLE I

DEFINITIONS

“*Act*” means the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes, as amended.

“*Agreement*” means this Loan Agreement, as amended or supplemented from time to time in accordance with the provisions hereof.

“*Authority*” means the 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.

“*Authorized Person*” means the Executive Director of the Authority or any other individual authorized by the Board to act as an Authorized Person hereunder.

“*Authorizing Resolution*” means Resolution No. ____, Series of 2012, adopted by the Board on February 27, 2012 authorizing the Authority to incur the indebtedness of the Loan and to execute and deliver the Note, this Agreement, the Deeds of Trust, and the other Financing Documents to which it is a party.

“*Board*” means the Board of Commissioners of the Authority, in its capacity as the governing body of the Authority, as the same shall be duly and regularly constituted from time to time.

“*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.

“*Closing*” means the concurrent execution and delivery of the Note, this Agreement, the Deeds of Trust and the other Financing Documents by the respective parties thereto; the funding and disbursement of the Loan; the execution and delivery of the Warranty Deed by Sears to the Authority; and the satisfaction of all conditions precedent to the foregoing as set forth in this Agreement and the Sears Agreement.

“*Closing Date*” means date on which the Closing occurs, estimated to be on or about February 29, 2012. (Pre-closing will occur on February 28, 2012.)

“*Collateral*” means:

(a) the Lender’s interest in the Real Property pursuant to the Lien of the Deeds of Trust thereon;

(b) all amounts realized pursuant to the exercise by the Lender of its rights and remedies under the Deeds of Trust including, without limitation, amounts reimbursable to the Lender pursuant to the provisions thereof and hereof;

(b) all Net Sale Proceeds; and

(c) all amounts on deposit in the Interest Account held hereunder, together with all investment earnings thereon.

“*Commitment Fee*” means the fee due and payable to the Lender on the Closing Date in an amount equal to \$21,000.00, calculated as 0.50% of the Loan Amount.

“*Costs of Issuance*” means the reasonable costs and expenses incident to the making of the Loan by the Lender and the borrowing of the Loan by the Authority, including, without limitation, the Commitment Fee, the fees and disbursements of counsel to the Authority and counsel to the Lender; the fees and expenses of the Authority’s accountants and other consultants; and the costs of environmental studies, surveys, and appraisals, all to be paid with legally available moneys of the Authority (and not proceeds of the Loan) pursuant to invoices provided to and approved by the Authority.

“*Debt*” of any Person shall mean, on any date, without duplication, (a) all obligations of such Person for borrowed money and reimbursement obligations which are not contingent, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others guaranteed by such Person, (f) all obligations of such Person subject to annual appropriation by its governing body of amounts sufficient to pay such obligations, and (g) all payment obligations of such Person, in addition to any obligations set forth in clauses (a) through (f) above, arising under any swap, cap, collar, interest rate futures contract, interest rate option contract or other similar arrangement and under any foreign exchange contract, currency swap agreement, foreign exchange futures contract, foreign exchange option contract, synthetic cap or other similar agreement; *provided* that it is understood that Debt does *not* include: contingent obligations of such Person to reimburse any other Person in respect of surety bonds or letters of credit to the extent that such surety bonds or letters of credit support Debt of such Person, or any operating leases, payroll obligations, accounts payable or taxes incurred or payable in the ordinary course of business of such Person. For purposes of this definition, if any of the agreements or contracts set forth in clause (g) above relate to any other obligation of a Person which is otherwise included in this definition of Debt, such agreements and contracts shall constitute Debt only to the extent that the payment obligations of such Person thereunder, less any amounts receivable by such Person thereunder, exceed or are expected to exceed the amount payable on the related Debt.

“*Deed of Trust (Macy’s Parcel)*” means the Deed of Trust dated as of February 29, 2012 from the Authority to the Public Trustee of Jefferson County for the use of the Lender, to be recorded on the Closing Date against the real property described on Exhibit ___ attached thereto.

“*Deed of Trust (Mervyn’s Parcel)*” means the Deed of Trust dated as of February 29, 2012 from the Authority to the Public Trustee of Jefferson County for the use of the Lender, to be recorded on the Closing Date against the real property described on Exhibit ___ attached thereto.

“*Deed of Trust (Sear’s Parcel)*” means the Deed of Trust dated as of February 29, 2012 from the Authority to the Public Trustee of Jefferson County for the use of the Lender, to be recorded on the Closing Date against the real property described on Exhibit ___ attached thereto.

“*Deeds of Trust*” means, collectively, the Deed of Trust (Macy’s Parcel); the Deed of Trust (Mervyn’s Parcel); and the Deed of Trust (Sear’s Parcel).

“*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.

“*Default Rate*” has the meaning set forth in Section 2.04(b)(ii) hereof.

“*Escrow Instructions*” means the written instructions from Kutak Rock LLP, legal counsel to the Lender, to the Title Company dated on or about the Closing Date instructing the Title Company as to disbursement of the Loan proceeds, recording of the Deeds of Trust, and other relevant matters.

“*Environmental Reliance Letters*” means, collectively, the Macy’s Phase I Reliance Letter; the Mervyn’s Phase I Reliance Letter; and the Sear’s Phase I Reliance Letter.

“*Event of Default*” has the meaning set forth in Section 7.01 hereof.

“*Financing Documents*” means this Agreement, the Note, the Authorizing Resolution, and the Deeds of Trust, all in form and substance satisfactory to the Lender, as the same may be amended or supplemented from time to time in compliance with the provisions hereof.

“*Fiscal Year*” means the fiscal year of the Authority, which currently begins on January 1 of each year and ends on December 31 of such year, or any other fiscal year of the Authority in the event that the fiscal year of the Authority shall be modified.

“*Index*” means the Seattle Federal Home Loan Bank Two Year Bullet Advance Rate [MORE SPECIFIC LANGUAGE TO FOLLOW].

“*Interest Differential*” has the meaning set forth in Section 2.04 hereof.

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

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

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, Lien (statutory or other), preference, priority or other security agreement or

arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“*Loan*” means the loan made by the Lender to the Authority in an original principal amount equal to the Loan Amount as evidenced by the Note and made in accordance with the terms and provisions of this Agreement.

“*Loan Amount*” means Four Million Two Hundred Thousand and 00/100 U.S. Dollars (\$4,200,000).

“*Loan Balance*” means the Loan Amount less any payments of principal received by the Lender for application to repayment of principal of the Loan.

“*Macy’s Parcel*” means the real property described on Exhibit ___ of the Deed of Trust (Macy’s Parcel).

“*Macy’s Phase I*” means the Phase I Environmental Site Assessment (Macy’s Department Store, 5613 W. 88th Avenue, Westminster, Colorado) dated as of January 21, 2010, prepared by Smith Environmental and Engineering (SMITH Project No. 2009-455).

“*Macy’s Phase I Reliance Letter*” means a letter from Smith Environmental and Engineering, Westminster, Colorado, dated on or about the Closing Date and addressed to the Lender, stating that the Lender shall be entitled to rely upon the Macy’s Phase I as if it had been prepared for the Lender and as if the Lender were the addressee thereof.

“*Maturity Date*” means February 28, 2014.

“*Mervyn’s Parcel*” means the real property described on Exhibit ___ of the Deed of Trust (Mervyn’s Parcel).

“*Mervyn’s Phase I*” means the Phase I Environmental Site Assessment (Mervyn’s Department Store, 5483 W. 88th Avenue, Westminster, Colorado) dated as of December 28, 2010, prepared by Smith Environmental and Engineering (SMITH Project No. 2010-506).

“*Mervyn’s Phase I Reliance Letter*” means a letter from Smith Environmental and Engineering, Westminster, Colorado, dated on or about the Closing Date and addressed to the Lender, stating that the Lender shall be entitled to rely upon the Mervyn’s Phase I as if it had been prepared for the Lender and as if the Lender were the addressee thereof.

“*Net Sale Proceeds*” means an amount equal to 100% of the gross proceeds derived from the sale of a Parcel less reasonable and ordinary closing costs and brokerage commissions.

“*Note*” means the promissory note evidencing the indebtedness of the Loan, dated as of February 29, 2012, from the Authority to the Lender issued in substantially the form of Exhibit A hereto.

“*Parcel*” means, as the context requires, any one or more of the Sears Parcel, the Macy’s Parcel, the Mervyn’s Parcel, or any portion thereof.

“*Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001).

“*Permitted Investments*” means any investment or deposit permissible for the Authority under then applicable law.

“*Person*” means an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“*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.

“*Real Property*” means, collectively, the Sears Parcel, the Macy’s Parcel, and the Mervyn’s Parcel.

“*Sears*” means Sears Development Co., a Delaware corporation, in its capacity as seller of the Sears Parcel.

“*Sears Agreement*” means the Purchase and Sale Agreement between Sears and the Authority dated as of January 24, 2012 pursuant to which Sears agrees to sell and the Authority agrees to purchase the Sears Parcel.

“*Sears Parcel*” means the real property described on Exhibit ___ of the Deed of Trust (Sears Parcel).

“*Sears Phase I*” means the Phase I Environmental Site Assessment (Sears Department Store, _____, Westminster, Colorado) dated as of _____, 2012, prepared by [Smith Environmental and Engineering (SMITH Project No. 20__-__)].

“*Sears Phase I Reliance Letter*” means a letter from [Smith Environmental and Engineering, Westminster, Colorado], dated on or about the Closing Date and addressed to the Lender, stating that the Lender shall be entitled to rely upon the Sears Phase I as if it had been prepared for the Lender and as if the Lender were the addressee thereof.

“*Sears Store*” means the Sears retail store currently existing and operating on the Sears Parcel.

“*Supplemental Public Securities Act*” means article 57 of title 11, Colorado Revised Statutes, as amended.

“*Title Company*” means Heritage Title Company, its successors and assigns.

“*Title Commitment*” means, (a) with regard to the Sears Parcel, Commonwealth Land Title Insurance Company Commitment No. 451-HO328363—036-GOD (Amendment No. 4) issued by Heritage Title Company and (b) with regard to the Macy’s Parcel and the Mervyn’s Parcel, Commonwealth Land Title Insurance Company Commitment No. _____ issued by Heritage Title Company.

“*Title Policy*” means a mortgagee’s title insurance policy or policies insuring Vectra Bank Colorado, National Association, its successors and assigns, as the first priority lienholder pursuant to each of the Macy’s Deed of Trust, the Mervyn’s Deed of Trust, and the Sear’s Deed of Trust, together with endorsements thereto as required by the Lender.

“*Westminster Center*” means the 105 acres located within the City of Westminster and identified as the Westminster Center.

ARTICLE II

LOAN

Section 2.01. Loan In General. The Lender hereby agrees to extend the Loan to the Authority in the aggregate original principal amount of \$4,200,000 (as previously defined, the “Loan Amount”) subject to the terms and conditions of this Agreement and the other Financing Documents. The Loan shall be evidenced by the Note, the form of which is set forth in Exhibit A attached hereto.

Section 2.02. Disbursement of Loan Proceeds. On the Closing Date the Lender shall fund the Loan by disbursing the entire Loan Amount of \$4,200,000.00 to the Title Company in accordance with a closing statement acceptable to the Lender and approved by the Authority.

Section 2.03. Costs of Issuance and Fees. The Authority shall pay or cause to be paid the Commitment Fee to the Lender on or prior to the Closing Date. In addition, the Authority shall pay or cause to be paid all other Costs of Issuance to the appropriate parties on or about the Closing Date. The Authority shall use legally available moneys (and not proceeds of the Loan) to pay the Costs of Issuance (including the Commitment Fee) pursuant to invoices provided to and approved by the Authority.

Section 2.04. Interest Rates; Interest Payments; Principal Payments.

(a) ***Interest Computations; Compounding.*** All interest due and payable under this Agreement shall be calculated on the basis of a 360-day year and actual number of days elapsed in the applicable period. Interest not paid when due shall compound on each Interest Payment Date at the rate of interest then borne by the Loan. The Lender’s internal records of the applicable rate of interest shall be determinative in the absence of manifest error.

(b) ***Interest Rates.***

(i) *Interest Rate.* Subject to the provisions of Section 2.04(b)(ii) below, the Loan Balance will bear interest at a fixed annual rate to be established on [or before] the Business Day immediately preceding the Closing Date in an amount equal to the sum of the Index *plus* 2.25%.

(ii) *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 sum of Prime Rate *plus* 4.00% (the “Default Rate”). The Prime Rate shall be quoted by the Lender and shall be the Prime Rate then in effect on the date of the occurrence of the applicable Event of Default. The Default Rate shall remain in effect with respect to the Loan until such time as the applicable Event or Events of Default are cured to the satisfaction of the Lender.

(c) *Interest Payments.* Interest payments on the Loan shall be due and payable semi-annually on June 1 and December 1 each year, commencing June 1, 2012, and on the Maturity Date (as previously defined in Section 1.01 hereof, each, an “Interest Payment Date”). To the extent not paid when due, interest will compound on each Interest Payment Date, shall continue to be due and payable, and shall be paid by the Authority until such time as all accrued interest is paid in full and the Loan Balance is equal to zero.

(d) *Mandatory Prepayment of Principal.* There are no scheduled payments of principal on the Loan. The Loan is subject to mandatory prepayment of principal on any Business Day upon receipt by the Lender of moneys representing Net Sale Proceeds. The Lender shall promptly apply such Net Sale Proceeds to, on a dollar for dollar basis, the reduction of Loan principal and shall apply amounts in the Interest Account to the payment of the accrued but unpaid interest on the principal so prepaid. [The Authority shall, not less than 30 days prior to an anticipated closing date, notify the Lender in writing of the expectation of the sale of any Parcel.]

(e) *Maximum Interest Rate.* Notwithstanding the foregoing provisions, the Loan shall not bear interest at a rate in any Fiscal Year that would cause the net effective interest rate on the Loan, calculated as of the end of such Fiscal Year, to exceed any interest rate limitation legally binding on the Authority. For purposes of the foregoing, “net effective interest rate” shall mean, as of the end of any Fiscal Year, the total amount of interest accrued hereunder on the Loan from the date of execution of this Agreement through the last day of such Fiscal Year, divided by the sum of the products derived by multiplying the principal amount of the Loan outstanding in each year by the number of years from the date of this Agreement to the last day of such Fiscal Year (or the date on which such principal amount was actually paid, if earlier). In addition to the foregoing, to the extent amounts due to the Lender have not been fully repaid, the provisions of Section 2.05 hereof shall apply.

Section 2.05. Application of Maximum Rate to Interest Differential. If the interest due and payable on any obligation hereunder computed at the applicable rate as provided in Section 2.04(b) hereof is in excess of the amount actually paid by the Authority as a result of the provisions of Section 2.04(e) hereof, the difference between what would have been the interest payable on such obligation had it accrued interest at the applicable rate as provided in Section 2.04(b) hereof and the actual interest paid by the Authority on such obligation (the “Interest Differential”) shall remain an obligation of the Authority. If at any time there is an Interest Differential owed to the Lender, the application of the provisions of Section 2.04(b) hereof shall not reduce the rate of interest below the maximum net effective interest rate as computed pursuant to Section 2.04(e) hereof until the Interest Differential has been repaid to the Lender.

Section 2.06. Prepayment of Loan. In addition to the mandatory prepayment of Loan principal from Net Sale Proceeds pursuant to Section 2.04(d) hereof, the Authority may, at its option and from legally available moneys of the Authority, prepay the Loan in whole or in part on any Business Day, upon payment to the Lender of the principal so prepaid. The Lender shall apply amounts in the Interest Account to the payment of the accrued but unpaid interest on the principal so prepaid. Unless waived by the Lender in writing, the Authority shall provide the Lender not less than 30 days prior written notice of any intent to prepay the Loan under this Section 2.06.

Section 2.07. Manner of Payments. All interest, fees, and other payments to be made hereunder by or on behalf of the Authority to the Lender shall be made, and shall not be considered made until received, in lawful money of the United States of America in immediately available funds. The Authority shall make each payment hereunder in the manner and at the time necessary so that each such payment is received not later than 12:00 p.m., Denver time, on the day when due. Any payment received after 12:00 p.m., Denver time, shall be deemed made on the next succeeding Business Day. Unless expressly stated otherwise, all payments made hereunder by or on behalf of the Authority to the Lender may be applied to such amounts due hereunder and under the Financing Documents in such order as the Lender shall elect.

Section 2.08. Costs and Expenses. The Authority agrees to pay all reasonable costs and expenses of the Lender in connection with (a) the preparation, execution and delivery of this Agreement or any other documents, including the other Financing Documents, which may be delivered by any party in connection with the transactions contemplated under this Agreement and the other Financing Documents; (b) the filing, recording, administration (other than normal, routine administration), enforcement, transfer, amendment, maintenance, renewal or cancellation of the Deeds of Trust, this Agreement and all amendments, supplements, or modifications thereto and hereto, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Lender and the allocated cost of in-house counsel and legal staff and independent public accountants and other outside experts retained by the Lender in connection with any of the foregoing; (c) the fees, costs and expenses of any notice, financing statement, continuation statement, assignment or other document or agreement that the Lender reasonably deems necessary or advisable to create, preserve, continue or perfect any security interest intended to be created under the Deeds of Trust or hereunder or to otherwise enable the Lender to enforce its rights under the Deeds of Trust and hereunder; and (d) the fees and expenses of any custodian appointed by the Lender to hold any collateral securing the obligations of the Authority hereunder. In addition, the Authority agrees to pay promptly all costs and expenses of the

Lender, including, without limitation, the fees and expenses of external counsel and the allocated cost of in-house counsel, for (i) any and all amounts which the Lender has paid relative to the Lender's curing of any Event of Default under this Agreement or any of the other Financing Documents; (ii) the enforcement of this Agreement, the Deeds of Trust, or any of the other Financing Documents; or (iii) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Authority from paying any amount hereunder. Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations contained in this Section 2.08 shall survive the payment in full of all amounts owing to the Lender hereunder.

Section 2.09. Obligations Unconditional. The Authority's obligation to repay the Loan and all of its other obligations under this Agreement shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Authority may have against the Lender, any Participant, or any other Person, including, without limitation, any defense based on the failure of any nonapplication or misapplication of the proceeds of the Loan hereunder, and irrespective of the legality, validity, regularity or enforceability of all or any of the Financing Documents, and notwithstanding any amendment or waiver of (other than an amendment or waiver signed by the Lender explicitly reciting the release or discharge of any such obligation), or any consent to, or departure from, all or any of the Financing Documents or any exchange, release, or nonperfection of any collateral securing the obligations of the Authority hereunder or under the other Financing Documents and any other circumstances or happening whatsoever, whether or not similar to any of the foregoing; provided, however, that nothing contained in this Section 2.00 shall abrogate or otherwise affect the rights of the Authority pursuant to Section 8.16 hereof.

Section 2.10. Waivers. To the fullest extent permitted by law: (a) the Authority hereby waives (i) presentment, demand, notice of demand, protest, notice of protest, notice of dishonor and notice of nonpayment; (ii) to the extent the Lender is not in default hereunder, the right, if any, to the benefit of, or to direct application of, any security hypothecated to the Lender until all obligations of the Authority to the Lender hereunder, howsoever arising, has been paid; (iii) the right to require the Lender to proceed against the Authority hereunder, or against any Person under any guaranty or similar arrangement, or under any agreement between the Lender and any Person or to pursue any other remedy in the Lender's power; (iv) all statutes of limitation; and (v) any defense arising out of the election by the Lender to foreclose on any security by one or more non-judicial or judicial sales; (b) the Lender may exercise any other right or remedy, even though any such election operates to impair or extinguish the Authority's right to repayment from, or any other right or remedy it may have against, any Person, or any security; and (c) the Authority agrees that the Lender may proceed against the Authority or any Person directly and independently of any other, and that any forbearance, change of rate of interest, or acceptance, release or substitution of any security, guaranty, or loan or change of any term or condition thereunder or under any Financing Document (other than by mutual agreement between the Authority and the Lender) shall not in any way affect the liability of the Authority hereunder.

Section 2.11. Taxes, Increased Costs and Reduced Return.

(a) To the extent permitted by law any and all payments by the Authority hereunder (or with respect to the Note) shall be made, in accordance with Section 2.09

hereof, free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the overall net income of the Lender (and franchise taxes imposed in lieu of net income taxes) by the jurisdiction of the Lender's applicable lending office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Authority shall be required by law to withhold or deduct any Taxes from or in respect of any sum payable hereunder (or with respect to the Note) then, to the extent permitted by law, (A) the sum payable shall be increased as may be necessary so that after making all required withholdings or deductions (including those Taxes payable solely by reason of additional sums payable under this Section 2.11) the Lender receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (B) the Authority shall make such withholdings or deductions, and (C) the Authority shall pay the full amount withheld or deducted to the relevant taxing authority or other authority in accordance with applicable law.

In addition, to the extent permitted by law, the Authority agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise under the laws of the United States or the State from any payment made hereunder or with respect to the Note or otherwise with respect to this Agreement or the Note (hereinafter referred to as "Other Taxes").

If the Authority fails to pay Taxes and/or Other Taxes (including Taxes imposed by any jurisdiction on amounts payable under this Section 2.11(a)) required to be paid by the Authority pursuant to the preceding two paragraphs in accordance with applicable law, then the Authority shall, to the extent permitted by law, indemnify and hold harmless the Lender, and reimburse the Lender, as applicable, for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.11(a)) paid by the Lender or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. The Authority shall have the right to contest the imposition of Taxes and/or Other Taxes that the Authority believes, in good faith, were incorrectly or illegally asserted; however, such right shall not affect the obligation of the Authority to indemnify and hold harmless the Lender as provided in this Section 2.11(a) and in Section 8.03 hereof. Payments by the Authority pursuant to this Section 2.11(a) shall be made within 30 days from the date the Lender makes written demand therefor which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

Within 30 days after the date of any payment of Taxes by the Authority, the Authority shall furnish to the Lender, at its address referred to in Section 8.05 hereof, the original or a certified copy of a receipt evidencing payment thereof. The Authority shall compensate the Lender for all reasonable losses and expenses sustained by the Lender as a result of any failure by such party to so furnish such copy of such receipt.

Any amounts paid by the Authority to the Lender pursuant to this Section 2.11(a) which are subsequently recovered by the Lender from any taxing agency shall be repaid to the Authority within 30 days of receipt thereof by the Lender.

Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations contained in this Section 2.11(a) shall survive the payment in full of all amounts owing to the Lender hereunder.

(b) (i) If, on or after the date of this Agreement, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation, promulgation, implementation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act regardless of the date enacted, adopted or issued, or compliance by the Lender or any Participant with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(A) subjects the Lender or any Participant to any Taxes, or changes the basis of taxation of payments (other than with respect to taxes imposed on the overall net income of the Lender or such Participant) to the Lender or any Participant in respect of the Loan or participations therein; or

(B) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Lender or any Participant; or

(C) imposes any other condition the result of which is to increase the cost to the Lender or any Participant of issuing or participating in the Loan, or reduces any amount receivable by the Lender or any Participant in connection with the Loan or participations therein, or requires the Lender or any Participant to make any payment calculated by reference to the amount of the Loan or participations therein held or interest or fees received by it, by an amount deemed material by the Lender or such Participant, as the case may be, and the result of any of the foregoing is to increase the cost to the Lender or such Participant, as the case may be, of issuing or participating in the Loan or to reduce the return received by the Lender or such Participant, as the case may be, attributable to the Default Rate charged in connection with the Loan or participations therein, then, within 15 days after demand by the Lender, the Authority shall pay the Lender such additional amount or amounts as will compensate the Lender or such Participant, as the case may be, for such increased cost or reduction in amount received.

(ii) If after the effective date of this Agreement there shall occur any enactment, promulgation, imposition, implementation, interpretation or administration of, or change to, any Regulation, whether such Regulation was created before or after the date of this Agreement, which shall have the effect of imposing on the Lender (or through the Lender's holding company) any tax (excluding taxes on its overall net income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, additional reserve or capital adequacy requirements, special deposits or similar requirements against credit extended by the Lender, assets of, deposits with or for the account of Lender or any other conditions affecting the extensions of credit under this Agreement, then the Authority shall pay to the Lender such additional amount as the Lender deems necessary to compensate the Lender for any increased cost to the Lender attributable to the extension(s) of credit under this Agreement and/or for any reduction in the rate of return on the Lender's capital and/or the Lender's revenue attributable to such extension(s) of credit, attributable to any calendar year. As used above, the term "Regulation" shall include any federal, state or international law, governmental or quasi-governmental rule, regulation, policy, guideline or directive (including but not limited to the Dodd-Frank Wall Street Reform and Consumer Protection Act and enactments, issuances or similar pronouncements by the Lender for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices or any similar authority and any successor thereto) that applies to the Lender. Any amount payable to the Lender under this paragraph shall be paid upon demand by the Lender. In addition, if the Lender determines that such cost or reduction will be ongoing or recurring, the Lender may by notice to the Authority elect to require payment of such amounts with regularly scheduled payments under the Loan. The Lender's method of determining any amount payable to the Lender under this paragraph shall be substantially the same as that method utilized by the Lender in implementing similar provisions for similarly situated borrowers and extensions of credit. The Lender's determination of such additional amount shall be determinative in the absence of manifest error.

Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations contained in this Section 2.11(b) shall survive the payment in full of all amounts owing to the Lender hereunder.

Section 2.12. Pledge. The Authority hereby assigns, transfers, pledges, hypothecates, delivers and grants to the Lender a first priority exclusive security interest in and to the Collateral to secure the payment of the principal of and interest on the Loan and the Collateral shall not be subject to any other Lien. The Authority represents and warrants to the Lender that the Collateral is not subject to any other Lien or encumbrance. This pledge shall include any substitutions, renewals and additions to the Interest Account.

Section 2.13. Conditions to Closing. The making by the Lender of the Loan is conditioned upon the satisfaction of each of the following on or prior to the Closing Date:

(a) ***Financing Documents.*** All Financing Documents and other instruments applicable to the Loan is in form and content satisfactory to the Lender; have been duly executed and delivered in form and substance satisfactory to the Lender; and have not been modified, amended or rescinded and are in full force and effect on and as of the Closing Date and executed original or certified copies of each thereof shall have been delivered to the Lender.

(b) ***Certified Proceedings.*** The Lender is in receipt of an executed original or certified copy of the Authorizing Resolution of the Authority, which shall be in form and content satisfactory to the Lender and duly and properly authorize the Authority to issue the Loan, to execute and deliver this Agreement and the other Financing Documents to which the Authority is a party, and perform all acts contemplated hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the Authority authorized to sign this Agreement and the other Financing Documents to be delivered by the Authority hereunder and as to other matters of fact as shall reasonably be requested by the Lender;

(c) ***Authority Certificate.*** The Authority has provided the Lender with a certificate certifying that on the Closing Date each representation and warranty on the part of the Authority contained in this Agreement and in any other Financing Document to which the Authority is a party is true and correct and no Event of Default, or event which would, with the passage of time or the giving of notice, constitute an Event of Default, has occurred and is continuing and no default exists under any other Financing Document to which the Authority is a party, or under any other agreement by and between the Authority and the Lender relating to the Loan and certifying as to such other matters as the Lender might reasonably request.

(d) ***Other Proceedings.*** All proceedings of any Person taken in connection with the transactions contemplated by this Agreement and the other Financing Documents, and all instruments, authorizations and other documents applicable thereto, are satisfactory to the Lender and its counsel.

(e) ***Opinion of General Counsel.*** The Lender shall have received an opinion of counsel to the Authority, dated as of the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, including opinions as to the validity of the Authority's organization and existence; addressing the absence of litigation involving (or threatened to involve) the Authority; stating that all governmental approvals, if any, necessary for the Authority to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Authority is a party have been duly obtained; that the Authorizing Resolution was duly and properly adopted, is in full force and effect, and has not been rescinded as of the Closing Date; that this Agreement and the other Financing Documents to which the Authority is a party have been duly authorized, executed, and delivered by the Authority and that such obligations are binding and enforceable against the Authority in accordance

with their respective terms; that the execution, delivery and performance by the Authority of this Agreement and the other Financing Documents to which the Authority is a party will not violate any law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority; will not violate any provisions of any document constituting, regulating or otherwise affecting the operations or activities of the Authority; and will not violate any provision of, constitute a default under, or result in the creation, imposition or foreclosure of any Lien, mortgage, pledge, charge, security interest or encumbrance of any kind (other than Liens created or imposed by the Financing Documents), on any of the revenues or other assets of the Authority; and otherwise in form and substance acceptable to the Lender and its counsel.

(f) ***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 Authority from fulfilling its obligations under this Agreement or the other Financing Documents to which the Authority is a party.

(g) ***Payment of Costs and Expenses.*** All Lender counsel fees and any other Costs of Issuance due and payable in connection with the execution and delivery of this Agreement and the other Financing Documents and the transactions contemplated hereunder and thereunder shall have been paid by the Authority. The consultants and other parties shall send their respective invoices to the Authority for payment. Upon approval of each invoice, the Authority shall make such payments with its legally available moneys (and not from proceeds of the Loan).

(h) ***Due Diligence.*** The Lender shall have been provided with the opportunity to review all pertinent financial information regarding the Authority; all agreements, documents, amendments, and any other material information or pertinent data relating to the Authority or the Collateral.

(i) ***Accuracy and Completion.*** All information provided by the Authority to the Lender shall be, as of the Closing Date, complete and accurate in all respects.

(j) ***No Breach or Other Violation.*** The Authority shall not, as of the Closing Date, be in violation or breach of any other agreement with the Lender or of any third party of any nature or kind in excess of \$5,000.

(k) ***No Material Adverse Change.*** No material adverse change has, in the sole opinion of the Lender based on its business expertise, occurred with respect to the Authority's business operations, financial condition or performance, as reflected in the most recent financial statements provided to the Lender or as otherwise known by the Lender.

(l) ***No Structural Changes.*** No change in the structure of the financing transactions relating to the Loan has occurred since that initially presented to and agreed upon by the Lender.

(m) **Approval of Legal Counsel.** Lender's legal counsel shall have reviewed and approved the Financing Documents and all other related transaction documents required to consummate the transactions contemplated hereunder.

(n) **Appraisals.** The Lender shall be in receipt of appraisals for each of the Macy's Parcel, the Mervyn's Parcel, and the Sears Parcel, each in form and content acceptable to the Lender and, with respect to the appraisal for the Sears Parcel, the value shall be determined as vacant land, after demolition of the Sears Store.

(o) **Title Insurance.** The Lender shall be in receipt of a Title Commitment, which, together with the Escrow Instructions, are acceptable to the Lender and properly commit the Title Company to issue a mortgagee's Title Policy with endorsements thereto as required by the Lender, mechanics' lien protection, deletion of certain standard exceptions, gap protection, and permitted exceptions approved by the Lender, all in form and content satisfactory to the Lender.

(p) **Survey.** [Pending].

(q) **Environmental Phase I for Sears Parcel.** The Lender shall be in receipt of a Phase I Environmental Site Assessment for the Sears Parcel in form and content acceptable to the Lender.

(r) **Environmental Reliance Letters.** The Lender shall be in receipt of the Environmental Reliance Letters, in form and content satisfactory to the Lender.

(s) **Insurance.** The Lender shall be in receipt of written evidence of insurance with respect to the Sears Parcel, which insurance shall name the Lender as an additional insured and shall include, without limitation, general liability coverage, workers' compensation, public liability coverage; and builders' risk or equivalent coverage appropriate to cover the demolition of the Sears Store and appurtenances, all in form and content acceptable to the Lender.

(t) **Flood Plain.** The Lender shall be in receipt of written evidence that the Real Property is not in a flood plain, in form and content satisfactory to the Lender.

(u) **[Soils Reports.** The Lender shall be in receipt of a soils reports for the Real Property in form and content acceptable to the Lender.]

(v) **Other Certificates and Approvals.** The Lender shall have received such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Lender.

(w) **Other Legal Matters.** All other legal matters pertaining to the execution and delivery of this Agreement and the other Financing Documents and the full and timely performance of the transactions contemplated hereunder and thereunder shall be reasonably satisfactory to the Lender.

ARTICLE III

INTEREST ACCOUNT; NET SALE PROCEEDS

Section 3.01. Creation of Interest Account. The “Westminster Economic Development Authority Interest Account” (hereinafter referred to as the “Interest Account”) is hereby created and established as Vectra Bank Account # 5119012556. The Interest Account shall be held and administered by the Lender in accordance with the provisions hereof.

Section 3.02. Deposit to Interest Account at Closing. On the Closing Date, the Authority shall transfer to the Lender legally available moneys in the amount of \$_____, representing the aggregate interest due and owing on the Loan from the Closing Date to, but not including, the Maturity Date. Such amount is calculated based on the Loan Amount without regard to the application of any Principal Payments made hereunder. Any amounts remaining in the Interest Account on the Maturity Date shall be applied to the payment of the principal of and/or interest on the Loan, at the election of the Lender; provided, however, that if such moneys are not need to pay the Loan in full on the Maturity Date, the Lender shall return such funds to the Authority.

Section 3.03. Application of Moneys in Interest Account. On each Interest Payment Date, the Lender shall transfer from the Interest Account an amount equal to the interest on the Loan then due and owing on such date and apply such funds to the payment of such interest.

Section 3.04. Net Sale Proceeds. On and after the Closing Date and immediately upon the sale and closing of each Parcel, the Authority shall cause all Net Sale Proceeds to be promptly transferred to the Lender. The Lender shall apply all Net Sale Proceeds to the repayment of principal of the Loan in accordance with Section 2.04(d) hereof. Lender shall have the right to review each settlement/closing statement prior to the closing of the sale of a Parcel and approve the applicable closing costs. Any extraordinary costs at closing shall require the prior approval of the Lender.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY

While any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Authority continuously represents and warrants to the Lender as follows:

Section 4.01. Due Organization. The Authority is a public body corporate and politic and has been duly created, organized, established and authorized by the City to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Act.

Section 4.02. Power and Authorization. The Authority has all requisite power and authority to own and convey its properties and to carry on its business as now conducted and as contemplated to be conducted under the Financing Documents; to execute, deliver and to perform its obligations under this Agreement and the other Financing Documents; and to cause the execution, delivery and performance of the Financing Documents.

Section 4.03. No Legal Bar. The Authority is not in violation of any of the provisions of the laws of the State of Colorado or the United States of America or any of the provisions of any order of any court of the State of Colorado or the United States of America which would affect its existence or its powers referred to in the preceding Section 4.02. The execution, delivery and performance by the Authority of this Agreement and of the other Financing Documents to which the Authority is a party (a) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority; (b) will not violate any provisions of any document constituting, regulating or otherwise affecting the operations or activities of the Authority; and (c) will not violate any provision of, constitute a default under, or result in the creation, imposition or foreclosure of any Lien, mortgage, pledge, charge, security interest or encumbrance of any kind other than Liens created or imposed by the Financing Documents, on any of the revenues or other assets of the Authority which could have a material adverse effect on the assets, financial condition, business or operations of the Authority, on the Authority's power to cause the Financing Documents to be executed and delivered, or its ability to pay in full in a timely fashion the obligations of the Authority under this Agreement or the other Financing Documents.

Section 4.04. Consents. The Authority has obtained all consents, permits, licenses and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery and performance by the Authority of this Agreement and the other Financing Documents.

Section 4.05. Litigation. There is no action, suit, inquiry or investigation or proceeding to which the Authority is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body or official which is pending or, to the best knowledge of the Authority, threatened in connection with any of the transactions contemplated by this Agreement or against or affecting the assets of the Authority, nor, to the best knowledge of the Authority, is there any basis therefor, wherein an unfavorable decision, ruling or finding (a) would adversely affect the validity or enforceability of, or the authority or ability of the Authority to perform its obligations under, the Financing Documents; (b) would, in the reasonable opinion of the Authority, have a materially adverse effect on the ability of the Authority to conduct its business as presently conducted or as proposed or contemplated to be conducted; or (c) would adversely affect the exclusion of interest on the Loan from gross income for federal income tax purposes or the exemption of such interest from State of Colorado personal income taxes.

Section 4.06. Enforceability. This Agreement and each other Financing Document constitutes the legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

Section 4.07. Changes in Law. To the best knowledge of the Authority, there is not pending any change of law which, if enacted or adopted could have a material adverse effect on the assets, financial condition, business or operations of the Authority, on the Authority's power to issue or its ability to pay in full in a timely fashion the obligations of the Authority under this Agreement or the other Financing Documents.

Section 4.08. Financial Information and Statements. The financial statements and other information previously provided to the Lender or provided to the Lender in the future are or will be complete and accurate and prepared in accordance with generally accepted accounting principles. There has been no material adverse change in the Authority's financial condition since such information was provided to the Lender.

Section 4.09. Accuracy of Information. All information, certificates or statements given to the Lender pursuant to this Agreement and the other Financing Documents will be, to the best of the Authority's knowledge, true and complete when given.

Section 4.10. Financing Documents. Each representation and warranty of the Authority contained in any Financing Document is true and correct as of the Closing Date.

Section 4.11. Regulations U and X. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Loan will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

Section 4.12. Default, Etc. The Authority is not in default in the performance, observance, or fulfillment of any of the obligations, covenants or conditions contained in any Financing Document or other resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the Authority to perform its obligations hereunder or under the other Financing Documents, or which would affect the enforceability hereof or thereof.

Section 4.13. Sovereign Immunity. Except for actions that lie or would lie in tort, the Authority does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under this Agreement or any of the other Financing Documents.

Section 4.14. No Filings. Except for the recordation of the Deeds of Trust with the Jefferson County Clerk and Recorder, no filings, recordings, registrations or other actions are necessary to create and perfect the pledges provided for herein and in the other Financing Documents; the obligations of the Authority hereunder are secured by the Lien and pledge provided for herein and in the Deeds of Trust; and the Liens and pledges provided for herein and in the Deeds of Trust constitute valid prior Liens subject to no other Liens.

Section 4.15. Real Property Free and Clear. Except for the Lien thereon of the Deeds of Trust, the Real Property is free and clear of any other Liens.

Section 4.16. Net Sale Proceeds Not Subject to Appropriation. No portion of the Net Sale Proceeds is subject to appropriation by the Authority or any other Person.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE AUTHORITY

While any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Authority continuously covenants and agrees as follows:

Section 5.01. Performance of Covenants, Authority. The Authority 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 other Financing Documents and all its proceedings pertaining thereto as though such covenants, undertakings, stipulations, and provisions were set forth in full herein (for the purpose of this provision the Financing Documents shall be deemed to continue in full force and effect notwithstanding any earlier termination thereof so long as any obligation of the Authority under this Agreement shall be unpaid or unperformed). The Authority covenants that it is duly authorized under the constitution and laws of the State of Colorado, to issue the Loan and to execute and deliver the Note, the Deeds of Trust, this Agreement, and the other Financing Documents, and that all action on its part for the issuance of the Loan and the execution and delivery of the Note, the Deeds of Trust, this Agreement, and the other Financing Documents has been duly and effectively taken and will be duly taken as provided herein, and that the Loan, the Note, the Deeds of Trust, this Agreement, and the other Financing Documents are and will be valid and enforceable obligations of the Authority according to the terms hereof and thereof.

Section 5.02. Laws, Permits and Obligations. The Authority will comply in all material respects with all applicable laws, rules, regulations, orders and directions of any governmental authority and all agreements and obligations binding on the Authority, noncompliance with which would have a material adverse effect on the Authority, its financial condition, assets or ability to perform its obligations under this Agreement and/or the other Financing Documents; provided that the Authority may in good faith contest such laws, rules, regulations, orders and directions and the applicability thereof to the Authority to the extent that such action would not be likely to have a material adverse effect on the Authority's ability to perform its obligations hereunder.

Section 5.03. Bonding and Insurance. The Authority shall carry general liability coverage, workers' compensation, public liability, and such other forms of insurance on insurable Authority property upon the terms and conditions, and issued by recognized insurance companies, as in the judgment of the Authority would ordinarily be carried by entities having similar properties of equal value, such insurance being in such amounts as will protect the Authority and its operations. In addition, each Authority official or other Person having custody of any Authority funds or responsible for the handling of such funds, shall be bonded or insured against theft or defalcation at all times. Such insurance shall appropriately cover the demolition of the Sears Store and appurtenances and related risks and liability.

Section 5.04. Other Liabilities. The Authority shall 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 5.05. Proper Books and Records. The Authority shall keep or cause to be kept adequate and proper records and books of account in which complete and correct entries shall be made with respect to the Authority, the Collateral and all of the funds and accounts established or maintained pursuant to any of the Financing Documents. The Authority shall (a) maintain accounting records in accordance with generally recognized and accepted principles of accounting consistently applied throughout the accounting periods involved; (b) provide the Lender with such information concerning the business affairs and financial condition (including insurance coverage) of Authority as the Lender may request; and (c) without request, provide the Lender with the information set forth below.

Section 5.06. Reporting Requirements.

(a) The Authority shall notify the Lender promptly of all interim litigation or administrative proceedings, threatened or pending, against the Authority which would, if adversely determined, in Authority's reasonable opinion, have a material effect on the Authority's financial condition arising after the date hereof.

(b) as soon as available, but not later than 210 days following each Fiscal Year, the Authority shall furnish to the Lender its unqualified audited financial statements prepared in accordance with generally accepted accounting principles consistently applied, in reasonable detail and audited by a firm of independent certified public accountants selected by the Authority and satisfactory to the Lender;

(c) promptly upon request of the Lender, the Authority shall furnish to the Lender such other reports or information regarding the Collateral and any other collateral securing the obligations of the Authority hereunder or the assets, financial condition, business or operations of the Authority, as the Lender may reasonably request.

(d) The Authority shall promptly notify the Lender of any Default or Event of Default of which the Authority has knowledge, setting forth the details of such Default or Event of Default and any action which the Authority proposes to take with respect thereto.

(e) The Authority shall notify the Lender as soon as possible after the Authority acquires knowledge of the occurrence of any event which, in the reasonable judgment of the Authority, is likely to have a material adverse effect on the financial condition of the Authority or affect the ability of the Authority to perform its obligations under this Agreement or under any other Financing Document.

Section 5.07. Visitation and Examination. Unless otherwise prohibited by law, the Authority will permit any Person designated by the Lender to visit any of its offices to examine the Authority's books and financial records, and make copies thereof or extracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, all at such reasonable times and as often as the Lender may reasonably request.

Section 5.08. Further Assurances. The Authority shall do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged and delivered, such modifications, amendments, or supplements hereto or to the other Financing Documents and such further acts,

instruments, and transfers as the Lender may reasonably require for the better assuring, transferring, and pledging unto the Lender the Collateral with the priority required herein.

Section 5.09. Continued Existence. The Authority shall 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, and will continue to operate and manage the Authority and its facilities in an efficient and economical manner in accordance with all applicable laws, rules and regulations.

Section 5.10. Restructuring. In the event the Net Sale Proceeds are insufficient or is anticipated to be insufficient (in the aggregate) to pay the principal of and interest on the Loan in full, the Authority shall use its best efforts to refinance, refund, or otherwise restructure the Loan so as to avoid such a default. The Authority shall promptly notify the Lender of any such efforts.

Section 5.11. Authority Operations. The Authority shall manage its finances and day to day operations in an economical and efficient manner and in accordance with all applicable laws, rules and regulations.

Section 5.12. First Sale in Westminster Center. The Authority shall act in good faith to facilitate the demolition of the Sears Store and the redevelopment of the Real Property. The Authority shall not sell, transfer, convey, or otherwise dispose of any portion of the Collateral within the Westminster Center unless the outstanding principal of the Loan, together with all accrued interest thereon, is concurrently paid in full to the Lender.

Section 5.13. Net Sale Proceeds. The Authority shall use its commercially reasonable best efforts to maximize the amount of Net Sale Proceeds for each Parcel and shall take all necessary action to cause the prompt transfer of Net Sale Proceeds to the Lender. The Lender shall not proceed with the sale and transfer of any Parcel where the Net Sale Proceeds are not disbursed to the Lender.

ARTICLE VI

NEGATIVE COVENANTS OF THE AUTHORITY

Section 6.01. No Additional Debt. The Authority shall not incur, assume, or issue any additional Debt secured by a Lien on the Collateral or any portion thereof without the prior written consent of the Lender.

Section 6.02. No Lien or Security Interest in Collateral. Except for the Lien of the Deeds of Trust on the Real Property and the rights of the Lender hereunder, the Authority shall not grant or permit to be granted any Lien on or security interest in and to any portion of the Net Sale Proceeds or any other component of the Collateral securing the obligations of the Authority hereunder.

Section 6.03. No Change in Financing Documents. The Authority shall not cancel, terminate, amend, supplement, modify or waive any of the provisions of any of the Financing Documents or consent to any such cancellation, termination, amendment, supplement, modification or waiver, without the prior written consent of the Lender. The Authority shall take

no action inconsistent with the rights of the Lender under this Agreement and the other Financing Documents to which the Authority is a party, including, without limitation, its obligations to make payments to the Lender hereunder.

Section 6.04. Material Adverse Action. The Authority shall not take any action nor consent to any action that would materially adversely affect any portion of the Net Sale Proceeds, the Real Property, or any other component of the Collateral securing the obligations of the Authority hereunder.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. 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):

(a) the Authority fails to pay when due (i) interest on the Loan; (ii) principal of the Loan; or (iii) any other sum owing under this Agreement;

(b) the Authority fails to transfer or cause the transfer of any Net Sale Proceeds to the Lender as required by Section 3.04 hereof;

(c) the occurrence and continuance of an event of default or an event of nonperformance under any one or more of the Deeds of Trust or any of the other Financing Documents to which the Authority is a party after the expiration of any applicable cure period;

(d) the Authority fails to observe or perform any other of the covenants, agreements or conditions on the part of the Authority in this Agreement, any one or more of the Deeds of Trust, or any of the other Financing Documents to which the Authority is a party and such failure is not remedied to the satisfaction of the Lender within 30 days after such failure;

(e) any representation or warranty made by the Authority in this Agreement or in any other Financing Document to which the Authority is a party or any certificate, instrument, financial or other statement furnished by the Authority to the Lender, proves to have been untrue or incomplete in any material respect when made or deemed made;

(f) default in the payment of principal of or interest when due on any material financial obligation of the Authority and continuance of such default beyond any applicable grace period;

(g) any judgment or court order for the payment of money exceeding any applicable insurance coverage by more than \$[10,000] in the aggregate is rendered

against the Authority and the Authority fails to vacate, bond, stay, contest, pay or satisfy such judgment or court order for 60 days;

(h) the Authority shall initiate, acquiesce or consent to any proceedings to dissolve the Authority or to consolidate the Authority with other similar entities into a single entity or the Authority shall otherwise cease to exist;

(i) a change occurs in the financial or operating conditions of the Authority, or the occurrence of any other event that, in the Lender's reasonable judgment, will have a materially adverse impact on the ability of the Authority to satisfy the Authority's payment obligations under this Agreement or its other obligations, and the Authority fails to cure such condition within the time specified by the Lender in a written notice from the Lender informing the Authority of an occurrence under this subsection (i);

(j) (i) the Authority 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 Authority shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Authority any case, proceeding or other action of a nature referred to in clause (i) above and the same shall remain undismissed; or (iii) there shall be commenced against the Authority 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 Authority 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 Authority shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(k) this Agreement, any one or more of the Deeds of Trust, or any other Financing Document, or any material provision hereof or thereof, (i) ceases to be valid and binding on the Authority or is declared null and void, or the validity or enforceability thereof is contested by the Authority (unless being contested by the Authority in good faith), or the Authority denies it has any or further liability under any such document to which it is a party; or (ii) any pledge or security interest created hereunder or under any one or more of the Deeds of Trust fails to be fully enforceable with the priority required hereunder or thereunder;

(l) the Authority's auditor delivers a qualified opinion with respect to the Authority's status as an on-going concern;

(m) the Interest Account or any Net Sale Proceeds become subject to any writ, judgment, warrant or attachment, execution or similar process.

Section 7.02. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Lender at its option, may do any one or more of the following:

(a) Immediately declare the entire unpaid principal of the Loan, together with all interest accrued and unpaid thereon, and all other amounts owing or payable to the Lender hereunder or under any other Financing Document, immediately due and payable to the Lender in full;

(b) Apply all amounts constituting Collateral, including, without limitation, amounts held in the Interest Account, to the unpaid principal of the Loan and all interest accrued and unpaid thereon, and all other amounts owing or payable to the Lender hereunder or under any other Financing Document, in any order of priority determined by the Lender;

(c) exercise any and all other remedies available hereunder or under the other Financing Documents;

(d) exercise its rights and remedies under one or more (or all) of the Deeds of Trust, including, without limitation, initiation of foreclosure proceedings thereunder and the substitution of the Lender in lieu of the Authority as owner of the Real Property. In such instance, the Authority hereby agrees to take such actions and execute such instruments, consistent with such rights and remedies as are afforded it by law, as shall be deemed necessary or desirable, in the Lender's sole discretion, to effectuate such substitution, including the transfer of the Real Property to the Lender. In such instance, the Lender may enter into possession of the Real Property and employ watchmen to protect the Real Property from injury. All sums so expended by the Lender shall be deemed to have been paid to the Authority and secured by the Deeds of Trust. The Authority hereby empowers the Lender to (i) use Net Sale Proceeds and amounts in the Interest Account for the purpose of maintaining the Real Property; (ii) employ such contractors, subcontractors, agents, architects, engineers, inspectors, and other consultants as may be required for said purpose; (iii) pay, settle or compromise all existing bills and claims which may be Liens against any of the Real Property, or as may be necessary or desirable for the maintenance of the Real Property or for the clearance of title; and (iv) do any and every act which the Authority might do in its own behalf. The Authority hereby assigns and quitclaims to the Lender all undisbursed sums in any fund or account created hereunder or under any related documents effective as of the date of any occurrence of any Event of Default, to the extent required to make the Lender whole, as determined by the Lender;

(e) take any other action or remedy available under the other Financing Documents or any other document, or at law or in equity.

Section 7.03. Notice of Default. Notwithstanding any cure period described above, the Authority will immediately notify the Lender in writing when the Authority obtains knowledge

of the occurrence of any Event of Default or any event which would, with the passage of time or the giving of notice, constitute an Event of Default.

Section 7.04. Termination of Disbursements; Additional Lender Rights. Upon the occurrence of an Event of Default the Lender may at any time cease any disbursements from the Interest Account for the benefit of the Authority and/or take such other steps to protect or preserve the Lender's interest in the Collateral.

Section 7.05. 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 7.06. 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 7.07. Other Remedies. Nothing in this Article VII is intended to restrict the Lender's rights under any of the Financing Documents or at law or in equity, and the Lender may exercise all such rights and remedies as and when they are available.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Loan Agreement and Relationship to Other Documents. The warranties, covenants and other obligations of the Authority (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 8.02. 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 8.03. 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 8.04. Notices. Any notice required hereunder shall be deemed delivered: (a) three Business Days after being deposited in the United States Mail, postage pre-paid; or when the notice has been (b) received by overnight delivery service; (c) received by telex; (d) received by facsimile; (e) received through the internet; or (f) when personally delivered at the following addresses:

If to the Authority: Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Finance Director
Telephone: 303.658.2036
Facsimile: 303.706.3923
E-mail: thitchens@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
Facsimile: 303.650.0158
E-mail: mmccullo@cityofwestminster.us

and: Sherman & Howard
633 17th Street, Suite 3000
Denver, Colorado 80202
Attention: Dee Wisor
Telephone: (303) 299-8228
Facsimile: 303.298.0940
E-mail: dvisor@shermanhoward.com

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
Facsimile: 720.947.7706

With a copy to: Vectra Bank Colorado, National Association
2000 S. Colorado Blvd., Suite 1200
Denver, Colorado 80222
Attention: Coby Walberg
Telephone: 720.947.8352
Facsimile: 303.947.7354

Section 8.05. 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 and/or interest on the Loan and other amounts due under this Agreement in any order which the Lender elects.

Section 8.06. Applicable Law and Jurisdiction; Interpretation; Severability. This Agreement and all other Financing Documents 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 AUTHORITY 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, THE PLEDGED REVENUE, ANY OTHER FINANCING DOCUMENT, 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 8.07. Copies; Entire Agreement; Modification. The Authority 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 ORAL 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 FINANCING DOCUMENTS NOW IN EFFECT BETWEEN THE AUTHORITY AND THE LENDER. A MODIFICATION OF ANY OTHER CREDIT AGREEMENT NOW IN EFFECT BETWEEN THE AUTHORITY AND THE LENDER, WHICH OCCURS AFTER RECEIPT BY THE AUTHORITY OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN

INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO ANY SUCH FINANCING DOCUMENT IS NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

Section 8.08. Waiver of Jury Trial. THE AUTHORITY AND THE LENDER HEREBY JOINTLY AND SEVERALLY WAIVE 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. THE AUTHORITY AND THE LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Section 8.09. Attachments. All documents attached hereto, including any appendices, schedules, riders and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 8.10. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Public Securities Act, if a member of the Board, or any officer or agent of the Authority, acts in good faith in the performance of his duties as a member, officer, or agent of the Board or the Authority 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 or the Authority, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise.

Section 8.11. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, this Agreement is 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 this Agreement after delivery for value.

Section 8.12. 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 Loan shall be commenced more than 30 days after the authorization of the Loan.

Section 8.13. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure the payment of the principal of and interest on the Loan as provided herein, in the Note and the other Financing Documents shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, this Agreement, the Note and the other Financing Documents. The amounts pledged to the payment of the principal of and interest on 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 Authority irrespective of whether such Persons have notice of such Liens. Notwithstanding the foregoing, the Lender acknowledges that the Deeds of Trust shall be recorded against the Real Property with the Jefferson County Clerk and Recorder.

Section 8.14. No Liability. Any action taken or omitted by the Lender under or in connection with the Financing Documents, if taken or omitted in good faith and without willful misconduct or gross negligence, shall be binding upon the Authority and shall not put the Lender under any resulting liability to the Authority. The Lender, including its agents, employees, officers, directors and controlling Persons, shall not have any liability to the Authority, and the Authority assumes all risk, responsibility and liability for (a) the form, sufficiency, correctness, validity, genuineness, falsification and legal effect of any demands and other documents, instruments and other papers relating to the Loan even if such documents, should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (b) the general and particular conditions stipulated therein; (c) the good faith acts of any Person whatsoever in connection therewith; (d) failure of any Person (other than the Lender, subject to the terms and conditions hereof) to comply with the terms of the Loan; (e) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telex, telegraph, wireless or otherwise, whether or not they be in code; (f) errors in translation or errors in interpretation of technical terms; (g) for any other consequences arising from causes beyond the Lender's control; or (h) any use of which may be made of the proceeds of the Loan, except to the extent of any direct, as opposed to indirect, consequential, or special damages suffered by the Authority which direct damages are proven by the Authority to be caused by the Lender's willful or grossly negligent failure to make lawful payment under the Loan.

Section 8.15. No Waiver; Modifications in Writing. No failure or delay on the part of the Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Lender at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure by the Authority therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Lender. Any amendment, modification or supplement of or to any provision of this Agreement, and any consent to any departure by the Authority from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given. No notice to or demand on the Authority in any case shall entitle the Authority to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Lender to any other or further action in any circumstances without notice or demand.

Section 8.16. Payment on Non-Business Days. 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 8.17. Document Imaging. The Lender shall be entitled, in its sole discretion, to image all or any selection of the Financing Documents, other instruments, documents, items and records governing, arising from or relating to the Loan, and may destroy or archive the paper originals. The Authority hereby waives any right to insist that the Lender produce paper originals; agrees that such images shall be accorded the same force and effect as the paper originals; and further agrees that the Lender is entitled to use such images in lieu of destroyed or

archived originals for any purpose, including as admissible evidence in any demand, presentment or proceedings.

Section 8.18. Execution in Counterparts. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 8.19. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 8.20. Headings. Article and Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

Section 8.21. Waiver of Rules of Construction. The Authority hereby waives any and all provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the party responsible for its drafting.

Section 8.22. Integration. This Agreement is intended to be the final agreement between the parties hereto relating to the subject matter hereof and this Agreement and any agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof.

Section 8.23. Patriot Act Notice. The Lender hereby notifies the Authority that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Lender to identify the Authority in accordance with the Patriot Act. The Authority hereby agrees that it shall promptly provide such information upon request by the Lender.

[Remainder of page intentionally left blank]

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

VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association

By _____
Conrad Freeman, Senior Vice President

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By _____
[Vice 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 PROMISSORY NOTE

PROMISSORY NOTE
UNITED STATES OF AMERICA
STATE OF COLORADO
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

PROMISSORY NOTE
IN THE AGGREGATE PRINCIPAL AMOUNT OF
\$4,200,000

US \$4,200,000.00 _____, 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 at 2000 S. Colorado Blvd., Suite 2-1200, Denver, Colorado, 80222, Attention: Genowefa Carroll, or at such place as Payee or its agent, designee, or assignee may from time to time designate in writing, the principal sum of FOUR MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (US \$4,200,000.00) (this "Note") pursuant to the terms of the Loan Agreement dated of even date herewith by and between Maker and Payee (the "Loan Agreement"), in lawful money of the United States of America.

This Note shall bear interest, be payable, and mature 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.

Amounts received by Payee under this Note shall be applied in the manner provided by the Loan Agreement and the other Financing Documents. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever by Maker.

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 _____
Vice Chairperson, Board of Commissioners

[SEAL]

Attest:

By _____
Secretary, Board of Commissioners

By _____
Executive Director, Board of Commissioners

[Signature Page to Promissory Note]

THIS DOCUMENT PREPARED BY AND
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Kutak Rock LLP
Suite 3100
1801 California Street
Denver, CO 80202
Attention: Kristine Lay, Esq.

DEED OF TRUST

THIS DEED OF TRUST (this “Deed of Trust”), is made as of February 29, 2012, by the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a public body corporate and politic, duly created, organized, established and authorized by the City of Westminster, Colorado as an urban renewal authority (the “Grantor” or the “Authority”) to the **PUBLIC TRUSTEE OF JEFFERSON COUNTY, COLORADO** for the benefit of **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association (the “Beneficiary” or the “Bank”), having an address at 2000 S. Colorado Blvd., Suite 1200, Denver, Colorado, 80222. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed thereto in Exhibit B hereto.

WITNESSETH:

WHEREAS, pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes (the “Act”) the Authority 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, the Authority is undertaking certain activities for the purpose of redeveloping the property within the City previously known as the Westminster Mall; and

WHEREAS, in connection with such activities, the Authority has entered into a purchase contract for the acquisition of the property on which a Sears retail store currently exists and operates; and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has determined that it is in the best interests of the Authority to obtain financing from the Lender in the form of a loan for the purpose of funding the acquisition of the Sears Parcel; and

WHEREAS, the Lender is willing to make a loan to the Authority for such purpose pursuant to the terms and conditions set forth in that certain Loan Agreement dated of even date herewith (the "Loan Agreement"); and

WHEREAS, to secure the Grantor's obligations to the Beneficiary under the Loan Agreement and all sums which may or shall become due thereunder or under the other Financing Documents (as defined in the Loan Agreement) evidencing, securing or executed in connection therewith, including (a) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Grantor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "Bankruptcy Code") and (b) the costs and expenses of enforcing any provision of any Financing Document (all such sums in this paragraph shall hereafter be included in the definition of "Obligations"), Grantor has given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto the Public Trustee of Jefferson County, Colorado, in trust for the benefit of Beneficiary, WITH POWER OF SALE, the land described in Exhibit A (the "Real Trust Property"), TOGETHER WITH all right, title, interest and estate of Grantor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Real Trust Property and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "Trust Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, ditches and ditch rights, wells and well rights, well permits, springs and spring rights and reservoirs and reservoir rights appurtenant to or historically used in connection with the Real Trust Property and all of Grantor's rights and interests under applicable state or Federal law to all water, and to use or consent to use all water, contained in or available from any part of the water-bearing formations underlying the Real Trust Property, together with all associated easements and rights-of-way; any and all rights to obtain water, sewer and other services from service districts, all air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, all crops, timber, trees, shrubs, flowers and landscaping plants and materials now or hereafter located on, under or above the Real Trust Property, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Real Trust Property; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Real Trust Property, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Real Trust Property and every part and parcel thereof, with the appurtenances thereto;

(b) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Real Trust Property, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in

anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Real Trust Property;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Real Trust Property, including any extensions, renewals, modifications or amendments thereof (as more particularly defined in Exhibit B hereto, the "Leases") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources arising from or attributable to the Real Trust Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Real Trust Property, or rendering of services by Grantor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (as more particularly defined in Exhibit B hereto, the "Rents and Revenues"), now or hereafter due or payable for the occupancy or use of the Real Trust Property, including without limitation all guaranties thereof, now or hereafter affecting the Real Trust Property, together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents and Revenues to the payment of the Obligations;

(e) all proceeds of any insurance policies covering the Trust Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, paid or payable with respect to any damage to or destruction of any improvements or other property, whether real, personal or mixed, located on the Real Trust Property and for any other damage to the Trust Property;

(f) the right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Trust Property and to commence any action or proceeding to protect the interest of Beneficiary in the Trust Property;

(g) to the extent assignable or transferable by Grantor, all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Trust Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Trust Property) and causes of action that now or hereafter relate to, are derived from or

are used in connection with the Trust Property, or the use or enjoyment thereof (hereinafter collectively referred to as the “Intangibles”);

(h) all revenues derived from any of the Trust Property; and

(i) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

WITHOUT LIMITING the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Grantor, pursuant to [Section 552(b)(2)] of the Bankruptcy Code, the security interest granted by this Deed of Trust shall automatically extend to all Rents and Revenues acquired by the Grantor after the commencement of the case and shall constitute cash collateral under [Section 363(a)] of the Bankruptcy Code.

TO HAVE AND TO HOLD the Trust Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Beneficiary all amounts due and owing under the Loan Agreement and the other Financing Documents (collectively, the “Obligations”) in the manner provided therein, and the Grantor shall well and truly abide by and comply with each and every covenant and condition set forth in each of the Financing Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Grantor represents and warrants to and covenants and agrees with Beneficiary as follows:

ARTICLE I

PAYMENT OF LOAN AND INCORPORATION OF COVENANTS, UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES IN THE LOAN AGREEMENT

Grantor shall pay the Obligations at the time and in the manner provided in the Financing Documents. All of the covenants, undertakings, representations and warranties of the Grantor contained in the Loan Agreement are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. This Deed of Trust secures the Obligations and all other amounts due and owing under the Loan Agreement and the other Financing Documents, which the parties agree constitutes evidence of debt pursuant to C.R.S. §38-38-100.3(8), (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time). Without limiting the generality of the foregoing, Grantor (a) agrees to insure the Trust Property, pay Taxes and Other Charges, if any, and comply in all material respects with Legal Requirements, in accordance with this Deed of Trust, and (b) agrees that the Net Proceeds of payments under insurance policies and Awards for Condemnation shall be settled, held and applied in accordance with this Deed of Trust.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Grantor represents and warrants to Beneficiary as of the date hereof that:

Section 2.01. Organization. Grantor has been duly organized and is validly existing under the law of the State of Colorado with requisite power and authority, and all rights, licenses, permits and authorizations necessary to own its properties and to transact the business in which it is now engaged.

Section 2.02. Proceedings; Enforceability. Grantor has taken all necessary action to authorize the execution, delivery and performance of the Financing Documents. The Financing Documents have been duly executed and delivered by Grantor and constitute legal, valid and binding obligations of Grantor enforceable against Grantor in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Financing Documents are not subject to, and Grantor has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms of the Financing Documents, or any right thereunder, will render any Financing Document unenforceable.

Section 2.03. No Conflicts. The execution, delivery and performance of the Financing Documents by Grantor and the transactions contemplated thereby and hereby will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Financing Documents) upon any of the property of Grantor pursuant to the terms of, any agreement or instrument to which Grantor is a party or by which its property is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Grantor or any of its properties. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Grantor of the Financing Documents has been obtained and is in full force and effect.

Section 2.04. Litigation. There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting Grantor or the Trust Property, which, if adversely determined, might materially adversely affect the condition (financial or otherwise) or business of Grantor (including the ability of Grantor to carry out its obligations under the Financing Documents), or the use, value, condition or ownership of the Trust Property.

Section 2.05. Agreements. Grantor is not a party to any agreement or instrument or subject to any restriction which might adversely affect Grantor or the Trust Property. Grantor is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Trust Property is bound.

Section 2.06. Title. Grantor has good, marketable and indefeasible title in fee to the Real Property, free and clear of all liens, taxes, assessments, charges, and encumbrances except the Permitted Encumbrances. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid under applicable Legal Requirements in connection with the transfer of the Real Property to Grantor have been paid. The Deed of Trust when properly recorded in the appropriate records will create a valid, perfected first priority lien on the Grantor's interest in the Real Property, subject only to any applicable Permitted Encumbrances. All Deed of Trust recording, stamp, intangible or other similar taxes required to be paid under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Financing Documents have been paid. The Permitted Encumbrances do not materially adversely affect the value or use of the Real Property, or Grantor's ability to repay the Obligations. No condemnation or other proceeding has been commenced or, to Grantor's actual knowledge, is contemplated with respect to all or part of the Real Property or for the relocation of roadways providing access to the Real Property. To the Grantor's knowledge, there are no claims for payment for work, labor or materials affecting the Real Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Financing Documents. To the Grantor's knowledge, the survey for the Real Property delivered to Beneficiary does not fail to reflect any material matter affecting the Real Property or the title thereto. No improvement on an adjoining property encroaches upon the Real Property. Each parcel comprising the Real Property is a separate tax lot and is not a portion of any other tax lot that is not a part of the Real Property. To the Grantor's knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Real Property, or any contemplated improvements to the Real Property that may result in such special or other assessments. With respect to the Title Insurance Policy, (i) the requirements set forth in the title commitment relating thereto have been fully satisfied, (ii) the premium with respect thereto has been paid in full, (iii) the Title Insurance Policy is being issued by a title insurance company licensed to issue policies in the State, (iv) no claims have been made under the Title Insurance Policy and no other action has been taken that would materially impair the Title Insurance Policy, and (v) the Title Insurance Policy contains no exclusions for any of the following circumstances, or it affirmatively insures Beneficiary against losses relating to any of the following circumstances (unless the Real Property is located in a jurisdiction where such affirmative insurance is not available): (A) that the Real Property has access to a public road, and (B) that the area shown on the survey delivered to Beneficiary in connection with the Obligations is the same as the property legally described in the Deed of Trust.

Section 2.07. No Bankruptcy Filing. Grantor is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "Bankruptcy Proceeding"), and Grantor has no knowledge of any Person contemplating the filing of any such petition against it.

Section 2.08. Full and Accurate Disclosure. No statement of fact made by Grantor in any Financing Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading. There is no material fact presently known to Grantor that has not been disclosed to Beneficiary which adversely affects, or, as far as Grantor can reasonably foresee, might adversely affect, the Trust Property or the business, operations or condition (financial or otherwise) of Grantor. All

financial data, including the statements of cash flow and income and operating expense, that have been delivered to Beneficiary in respect of Grantor and the Trust Property (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Grantor and the Trust Property as of the date of such reports, and (c) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with accounting principles applicable to governmental entities, consistently applied throughout the periods covered, except as disclosed therein. Grantor has no contingent liabilities, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations not expressly permitted by this Deed of Trust. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Grantor or the Trust Property from that set forth in said financial statements.

Section 2.09. Reserved.

Section 2.10. Reserved.

Section 2.11. Compliance. Grantor and the Trust Property and the use thereof comply in all material respects with all applicable Legal Requirements (including with respect to parking and applicable zoning and land use laws, regulations and ordinances). Grantor has not received any notice nor to Grantor's knowledge is it in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of Grantor. The Trust Property is or will be vacant land zoned for commercial purposes. No legal proceedings are pending or, to the knowledge of Grantor, threatened with respect to the zoning of the Trust Property.

Section 2.12. Reserved.

Section 2.13. Federal Reserve Regulations; Investment Company Act. No part of the proceeds of the Loan have been or will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Financing Document.

Section 2.14. Easements; Utilities and Public Access. All easements, cross easements, licenses, air rights and rights-of-way or other similar property interests (collectively, "Easements"), if any, necessary for the full utilization of Real Property have been obtained, are described in the Title Insurance Policy and are in full force and effect without default thereunder. The Trust Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such property. All public utilities necessary or convenient to the full use and enjoyment of the Trust Property are located in the public right-of-way abutting the Trust Property, and all such utilities are connected so as to serve the Trust Property without passing over other property absent a valid easement.

Section 2.15. Physical Condition. [DESCRIBE SEPARATELY FOR EACH OF THE SEARS PARCEL; MACY'S PARCEL AND MERVYN'S PARCEL].

Section 2.16. Fraudulent Transfer. Grantor has not entered into the Loan Agreement or any other Financing Document with the actual intent to hinder, delay, or defraud any creditor, and Grantor has received reasonably equivalent value in exchange for its obligations under the Financing Documents. Giving effect to the transactions contemplated by the Financing Documents, the fair saleable value of Grantor's assets exceeds and will, immediately following the execution and delivery of the Financing Documents, exceed Grantor's total probable liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Grantor's assets do not and, immediately following the execution and delivery of the Financing Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Grantor does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Grantor).

Section 2.17. Purchase Options. To the Grantor's knowledge, neither the Trust Property nor any part thereof is subject to any purchase options or other similar rights in favor of third parties.

Section 2.18. Hazardous Substances. (a) Grantor has received no notice that the Trust Property is in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, any state super-lien and environmental clean-up statutes (including with respect to Toxic Mold), any local law requiring related permits and licenses and all amendments to and regulations in respect of the foregoing laws (collectively, "Environmental Laws"); (b) to the Grantor's knowledge, the Trust Property is not subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous, toxic and/or dangerous substances, toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Trust Property ("Toxic Mold") or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances"); (c) to the best of Grantor's knowledge, after due inquiry, no Hazardous Substances are or have been (including the period prior to Grantor's acquisition of the Trust Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Trust Property other than in compliance with all Environmental Laws; (d) to the best of Grantor's knowledge, no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Trust Property; (e) to the best of Grantor's knowledge, no Toxic Mold is on or about the Trust Property which requires remediation; (f) to the Grantor's knowledge, no underground storage tanks exist on the Trust Property and to Grantor's knowledge, the Trust Property has never been used as a landfill; and (g) there have been no

environmental investigations, studies, audits, reviews or other analyses conducted by or on behalf of Grantor which have not been provided to Beneficiary.

Section 2.19. Name; Principal Place of Business. Grantor does not use and will not use any trade name and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of Grantor is its primary address for notices as set forth in Section 16.01 hereof, and Grantor has no other place of business.

Section 2.20. Other Obligations. There is no indebtedness with respect to the Trust Property or any excess cash flow or any residual interest therein, whether secured or unsecured, other than the Permitted Encumbrances.

All of the representations and warranties in this Article III and elsewhere in the Financing Documents (a) shall survive for so long as any portion of the Obligations remains owing to Beneficiary; and (b) shall be deemed to have been relied upon by Beneficiary notwithstanding any investigation heretofore or hereafter made by Beneficiary or on its behalf, provided, however, that the representations, warranties and covenants set forth in Article III above shall survive in perpetuity.

ARTICLE III

COVENANTS

Grantor hereby covenants and agrees with Beneficiary that:

Section 3.01. Existence. Grantor shall (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, and franchises and (b) continue to engage in the business presently conducted by it.

Section 3.02. Taxes and Other Charges. Grantor shall pay all Taxes and Other Charges (each, as defined in the Loan Agreement) as the same become due and payable, and deliver to Beneficiary receipts for payment or other evidence reasonably satisfactory to Beneficiary that the Taxes and Other Charges have been so paid no later than 30 days before they would be delinquent if not paid (provided, however, that Grantor need not pay such Taxes nor furnish such receipts for payment of Taxes paid by Beneficiary pursuant to this Deed of Trust). Grantor shall not suffer and shall promptly cause to be paid and discharged any Lien against the Trust Property, and shall promptly pay for all utility services provided to the Trust Property. After prior notice to Beneficiary, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall suspend the collection of the Taxes or such Other Charges; (c) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder; (d) no part of or interest in the Trust Property will be in danger of being sold, forfeited, terminated, canceled or lost; (e) Grantor shall have furnished such security as may be required in the proceeding, or as may be requested by Beneficiary, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, which shall not be less than 125% of the Taxes and Other

Charges being contested; and (f) Grantor shall promptly upon final determination thereof pay the amount of such Taxes or Other Charges, together with all costs, interest and penalties. Beneficiary may pay over any such security or part thereof held by Beneficiary to the claimant entitled thereto at any time when, in the judgment of Beneficiary, the entitlement of such claimant is established.

Section 3.03. Access to Trust Property. Grantor shall permit agents, representatives, consultants and employees of Beneficiary to inspect the Trust Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 3.04. Reserved.

Section 3.05. Performance of Other Agreements. Grantor shall observe and perform each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Trust Property, including the Financing Documents.

Section 3.06. Cooperate in Legal Proceedings. Grantor shall cooperate fully with Beneficiary with respect to, and permit Beneficiary, at its option, to participate in, any proceedings before any Governmental Authority which may in any way affect the rights of Beneficiary under any Financing Document.

Section 3.07. Further Assurances. Grantor shall, at Grantor's sole cost and expense, (a) execute and deliver to Beneficiary such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations and/or for the better and more effective carrying out of the intents and purposes of the Financing Documents, as Beneficiary may reasonably require from time to time; and (b) upon Beneficiary's request therefor given from time to time after the occurrence of any Default or Event of Default pay for (i) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to Grantor and (ii) searches of title to the Trust Property, each such search to be conducted by search firms reasonably designated by Beneficiary in each of the locations reasonably designated by Beneficiary.

Section 3.08. Environmental Matters.

(a) **Hazardous Substances.** So long as Grantor owns or is in possession of the Trust Property, Grantor shall (i) keep the Trust Property in compliance with all Environmental Laws; (ii) promptly notify Beneficiary if Grantor shall receive notice or have actual knowledge that (A) any Hazardous Substance is on or near the Trust Property in violation of Environmental Laws, (B) the Trust Property is in violation of any Environmental Laws, or (C) any condition on or near the Trust Property shall pose a threat to the health, safety or welfare of humans; and (iii) remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law (or as shall be required by Beneficiary in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified environmental consulting firm engaged by Beneficiary ("Beneficiary's Consultant")), promptly after Grantor becomes aware of

same, at Grantor's sole expense. Nothing herein shall prevent Grantor from recovering such expenses from any other party that may be liable for such removal or cure.

(b) *Environmental Monitoring.*

(i) Grantor shall give prompt written notice to Beneficiary of (A) any proceeding or inquiry by any party (including any Governmental Authority) with respect to the presence of any Hazardous Substance on, under, from or about the Trust Property; (B) all claims made or threatened by any third party (including any Governmental Authority) against Grantor or the Trust Property or any party occupying the Trust Property relating to any loss or injury resulting from any Hazardous Substance; and (C) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Trust Property that could cause the Trust Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Upon receipt of notice or actual knowledge of the presence of mold or fungus at the Trust Property, Grantor shall (1) undertake an investigation to identify the source(s) of such mold or fungus and shall develop and implement an appropriate remediation plan to eliminate the presence of any Toxic Mold; (2) perform or cause to be performed all acts reasonably necessary for the remediation of any Toxic Mold (including taking any action necessary to clean and disinfect any portions of the Trust Property affected by Toxic Mold, including providing any necessary moisture control systems at the Trust Property); and (3) provide evidence reasonably satisfactory to Beneficiary of the foregoing. Grantor shall permit Beneficiary to join and participate in, as a party if it so elects, any legal or administrative proceedings or other actions initiated with respect to the Trust Property in connection with any Environmental Law or Hazardous Substance, and Grantor shall pay all reasonable attorneys' fees and disbursements incurred by Beneficiary in connection therewith.

(ii) If Beneficiary in its good faith judgment has a reasonable belief that a violation of Environmental Law exists or may exist, then upon Beneficiary's request, at any time and from time to time, Grantor shall provide an inspection or audit of the Trust Property prepared by a licensed hydrogeologist, licensed environmental engineer or qualified environmental consulting firm approved by Beneficiary assessing the presence or absence of Hazardous Substances on, in or near the Trust Property and the cost and expense of such audit or inspection shall be paid by Grantor. Such inspections and audit may include soil borings and ground water monitoring. If Grantor fails to provide any such inspection or audit within 45 days after such request, Beneficiary may order same, and Grantor hereby grants to Beneficiary and its employees and agents access to the Trust Property and a license to undertake such inspection or audit.

(iii) If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for any Hazardous Substance, whether such Hazardous Substance existed prior to the ownership of the Trust Property by Grantor, or presently exists or is reasonably suspected of existing, Grantor shall cause such

operations and maintenance plan to be prepared and implemented at its expense upon request of Beneficiary, and with respect to any Toxic Mold, Grantor shall take all action necessary to clean and disinfect any portions of the Improvements affected by Toxic Mold in or about the Improvements, including providing any necessary moisture control systems at the Trust Property. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind is required under an applicable Environmental Law ("Remedial Work"), Grantor shall commence all such Remedial Work within 30 days after written demand by Beneficiary and thereafter diligently prosecute to completion all such Remedial Work within such period of time as may be required under applicable law. All Remedial Work shall be performed by licensed contractors approved in advance by Beneficiary and under the supervision of a consulting engineer approved by Beneficiary. All costs of such Remedial Work shall be paid by Grantor, including Beneficiary's reasonable attorneys' fees and disbursements incurred in connection with the monitoring or review of such Remedial Work. If Grantor does not timely commence and diligently prosecute to completion the Remedial Work, Beneficiary may (but shall not be obligated to) cause such Remedial Work to be performed at Grantor's expense. Notwithstanding the foregoing, Grantor shall not be required to commence such Remedial Work within the above specified time period: (A) if prevented from doing so by any Governmental Authority, (B) if commencing such Remedial Work within such time period would result in Grantor or such Remedial Work violating any Environmental Law, or (C) if Grantor, at its expense and after prior written notice to Beneficiary, is contesting by appropriate legal, administrative or other proceedings, conducted in good faith and with due diligence, the need to perform Remedial Work. Grantor shall have the right to contest the need to perform such Remedial Work; provided that, (1) Grantor is permitted by the applicable Environmental Laws to delay performance of the Remedial Work pending such proceedings, (2) neither the Trust Property nor any part thereof or interest therein will be sold, forfeited or lost if Grantor fails to promptly perform the Remedial Work being contested, and if Grantor fails to prevail in contest, Grantor would thereafter have the opportunity to perform such Remedial Work, (3) Beneficiary would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Grantor has not furnished additional security as provided in clause (4) below, or to any risk of criminal liability, and neither the Trust Property nor any interest therein would be subject to the imposition of any Lien for which Grantor has not furnished additional security as provided in clause (4) below, as a result of the failure to perform such Remedial Work, and (4) Grantor shall have furnished to Beneficiary additional security in respect of the Remedial Work being contested and the loss or damage that may result from Grantor's failure to prevail in such contest in such amount as may be reasonably requested by Beneficiary but in no event less than 125% of the cost of such Remedial Work as estimated by Beneficiary or Beneficiary's Consultant and any loss or damage that may result from Grantor's failure to prevail in such contest.

(iv) Grantor shall not install or permit to be installed on the Trust Property any underground storage tank.

Section 3.09. Title to the Trust Property. Grantor will warrant and defend the title to the Trust Property, and the validity and priority of all Liens granted or otherwise given to Beneficiary under the Financing Documents, subject only to Permitted Encumbrances, against the claims of all Persons.

Section 3.10. Leases. Without the prior written consent of Beneficiary, Grantor shall not: (a) execute or permit to exist any lease of or extend any existing lease related to all or any portion of the Trust Property; (b) execute any conditional bill of sale, chattel mortgage, security agreement or other security instruments covering any of the Trust Property; (c) encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Trust Property, or any part thereof; (d) sell, transfer, convey or assign any interest in the Trust Property; or (e) enter into any agreement whereby the holder of any prior or subordinate mortgage, deed of trust, deed to secure debt or security agreement, waives, extends or modifies any of the terms of the prior or subordinate security instrument.

Section 3.11. Reserved.

Section 3.12. Reserved.

Section 3.13. Reserved.

Section 3.14. Reserved.

Section 3.15. Zoning. Grantor shall not initiate or consent to any zoning reclassification of any portion of the Trust Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Trust Property in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior written consent of Beneficiary.

Section 3.16. No Joint Assessment. Grantor shall not suffer, permit or initiate the joint assessment of the Trust Property (a) with any other real property constituting a tax lot separate from the Trust Property, and (b) with any portion of the Trust Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Trust Property.

Section 3.17. Principal Place of Business. Grantor shall not change its principal place of business or chief executive office without first giving Beneficiary 30 days' prior written notice.

Section 3.18. Reserved.

Section 3.19. Obligations. Grantor shall not directly or indirectly create, incur or assume any indebtedness other than (a) any indebtedness permitted under the Loan Agreement; and (b) the Obligations (collectively, "Permitted Obligations").

Section 3.20. Licenses. Grantor shall not Transfer any License required for the operation of the Trust Property without the prior written consent of Beneficiary.

Section 3.21. Compliance With Restrictive Covenants, Etc. Grantor will not enter into, modify, waive in any material respect or release any Easements, restrictive covenants or other Permitted Encumbrances, or suffer, consent to or permit the foregoing, without Beneficiary's prior written consent, which consent may be granted or denied in Beneficiary's sole discretion.

Section 3.22. Reserved.

Section 3.23. Prohibited Transfers. Without the Beneficiary's prior written consent, Grantor shall not directly or indirectly make, suffer or permit the occurrence of any Transfer.

Section 3.24. Liens. Without Beneficiary's prior written consent, Grantor shall not create, incur, assume, permit or suffer to exist any Lien superior to the Lien of this Deed of Trust on all or any portion of the Trust Property or any direct or indirect legal or beneficial ownership interest in Grantor, except Liens in favor of Beneficiary and Permitted Encumbrances.

Section 3.25. Dissolution. Grantor shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity; (b) engage in any business activity not related to the ownership and operation of the Trust Property; or (c) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of Grantor.

Section 3.26. Expenses. Grantor shall reimburse Beneficiary upon receipt of notice for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Beneficiary in connection with the Obligations, including (a) the preparation, negotiation, execution and delivery of the Financing Documents and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Grantor; (b) Grantor's and Beneficiary's ongoing performance under and compliance with the Financing Documents, including confirming compliance with environmental and insurance requirements; (c) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Financing Document and any other documents or matters requested by Beneficiary; (d) filing and recording of any Financing Documents; (e) title insurance, surveys, inspections and appraisals; (f) the creation, perfection or protection of Beneficiary's Liens in the Trust Property (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, Deed of Trust, recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports, consulting fees, surveys and engineering reports); (g) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Grantor, the Financing Documents, the Trust Property, or any other security given for the Obligations; (h) fees charged by a registrar in connection with the Obligations; and (i) enforcing any obligations of or collecting any payments due from Grantor under any Financing Document or with respect to the Trust Property or in connection with any refinancing or restructuring of the Obligations in the nature of a "work-out," or any insolvency or bankruptcy proceedings. The obligations and liabilities of Grantor under this Section 3.26 shall survive termination of the Obligations and the exercise by Beneficiary of any of its rights or remedies

under the Financing Documents, including the acquisition of the Trust Property by foreclosure or a conveyance in lieu of foreclosure.

Section 3.27. Indemnity. Grantor shall, but solely to the extent permitted by law, defend, indemnify and hold harmless Beneficiary and each of its Affiliates and their respective successors and assigns, including the directors, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing and each other Person, if any, who controls Beneficiary, its Affiliates or any of the foregoing (each, an “Indemnified Party”), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Beneficiary shall be designated a party thereto, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the “Indemnified Liabilities”) in any manner, relating to or arising out of or by reason of the Obligations, including: (a) any breach by Grantor of its obligations under, or any misrepresentation by Grantor contained in, any Financing Document; (b) the use or intended use of the proceeds of the Obligations; (c) any information provided by or on behalf of Grantor, or contained in any documentation approved by Grantor; (d) ownership of the Deed of Trust, the Trust Property or any interest therein, or receipt of any Rents and Revenues; (e) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Trust Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any use, nonuse or condition in, on or about the Trust Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Trust Property; (h) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance on, from or affecting the Trust Property; (i) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (j) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; (k) any violation of the Environmental Laws which is based upon or in any way related to such Hazardous Substance, including the costs and expenses of any Remedial Work; (l) any failure of the Trust Property to comply in all material respects with any Legal Requirement; (m) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Trust Property or any part thereof, or any liability asserted against Beneficiary with respect thereto; and (n) the claims of any lessee of any portion of the Trust Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; provided, however, that Grantor shall not have any obligation to any Indemnified Party hereunder to the extent that it is finally judicially determined that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this paragraph shall be payable on written demand and shall bear interest at the Default Rate from the date actual loss or damage is sustained by any Indemnified Party until paid. The obligations and liabilities of Grantor under this Section shall survive satisfaction of the Obligations and the exercise by Beneficiary of any of its rights or remedies under the Financing

Documents, including the acquisition of the Trust Property by foreclosure or a conveyance in lieu of foreclosure.

Section 3.28. Reserved.

Section 3.29. Use of Trust Property. Grantor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Trust Property. If under applicable zoning provisions the use of the Trust Property is or shall become a nonconforming use, Grantor shall not cause or permit such nonconforming use to be discontinued or abandoned without the prior written consent of Beneficiary. Grantor shall not (a) change the use of the Trust Property, (b) permit or suffer to occur any waste on or to the Trust Property, or (c) take any steps to convert the Trust Property to a condominium or cooperative form of ownership.

ARTICLE IV

RESERVED

ARTICLE V

RESERVED

ARTICLE VI

RENTS AND REVENUES

Grantor does hereby absolutely and unconditionally assign to Beneficiary all of Grantor's right, title and interest in all current and future Rents and Revenues, it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Beneficiary to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary. Nevertheless, subject to the terms of this paragraph, Beneficiary grants to Grantor a revocable license to operate and manage the Trust Property and to collect the Rents and Revenues subject to the requirements of this Deed of Trust. Upon an Event of Default, without the need for notice or demand, the license granted to Grantor herein shall automatically be revoked, and Beneficiary shall immediately be entitled to possession of all Rents and Revenues, and all Rents and Revenues collected thereafter (including Rents and Revenues past due and unpaid), whether or not Beneficiary enters upon or takes control of the Trust Property. Grantor hereby grants and assigns to Beneficiary the right, at its option, upon revocation of the license granted herein, to enter upon the Trust Property in person, by agent or by court-appointed receiver to collect the Rents and Revenues. Any Rents and Revenues collected after the revocation of such license may be applied toward payment of the Obligations in such priority and proportions as Beneficiary in its sole discretion shall deem proper.

Grantor shall not enter into, modify, amend, cancel, terminate or renew any Lease. Any tenants or occupants of any part of the Real Trust Property are hereby authorized to recognize the claims of Beneficiary hereunder without investigating the reason for any action taken by

Beneficiary, or the validity or the amount of Obligations owing to Beneficiary, or the existence of any default in the Loan Agreement or this Deed of Trust, or under or by reason of this assignment of Rents and Revenues, or the application to be made by Beneficiary of any amounts to be paid to Beneficiary. The sole signature of Beneficiary shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Beneficiary for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Real Trust Property and Improvements. Checks for all or any part of the rentals collected under this assignment of Rents and Revenues shall be drawn to the exclusive order of Beneficiary.

ARTICLE VII

RESERVED

ARTICLE VIII

LIABILITY

The Grantor acknowledges and agrees that the Beneficiary has full recourse against the Trust Property and the Collateral (as defined in the Loan Agreement) after an Event of Default.

ARTICLE IX

RIGHT TO CURE DEFAULTS

Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Trust Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Trust Property or to foreclose this Deed of Trust or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary, shall constitute a portion of the Obligations, shall be secured by this Deed of Trust and the other Financing Documents and shall be due and payable to Beneficiary upon demand.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Events of Default. An "Event of Default" shall exist with respect to the Obligations if any of the following shall occur:

- (a) any of the Taxes are not paid when due (unless Beneficiary is paying such Taxes), subject to Grantor's right to contest Taxes in accordance with the terms hereof;
- (b) a transfer other than a Permitted Transfer occurs;

(c) any representation or warranty made by Grantor in any Financing Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by Grantor in connection with any Financing Document, shall be false or misleading in any material respect as of the date the representation or warranty was made;

(d) Grantor shall make an assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(e) a receiver, liquidator or trustee shall be appointed for Grantor; or Grantor, shall be adjudicated a bankrupt or insolvent; or any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Grantor or any proceeding for the dissolution or liquidation of Grantor, shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Grantor, only upon the same not being discharged, stayed or dismissed within sixty (60) days;

(f) Grantor breaches any covenant contained in Sections 3.15, 3.24, or 3.25 hereof;

(g) an Event of Default as defined or described elsewhere in this Deed of Trust or in any other Financing Document occurs; or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or to permit Beneficiary to accelerate the maturity of the Obligations;

(h) a default occurs under any term, covenant or provision set forth herein or in any other Financing Document which specifically contains a notice requirement or grace period and such notice has been given and such grace period has expired; and

(i) a default shall be continuing under any of the other terms, covenants or conditions of this Deed of Trust or any other Financing Document not otherwise specified in this Section 10.01, for 30 days after the occurrence thereof.

Section 10.02. Remedies. Upon the occurrence and continuance of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Trust Property, by Beneficiary itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) Declare an event of default under the Loan Agreement and declare the entirety or the Obligations to be immediately due and payable in full;

(b) give such notice of default and of election to cause the Trust Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein; Trustee shall then record and give such notice of Trustee's sale as then required by law and, after the expiration of such time as may be required by

law, may sell the Trust Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Trust Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof;

(c) institute a proceeding or proceedings, judicial or nonjudicial and, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Deed of Trust, in which case the Trust Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(d) sell for cash or upon credit the Trust Property and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) if such Default or Event of Default occurs under another Financing Document, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Financing Document;

(f) if such Default or Event of Default occurs under the Loan Agreement, recover judgment on the Loan Agreement either before, during or after any proceeding for the enforcement of this Deed of Trust;

(g) apply for the appointment of a trustee, receiver, liquidator or conservator of the Trust Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of the Grantor or of any person, firm or other entity liable for the payment of the Obligations;

(h) enforce Beneficiary's interest in the Rents and Revenues and enter into or upon the Trust Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and employees therefrom, and thereupon Beneficiary may (A) use and otherwise deal with the Trust Property; (B) complete any demolition on the Trust Property in such manner and form as Beneficiary deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Trust Property; (D) exercise all rights and powers of Grantor with respect to the Trust Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents and Revenues; and (E) apply the receipts from the Trust Property to the payment of

the Obligations, after deducting therefrom all actual, reasonable expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary, and its counsel, agents and employees;

(i) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents and Revenues, the fair and reasonable rental value for the use and occupation of any portion of the Trust Property occupied by Grantor, and require Grantor to vacate and surrender possession of the Trust Property to Beneficiary or to such receiver, and, in default thereof, evict Grantor by summary proceedings or otherwise; or

(j) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and Revenues and proceeds from the Intangibles and any other receivables or rights to payments of Grantor relating to the Trust Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Trust Property.

The proceeds of any sale made under or by virtue of this Article X, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this paragraph or otherwise, shall be applied by Beneficiary to the payment of the Obligations in such priority and proportion as Beneficiary in its sole discretion shall deem proper.

Beneficiary may adjourn from time to time any sale by it to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

Upon the completion of any sale or sales pursuant hereto, Trustee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Trustee is hereby irrevocably appointed the true and lawful attorney of Grantor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Trust Property and rights so sold and for that purpose Trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against

Grantor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Grantor.

Upon any sale made under or by virtue of this Article X, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust or any other Financing Document.

No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Grantor shall affect in any manner or to any extent the lien of this Deed of Trust upon the Trust Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

Beneficiary may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Article X at any time before the conclusion thereof, as determined in Beneficiary's sole discretion and without prejudice to Beneficiary.

Beneficiary may resort to any remedies and the security given by this Deed of Trust or in any other Financing Document in whole or in part, and in such portions and in such order as determined by Beneficiary's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Financing Document. The failure of Beneficiary to exercise any right, remedy or option provided in any Financing Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Financing Document. No acceptance by Beneficiary of any payment after the occurrence of any Event of Default and no payment by Beneficiary of any obligation for which Grantor is liable hereunder shall be deemed to waive or cure any Event of Default, or Grantor's liability to pay such obligation. No sale of all or any portion of the Trust Property, no forbearance on the part of Beneficiary, and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Beneficiary to Grantor, shall operate to release or in any manner affect the interest of Beneficiary in the remaining Trust Property or the liability of Grantor to pay the Obligations. No waiver by Beneficiary shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Beneficiary in exercising its rights and remedies under this Article X (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Grantor immediately upon notice from Beneficiary, with interest at the Default Rate for the period after notice from Beneficiary, and such costs and expenses shall constitute a portion of the Obligations and shall be secured by this Deed of Trust.

The interests and rights of Beneficiary under the Financing Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Beneficiary may grant with respect to any of the Obligations, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant with respect

to the Trust Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

Section 10.03. Public Trustee Foreclosure. At any time at or after the occurrence of an Event of Default (Beneficiary having declared the Obligations to be due and payable, as provided for hereof), Beneficiary may elect to commence foreclosure proceedings by way of a trustee's sale pursuant to the provisions of Title 38, Article 38, Colorado Revised Statutes, 1973, as amended, or in any other manner then permitted by law, four weeks' public notice having previously been given of the time and place of such sale by advertisement, weekly, in a newspaper of general circulation in the county in which the Real Trust Property is located, or upon such other notice as may then be required by law.

(a) **Judicial Foreclosure.** The right to foreclose this Deed of Trust by appropriate proceedings in any court of competent jurisdiction is also hereby given to Beneficiary.

(b) **Expenses of Trustee's Sale or Foreclosure.** If the Real Trust Property shall be sold by Trustee pursuant to the provisions of this Section 10.03 or if this Deed of Trust shall be foreclosed by appropriate proceedings in a court of competent jurisdiction as provided for in this Section 10.03, there shall be allocated and included as additional Obligations, together with interest at the Default Rate, all expenses that may be paid or incurred by or on behalf of Trustee or Beneficiary for the fees and disbursements of attorneys and their staff, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimates as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examination, title insurance policies and similar data and assurances with respect to title, as Trustee or Beneficiary may deem necessary either to prosecute such suit or to evidence to bidders at the sales that may be had pursuant to such proceedings the true conditions of the title to or the value of the Real Trust Property, together with and including a reasonable compensation to Trustee. All expenditures and expenses of the nature in this Section 10.03 mentioned, and such expenses and fees as may be incurred in the protection of the Real Trust Property and the maintenance of the lien of this Deed of Trust, including without limitation the fees and disbursements of attorneys and their staff employed by Beneficiary or Trustee in any litigation or proceedings affecting this Deed of Trust, the Loan Agreement or the Real Trust Property, including without limitation probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Grantor, with interest thereon at the Default Rate.

(c) **Proceeds of Trustee's or Foreclosure Sale.** The proceeds of foreclosure sale of the Real Trust Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including without limitation all such items as are mentioned in this Section 10.03; second, all other items which, under the terms hereof, constitute Obligations additional to that evidenced by the Loan Agreement, with interest on such items as herein provided; third, to interest remaining unpaid upon the Loan Agreement;

fourth, to the principal remaining unpaid upon the Loan Agreement; and lastly, to Grantor and its successors or assigns, as their rights may appear.

(d) ***Right to Possession and Receiver.*** Upon or at any time after the occurrence of any Event of Default, Trustee or Beneficiary shall at once become entitled to the possession, use and enjoyment of the Real Trust Property, and to the rents, revenues, issues and profits thereof, from the date of such occurrence and continuing during the pendency of any proceedings for sale by Trustee or foreclosure proceedings, and the period of redemption, if any. Such possession shall at once be delivered to Trustee or Beneficiary on request, and on refusal, the delivery of such possession may be enforced by Trustee or Beneficiary by any appropriate civil suit or proceeding, and Trustee or Beneficiary shall be entitled to a receiver for the Real Trust Property, and of the rents, issues and profits thereof, after any such default, including without limitation the time covered by any proceedings for sale by Trustee or foreclosure proceedings and the period of redemption, if any there be. Trustee or Beneficiary shall be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Grantor, or of the then owner of the Real Trust Property, and without regard to the value thereof, and such receiver, to the extent permitted by applicable law, may be appointed by any court of competent jurisdiction upon ex parte application, and without notice, notice being hereby expressly waived, and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver to the payment of the Obligations according to law and the orders and directions of the court.

(e) ***Insurance Upon Foreclosure.*** In case of an insured loss after judicial foreclosure or Trustee's sale proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied to rebuilding or restoring the buildings or improvements, shall be used to pay the amount due on the Obligations. In the event of judicial foreclosure or Trustee's sale, Beneficiary or Trustee is hereby authorized, without the consent of Grantor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Beneficiary or Trustee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

ARTICLE XI

RIGHT OF ENTRY

In addition to any other rights or remedies granted under this Deed of Trust, Beneficiary and its agents shall have the right to enter and inspect the Trust Property at any reasonable time during the term of this Deed of Trust. The cost of such inspections or audits shall be borne by Grantor should Beneficiary determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Beneficiary. The cost of such inspections, if not paid for by Grantor following demand, may be added to the principal balance of the sums due under the Loan Agreement and this Deed of Trust and shall bear interest thereafter until paid at the Default Rate.

ARTICLE XII

RESERVED

ARTICLE XIII

ACTIONS AND PROCEEDINGS

Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Trust Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its reasonable discretion, decides should be brought to protect its or their interest in the Trust Property. Beneficiary shall, at its option, be subrogated to the lien of any deed of trust or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

ARTICLE XIV

MARSHALLING AND OTHER MATTERS

Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Trust Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Trust Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law. The lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (a) any acceptance by Beneficiary of any other security for any portion of the Obligations; (b) any failure, neglect or omission on the part of Beneficiary to realize upon or protect any portion of the Obligations or any collateral security therefor; or (c) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Obligations or of any of the collateral security therefor; and Beneficiary may foreclose, or exercise any other remedy available to Beneficiary under other Financing Documents without first exercising or enforcing any of its remedies under this Deed of Trust, and any exercise of the rights and remedies of Beneficiary hereunder shall not in any manner impair the Obligations or the liens of any other Financing Document or any of Beneficiary's rights and remedies thereunder.

ARTICLE XV

RESERVED

ARTICLE XVI

NOTICES

Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Deed of Trust shall be deemed to have been duly given if delivered provided by facsimile transmission, or mailed, first-class, postage prepaid or sent by registered overnight delivery service, charges prepaid, as follows:

[TO BE INSERTED]

Section 16.01. Grantor Notices and Deliveries. Grantor shall (a) give prompt written notice to Beneficiary of: (i) any litigation, governmental proceedings or claims or investigations pending or threatened against Grantor which might materially adversely affect Grantor's condition (financial or otherwise) or business or the Trust Property; (ii) any material adverse change in Grantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Grantor has knowledge; and (b) furnish and provide to Beneficiary: (A) any Securities and Exchange Commission or other public filings, if any, of Grantor or any Affiliate of any of the foregoing within two Business Days of such filing, and (B) all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested, from time to time, by Beneficiary. In addition, after request by Beneficiary (but no more frequently than twice in any year), Grantor shall furnish to Beneficiary (1) within 10 days, a certificate addressed to Beneficiary, its successors and assigns reaffirming all representations and warranties of Grantor set forth in the Financing Documents as of the date requested by Beneficiary or, to the extent of any changes to any such representations and warranties, so stating such changes; and (2) within 30 days, tenant estoppel certificates addressed to Beneficiary, its successors and assigns from each tenant at the Trust Property in form and substance reasonably satisfactory to Beneficiary.

ARTICLE XVII

MISCELLANEOUS

Section 17.01. Inapplicable Provisions. If any term, covenant or condition of this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, this Deed of Trust shall be construed without such provision.

Section 17.02. Headings. The paragraph headings in this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 17.03. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form; and the word "Grantor" shall mean "each Grantor and any subsequent owner or owners of the Trust Property or any part thereof or any interest therein," the word "Beneficiary" shall mean "Beneficiary and any subsequent holder of the Loan

Agreement,” the words “Trust Property” shall include any portion of the Trust Property and any interest therein, the word “including” means “including but not limited to,” the words “attorneys’ fees” shall include any and all attorneys’ fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Trust Property and Collateral and enforcing its rights hereunder, and the words “reasonable” or “reasonably” shall mean commercial reasonableness as to commercial loans in comparable amounts originated for the capital markets and in the real estate market in which the Trust Property is located.

Section 17.04. Homestead. Grantor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Trust Property as against the collection of the Obligations, or any part thereof.

Section 17.05. Assignments. Beneficiary shall have the right to assign or transfer its rights under this Deed of Trust without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Deed of Trust.

Section 17.06. Waiver of Jury Trial. GRANTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GRANTOR.

Section 17.07. Consents. Any consent or approval by Beneficiary in any single instance shall not be deemed or construed to be Beneficiary’s consent or approval in any like matter arising at a subsequent date, and the failure of Beneficiary to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Beneficiary be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Beneficiary pursuant hereto shall be narrowly construed to be applicable only to Grantor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Beneficiary a venturer or partner with Grantor nor shall privity of contract be presumed to have been established with any such third party. If Beneficiary deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Grantor shall reimburse Beneficiary for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

Section 17.08. Release. Provided no Event of Default exists, the Lien of this Deed of Trust shall be terminated, released and reconveyed of record by Beneficiary only in accordance with the terms and provisions set forth in this Deed of Trust.

Section 17.09. Governing Law. This Deed of Trust shall be governed by, and be construed in accordance with, the laws of the state in which the Trust Property is located without regard to conflict of law provisions thereof.

Section 17.10. Third Party Beneficiary Rights. The Grantor hereby agrees and acknowledges and Beneficiary, by acceptance of this Deed of Trust, agrees and acknowledges that this Deed of Trust shall not be construed as creating third party beneficiary rights, and this Deed of Trust shall not be construed as giving or conferring any rights or benefits whatsoever to or upon any other persons or entities other than Grantor and Beneficiary.

ARTICLE XVIII

CHANGES IN LAWS REGARDING TAXATION

If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Obligations from the value of the Trust Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Beneficiary's interest in the Trust Property, Grantor will pay such tax, with interest and penalties thereon, if any. If Beneficiary is advised by its counsel that the payment of such tax or interest and penalties by Grantor would be unlawful, taxable to Beneficiary or unenforceable, or would provide the basis for a defense of usury, then Beneficiary shall have the option, by notice of not less than 90 days, to declare all of the Obligations immediately due and payable in full.

ARTICLE XIX

NO CREDITS ON ACCOUNT OF THE OBLIGATIONS

Grantor shall not claim or demand or be entitled to any credit on account of the Obligations for any part of the Taxes or Other Charges assessed against the Trust Property, and no deduction shall otherwise be made or claimed from the assessed value of the Trust Property for real estate tax purposes by reason of this Deed of Trust or the Obligations. If such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by notice of not less than 90 days, to declare the Obligations immediately due and payable.

ARTICLE XX

FURTHER ACTS, ETC.

Grantor shall, at its sole cost, do execute, acknowledge and deliver all and every such further acts, deeds, conveyances, Deed of Trusts, assignments, notices of assignment, transfers and assurances as Beneficiary shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby Deed of Trust, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Grantor may

be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering or recording this Deed of Trust or for facilitating the sale and transfer of the Obligations and interests in the Financing Documents. Upon foreclosure, the appointment of a receiver or any other relevant action, Grantor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Trust Property. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including such rights and remedies available to Beneficiary pursuant to this paragraph. Notwithstanding anything to the contrary in the immediately preceding sentence, Beneficiary shall not execute any document as attorney-in-fact of Grantor unless (a) Grantor shall have failed or refused to execute the same within five Business Days after Beneficiary's request therefor, or (b) in Beneficiary's good faith determination it would be materially prejudiced by the delay involved in making such a request. Beneficiary shall give prompt notice to Grantor of any exercise of the power of attorney as provided for in this Article XIX, along with copies of all documents executed in connection therewith.

ARTICLE XXI

RECORDING OF DEED OF TRUST, ETC.

Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, shall cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Trust Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Beneficiary in, the Trust Property. Grantor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Deed of Trust, any Deed of Trust supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance, except where prohibited by law so to do. Grantor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Deed of Trust.

[Remainder of page intentionally left blank]

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____ as _____ of the Westminster Economic Development Authority.

Witness my hand and official seal.

Notary Public

My commission expires: _____

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION

[Legal Description from Schedule A of Title Commitment to be Attached]

EXHIBIT B

Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement. The following terms have the meanings set forth below:

“*Affiliate*” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Bankruptcy Proceeding*” means, with respect to Grantor, the voluntary or involuntary filing of a petition under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property.

“*Beneficiary*” has the meaning ascribed in the preamble of this Deed of Trust.

“*Financing Documents*” has the meaning set forth in the Loan Agreement.

“*Business Day*” means any day excluding Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City of Denver, Colorado or the City of San Francisco, California, are authorized or obligated by law or administrative order to close.

“*Code*” means the Internal Revenue Code of 1986, as amended and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“*Control*” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Default*” means the occurrence of any event under any Financing Document which, with the giving of notice or passage of time, or both, would be an Event of Default.

“*Governmental Authority*” means any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) now or hereafter in existence.

“*Lease*” means, in the singular, any one of the Leases.

“*Leases*” means, collectively, all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Trust Property or the Improvements, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions and other rights and estates appurtenant thereunder.

“*Legal Requirements*” means the statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Grantor, any

Financing Document or all or part of the Trust Property or the construction, ownership, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to Grantor, at any time in force affecting all or part of the Trust Property.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Maturity Date*” means the date on which the Obligations is due and payable as provided in the Loan Agreement and the other Financing Documents, whether by declaration of acceleration or otherwise.

“*Net Proceeds*” shall mean the gross proceeds from an insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees and any expenses of the Beneficiary) incurred in the collection of the gross proceeds.

“*Permitted Encumbrances*” means, as of any particular time, (a) Liens for taxes, special assessments, and other charges not yet due and payable; (b) the Financing Documents; (c) presently existing utility, access, and other easements and rights of way, restrictions, and agreements described on Schedule B-2 of the Title Insurance Policy; (d) inchoate mechanics’ and materialmen’s Liens which arise by operation of law, but which have not been perfected by the required filing of record, for work done or materials delivered after the date of recording of this Deed of Trust in connection with permitted additions or alterations; (e) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations; and (f) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business; provided that the term “Permitted Encumbrances” shall not include any Lien securing indebtedness other than indebtedness arising under the Loan Agreement or the other Financing Documents.

“*Permitted Obligations*” shall have the meaning ascribed thereto in Section 3.19 hereof.

“*Permitted Transfer*” means a Transfer for which the Beneficiary has given its prior written consent.

“*Person*” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“*Rents and Revenues*” means all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding) or in lieu

of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered or to be rendered, other payments and other benefits and consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or any of their agents or employees from any and all sources now or hereafter arising from or attributable to the Trust Property and the Improvements or any portion thereof, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, tenancy, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Leases or other grant of the right of the use and occupancy of the Trust Property or rendering of services by Grantor or any of their agents or employees and proceeds, if any, from business interruption or other loss of income insurance, and all cash or securities deposited in any security deposit account to secure performance by the tenants, residents, or other parties, as applicable, of their obligations under any and all such Leases, subleases, licenses, tenancies, concessions, occupancy agreements or other agreements including without limitation parking fees, laundry and vending machine income and fees and charges for services provided at the Real Trust Property, if any, whether now due, past due, or to become due, and deposits forfeited by tenants.

“*State*” means the state in which the Trust Property is located.

“*Transfer*” means: any sale, conveyance, transfer, lease or assignment, or the entry into any agreement to sell, convey, transfer, lease or assign, whether by law or otherwise, of, on, in or affecting all or part of the Trust Property (including any legal or beneficial direct or indirect interest therein).

“*UCC*” means the Uniform Commercial Code as in effect in the State.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **137**

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 \$4,300,000, AND CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH, FOR THE PURPOSE OF FINANCING THE ACQUISITION OF LAND IN THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN AREA.

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, 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 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 to finance its activities and operations and to secure its bonds with a mortgage on property owned by the Authority; and

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

WHEREAS, an urban renewal plan, known as the "Westminster Center Urban Reinvestment Plan" (the "Plan") was duly and regularly approved by the City Council of the City pursuant to Resolution No. 12, adopted on April 13, 2009 (the "Urban Renewal Plan"), pursuant to the Act 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, the Authority has determined that it is in the best interests of the Authority and the citizens and taxpayers of the City to acquire certain property located within the Plan Area, as defined in the Plan (the “Project”); and

WHEREAS, the Authority intends to enter into a Loan Agreement with Vectra Bank Colorado, National Association (“Vectra”) to obtain a loan in the principal amount of not to exceed \$4,300,000 (the “Loan”) in order to finance the costs of the Project; and

WHEREAS, the proceeds derived from the 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 the costs of the Project; 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 Loan; and

WHEREAS, the Loan shall be a special obligation of the Authority payable from the Collateral (as defined in the Loan Agreement); and

WHEREAS, the Board desires to delegate to the Executive Director of the Authority the power to determine the terms of the 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 Loan Agreement; (b) the proposed form of the promissory note, in the form attached to the Loan Agreement (the “Note”), to be executed by the Authority and delivered to Vectra evidencing the Authority’s obligations to pay the Loan; (c) the proposed forms of the Deed of Trust from the Authority to Vectra (the “Deed of Trust” and together with the Loan Agreement and the Note, the “Documents”).

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 Project and the entering into of the Documents hereby are ratified, approved and confirmed.

Section 2. The forms, terms and provisions of 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 Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Chair, the Vice Chairperson of the Board, or the Executive Director 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 to undertake the Project, 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 Project.

Section 4. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Executive Director of the Authority the authority to make the following determinations with respect to the 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 on the Loan; (b) the conditions on which and the prices at which the Loan may be redeemed before maturity; (c) the existence and amount of any reserve funds; (d) the principal amount of the 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 Loan shall mature not later than December 1, 2014; (2) the principal amount of the Loan shall not exceed \$4,300,000; (3) the interest rate on the Loan shall not exceed 4.00% per unless there is an Event of Default (as defined in the Loan Agreement) in which case the interest rate shall equal the Default Rate (as defined in the Loan Agreement); (4) the Loan may be prepaid at anytime at the option of the Authority, upon payment of the principal amount of the Loan plus accrued interest thereon to the date of prepayment, without penalty; and (5) the Loan shall be prepaid from Net Sale Proceeds (as defined in the Loan Agreement), upon payment of the principal amount of the Loan plus accrued interest thereon to the date of prepayment, without penalty.

Section 5. The Loan and the Note are special obligations of the Authority payable as provided in the Loan Agreement. The principal of, premium, if any, and interest on the Loan and the 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 Loan and the Note, be payable out of funds or properties other than the Collateral, as such term is defined in the Loan Agreement. Neither the Commissioners of the Authority nor any persons executing the Loan Agreement or the Note shall be liable personally on the Loan Agreement or the Note.

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

Section 7. 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 8. The Chair, the Vice Chairperson and the Executive Director are each hereby appointed as an Authorized Person, as defined in the Loan Agreement. Different or additional Authorized Persons may be appointed by resolution adopted by the Board and a certificate filed with Vectra.

Section 9. All costs and expenses incurred in connection with the Loan and the transactions contemplated by this Resolution shall be paid either from the proceeds of the Loan or from legally available moneys of the Authority, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 10. 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 11. 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 12. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this February 27, 2012.

(SEAL)

Chair/Vice Chairperson of the Board of Commissioners

ATTEST:

Secretary

APPROVED AS TO LEGAL FORM:

Attorney for the Authority

WITNESS my hand and the seal of said Authority affixed February 27, 2012.

(SEAL)

Secretary

EXHIBIT A

(Form of Notice of Meeting)