



## 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 Meetings**
4. **Report of City Officials**
  - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
  - A. National Public Works Week Proclamation
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. Indoor Sports Officiating Services Contract
  - B. Sale of City Land Located at the Promenade
  - C. Development Agreement with Renaissance I, LLLP re Lowell Plaza Project
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
  - A. Public Hearing re My Business Park at Mandalay PDP and the Sixth Amended ODP
  - B. PDP and Sixth Amended ODP for My Business Park at Mandalay – Sports Training Facility Use
  - C. PDP and Sixth Amended ODP for My Business Park at Mandalay – Assembly Use
  - D. PDP and Sixth Amended ODP for My Business Park at Mandalay – Required Parking
  - E. Resolution No. 12 re Compliance Hearing for the Little Dry Creek Property Annexation
  - F. Resolution No. 13 re 2012 Private Activity Bond Allocation and Assignment to WHA for Lowell Plaza
  - G. Councillor's Bill No. 10 re 2012 Community Development Block Grant Fund Appropriation
  - H. Councillor's Bill No. 11 re 2011 Final Budget Supplemental Appropriation
  - I. Councillor's Bill No. 12 re 2012 1<sup>st</sup> Quarter Budget Supplemental Appropriation
  - J. Councillor's Bill No. 13 re Expanding the Time for Making a Jury Demand in Municipal Court
  - K. Councillor's Bill No. 14 re Supplement to the Synchroness, Inc. Business Assistance Agreement
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Miscellaneous Business and Executive Session**
  - A. City Council
13. **Adjournment**

**WESTMINSTER HOUSING AUTHORITY MEETING (separate agenda)**

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**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 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



Use

**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, APRIL 23, 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 and Councillors Herb Atchison, Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. Mayor Pro Tem Faith Winter was absent and excused. 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 April 9, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that following the conclusion of this City Council meeting there would be a meeting of the Westminster Economic Development Authority Board of Directors.

Additionally, he advised that since April 30 would be the fifth Monday of the month, the City Council would not meet as there was no pressing business to consider.

Mr. McFall invited everyone to participate in the following upcoming events. Community Pride Day on May 12, when from 8 a.m. to 1 p.m. over 1,500 volunteers were registered to help give the City a Spring cleaning. After the clean-up, volunteers would enjoy a free barbecue and entertainment at City Hall. Patti Wright, coordinator of the event, could still accommodate reservations. Fire Station #5's Open House would be on May 5 from noon to 3 p.m. at 10100 Garland Street. Families were urged to join in the festivities, which would feature lunch, fire truck rides, tours of the station, safety games, and opportunities for conversations with firefighters and City Council members. In conclusion, Mr. McFall invited the community to another popular annual event, the Armed Forces Tribute Day from 10 to 11 a.m. on May 19 at the Armed Forces Tribute Garden.

CITY COUNCIL COMMENTS

Councillor Atchison reported there would be a pancake breakfast on May 19 preceding the Armed Forces Tribute Day ceremonies. All proceeds would be donated to expansion of the garden. The public was urged to start the day by participating in the breakfast activity.

Councillor Briggs thanked the City for hosting exchange students from Croatia, whose visit to the community was sponsored by the 7:10 Rotary Club. The study group had spent several hours visiting City offices and learning about municipal government.

Councillor Lindsey reported that groundbreaking ceremonies at the Metzger Farm had begun the Cities of Westminster and Broomfield joint efforts to expand and enhance this unique working farm for greater public use and enjoyment. It had taken quite some time to secure grant funding, develop a master plan and get to this point. Now it could be as soon as six months out when amenities would be available to the public.

Councillor Major reported there were vacancies on some of the Boards and Commissions that served the City Council and performed many tasks that the Council could not. Currently, the Council was conducting a recruitment to solicit applications from citizens that were interested in serving in this capacity. Brief descriptions of the functions of each Board or Commission and the application were available on the City's website.

Mayor McNally reported it had been a pleasure to attend an Eagle Scout award ceremony for Spencer Amin. Spencer was awarded the Eagle distinction as a fencer. He had traveled all over the world to compete and had answered yes when asked if it was possible he would one day be an Olympic athlete.

### PRESENTATIONS

Councillor Lindsey read a proclamation designating May 15 as Peace Officers Memorial Day and May 13 through 19 as Police Week. She presented the proclamation to Officer Josh Vance.

Councillor Briggs presented proclamations designating May to be Mental Health Month to Lindy Schultz of Adams County Community Reach and Teresa Legault of the Jefferson Center for Mental Health. Both agencies served Westminster residents.

Mayor McNally proclaimed May 12 to be Community Pride Day and presented the proclamation to Patti Wright, Open Space Volunteer Coordinator.

Councillor Major read a proclamation declaring May 6 through 12 to be National Drinking Water Week in Westminster. He presented the proclamation to Mary Fabisiak, Water Quality Administrator.

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the March 2012 Financial Report; accept the 1<sup>st</sup> Quarter 2012 Insurance Claims Report; authorize the City Manager to execute a contract with the low bidder, B & M Roofing of Colorado, Inc., in the amount of \$92,327 for the roof retrofit at City Park Fitness Center and authorize a construction contingency in the amount of \$9,000 for a total expenditure of \$101,327; authorize the City Manager to execute a contract for the 2012 Asphalt Pavement Rehabilitation Project with the low bidder, Asphalt Specialties Company, Inc., in the amount of \$583,467 and authorize an 8.5% contingency of \$49,595, for a total project budget of \$633,062; authorize the City Manager to execute a contract with the low bidder, Hallmark, Inc., in the amount of \$66,257 for the 120<sup>th</sup> Avenue Wall Repair Project and authorize a construction contingency in the amount of \$2,000; find that the public interest would be best served by a negotiated contract with Jacobs Engineering Group, Inc for engineering services for the 72<sup>nd</sup> Avenue/Raleigh Street Bridge Replacement project, authorize the City Manager to execute a contract with Jacobs Engineering Group, Inc in the amount of \$347,613 for engineering design and preparation of construction bid documents for the 72<sup>nd</sup> Avenue/Raleigh Street Bridge Replacement project, authorize \$55,000 for title commitment and appraisal expenses, and authorize a project contingency of \$34,761; authorize the City Manager to enter a contract with the low bidder, American Demolition, Inc., for demolition of the England Water Treatment Facility for \$130,300 with a ten percent construction contingency in the amount of \$13,030 for a construction budget of \$143,330, and execute a contract amendment with Farnsworth Group, Inc. for engineering services during construction in the amount of \$36,000 with a ten percent contingency in the amount of \$3,600 for a construction engineering services budget of \$39,600; and change the date of the second regularly scheduled City Council meeting in May from May 28 to May 21.

There were no requests to remove any items from the Consent Agenda for individual consideration. Councillor Kaiser moved to approve the consent agenda, as presented. Councillor Lindsey seconded the motion, and it carried unanimously.

### RE-APPOINTMENT TO METRO WASTEWATER RECLAMATION DISTRICT BOARD OF DIRECTORS

Upon a motion by Councillor Briggs, seconded by Councillor Major, the City Council voted unanimously to reappoint Curtis Aldstadt to the Metro Wastewater Reclamation District's Board of Directors with a term of office effective through June 30, 2014.

RESOLUTION NO. 11 REGARDING SERVICE COMMITMENT COMPETITION AND ALLOCATIONS

It was moved by Councillor Atchison and seconded by Councillor Lindsey to adopt Resolution No. 11 authorizing a second, mid-year Service Commitment competition and allocating 166 additional Service Commitments for the year 2012 to the Traditional Mixed Use Neighborhood Development category of the Growth Management Program. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, the meeting adjourned at 7:25 p.m.

ATTEST:

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Mayor

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City Clerk



## Agenda Item 6 A

### Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Proclamation re National Public Works Week

**Prepared By:** Mike Happe, Acting Director of Public Works and Utilities

### Recommended City Council Action

Proclaim the week of May 20-26, 2012, as Public Works Week in the City of Westminster. Mayor Nancy McNally will present the proclamation to Jackie Bowers, Administrative Secretary, Administration Division; Barb Cinkosky, Secretary, and Bill Hayward, Foreman, Street Operations Division; Lili Cox, Secretary, Utilities Operations Division; and Bob Krugmire, Engineer, Utilities Planning and Engineering Division.

### Summary Statement

- National Public Works Week is a celebration of the tens of thousands of men and women across America who provide and maintain the infrastructure and services collectively known as public works.
- The American Public Works Association and State Chapters dedicate the third week in May each year to inform and educate citizens of the importance of Public Works.
- The theme of this year's Public Works Week is "Public Works: Creating a Lasting Impression."
- Posters, displays and brochures will be available at City Hall, City Recreation Centers, and City Libraries.
- Public Works and Utilities Staff will be in attendance to receive the proclamation on behalf of the Department.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

Public Works professionals throughout the United States and Canada will celebrate National Public Works Week, May 20 - 26, 2012.

Since 1960, the annual observance has been an opportunity to increase public awareness of the role that Public Works plays in all of our daily lives. The 2010 events are being coordinated in the State by the Colorado Chapter of the American Public Works Association. The week seeks to enhance the prestige of the often-unsung heroes of our society – the professionals who serve the public good every day with quiet dedication. Through National Public Works Week, the Colorado Chapter of the American Public Works Association seeks to raise the public’s awareness of public works issues and to increase confidence in Public Works employees who are dedicated to improving the quality of life for present and future generations.

Below is the graphic that was created for this year’s National Public Works Week.



This proclamation supports City Council’s goal of a Financially Sustainable City Government by recognizing Public Works and Utilities employees for their efforts towards a well-maintained city infrastructure and facilities and providing efficient, cost-effective internal and external services.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Proclamation

**WHEREAS**, Public Works and Utilities services provided in our community are an integral part of our citizens' lives; and

**WHEREAS**, support of an understanding and informed citizenry is vital to the efficient operation of Public Works and Utilities and programs concerning the maintenance of water, sewers, streets and highways, public buildings, and snow removal operations; and

**WHEREAS**, the health, safety, and comfort of this community greatly depends on these facilities and services; and

**WHEREAS**, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of Public Works and Utilities employees; and

**WHEREAS**, the efficiency of the qualified and dedicated personnel who staff the Public Works and Utilities Department are materially influenced by the people's attitude and understanding of the importance of the work they perform.

**NOW, THEREFORE, I, Nancy McNally, Mayor, on behalf of the entire City Council and Staff, do hereby proclaim the week of May 20 through 26, 2012, as**

### **PUBLIC WORKS WEEK**

in the City of Westminster and call upon all citizens and civic organizations to acquaint themselves with the challenges and opportunities involved in providing our Public Works and Utilities and to recognize the contributions that Public Works and Utilities employees make every day to our health, safety, comfort and quality of life.

Signed this 14<sup>th</sup> day of May, 2012.

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Nancy McNally, Mayor



## Agenda Item 8 A

### Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Indoor Sports Officiating Services Contract

**Prepared By:** Sean Layfield, Recreation Supervisor/Sports

### Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest is best served by authorizing the City Manager to renew a contract with Playthewhistle.com, LLC, for officiating and related services in an amount not to exceed \$85,000 for one year.

### Summary Statement

- City Staff believes it is in the City's best interest to renew this contract for an additional year as the contractor is holding the same price structure for 2012 as was bid competitively in 2010.
- The City's purchasing officer issued formal bids through Demand Star for sports officiating services on May 7, 2010. In addition, two vendors were mailed hard copies of the bid packet. Those vendors were Playthewhistle.com, LLC., (PTW) and Kevin Marples. PTW was the only vendor to submit a bid.
- The proposed agreement between the City of Westminster and PTW includes the terms and conditions for PTW to provide officiating services for senior and adult programs that are provided by the City.
- The 2012 Recreation Programs Division operating budget contains the necessary funds to contract these professional officiating services. The services to be provided by PTW amount to approximately \$75,000 per year for indoor soccer and is based on a per-game charge. This amount is dependent upon the number of teams that participate in each of the City's sports programs during the year; therefore, Staff is requesting authorization to spend up to \$85,000.
- Revenues for these sports totaled \$310,000 in 2011, and revenues of \$310,000 are projected in 2012.

**Expenditure Required:** Not to exceed \$85,000

**Source of Funds:** General Fund – Recreation Programs Division Operating Budget

**Policy Issue**

Should the City renew the 2010 contract from PTW for 2012 officiating services for the City's indoor soccer leagues?

**Alternative**

Council could choose to not renew the officiating services contract to PTW and ask Staff to rebid the officiating services in hopes of receiving a lower bid. Staff does not recommend this as the proposal received meets all of the City's criteria as well as the officiating needs of the leagues.

**Background Information**

The Recreation Services Division offers ongoing indoor soccer programs for the youth and adults in the Westminster community. Indoor soccer programs provide recreational team sports opportunities for over 7,200 participants each year. The Recreation Services Division has had a working relationship with PTW for the past four years.

PTW is responsible for training, certifying, and scheduling the officials for the following soccer organizations: Foothills Park and Recreation District, Colorado Rapids, Colorado Storm, Colorado Rush, Boulder County Force, and Colorado Fusion. PTW's current charges for services are \$15 per game per official and 10% assigning fee per game. Charges are paid on an as-used basis.

2012 will be the third year under this original bid. Staff will issue a request for bids in early 2013 for the officiating services contract for next year.

This contract 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 B

### Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Sale of City Land Located at the Promenade

**Prepared By:** Steve Smithers, Deputy City Manager

### Recommended City Council Action

Authorize the City Manager to enter into a Purchase and Sale Agreement, in substantially the same form as the attached agreement, with Westminster Boulevard, LLC, to sell a parcel of land located on the east section of the Promenade.

### Summary Statement

- The City has been approached by the owners of the Westin Hotel to purchase an 861 square foot City parcel immediately in front of the Westin restaurant on the Promenade.
- The Westin is moving forward with plans to reconstruct the restaurant and needs additional land near where the current restaurant patio is located to place permanent fixtures for an outdoor restaurant patio area.
- This land transaction will not interfere with the current pedestrian movement on the Promenade and the land is not needed for other City purposes.
- Westminster Boulevard, LLC, has agreed to pay \$7000 for the land. A copy of the proposed Purchase and Sale Agreement is attached for City Council's review.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City sell this parcel of land to Westminster Boulevard, LLC, in order to allow the reconstruction of the Westin restaurant to move forward?

**Alternatives**

1. Lease the land to Westminster Boulevard, LLC, instead of entering into a purchase and sale agreement. Staff explored this alternative because it would protect the City's ability to get the land back in the future. This alternative is not recommended because of the staff resources required to manage this lease, the fact that the sale of this land does not negatively impact the Promenade, and the City has no future uses for this land.
2. Do not approve the sale of the land. Staff does not recommend this alternative because without the land, the Westin Hotel will not be able to move forward with the restaurant reconstruction as planned.

**Background Information**

The Westin Hotel has been pursuing the renovation and reconstruction of their restaurant for the past 18 months. The current O's Restaurant was opened with the opening of the Hotel in 2000. The owners of the hotel, Westminster Boulevard, LLC, believe that it is time to move forward with a new restaurant concept in order to draw in a broader customer base from both the Hotel and the surrounding community. The new restaurant will be called Kuchina, and will have a southwestern theme and menu. The entire interior of the current restaurant will be reconstructed, as well as the addition of a permanent outdoor seating area. A copy of the floor plan for the restaurant is attached.

As part of this design, outdoor permanent fixtures will be added, a portion of which are proposed to be constructed on land currently owned by the City. Westminster Boulevard, LLC, is proposing to acquire the 861 square feet needed from the City for \$7000. Staff believes that this is a fair price and does not see any issues with selling this small parcel. The attached diagram shows the parcel of land Staff is recommending be sold.

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

Respectfully submitted,

J. Brent McFall  
City Manager

**Attachments**

- Purchase and Sale Agreement
- Exhibit A Land Parcel A Legal Description
- Restaurant Floor Plan

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

**CONTRACT TO BUY AND SELL REAL ESTATE  
(ALL TYPES OF PROPERTIES – CAO REVISED JANUARY 2008)**

Date: May~~April~~, 2012  
Purchase Price: \$7,000.00

**1. AGREEMENT.** Buyer agrees to buy, and Seller agrees to sell, the Property defined below on the terms and conditions set forth in this contract (Contract).

**2. DEFINED TERMS.**

**a. Buyer.** Buyer, Westminster Boulevard Amstar/Sage Westminster Holdings, LLC, will take title to the real property described below as  **Joint Tenants**  **Tenants In Common**  **Other** \_\_\_\_\_.

**Seller.** Seller is City of Westminster, a Colorado home-rule municipality.

**b. Property.** The Property is the following legally described real estate in the County of Jefferson, Colorado: See Exhibit "A" attached hereto and incorporated herein by this reference, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

**c. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 4a	Alternative Earnest Money Deadline	<u>N/A</u>
2	§ 5a	Loan Application Deadline	N/A
3	§ 5b	Loan Conditions Deadline	N/A
4	§ 5c	Buyer's Credit Information Deadline	N/A
5	§ 5c	Disapproval of Buyer's Credit Information Deadline	N/A
6	§ 5d	Existing Loan Documents Deadline	N/A
7	§ 5d	Existing Loan Documents Objection Deadline	N/A
8	§ 5d	Loan Transfer Approval Deadline	N/A
9	§ 6a(2)	Appraisal Deadline	<u>N/A</u>
10	§ 7a	Title Deadline	<u>May 15, 2012</u>
11	§ 8a	Title Objection Deadline	<u>May 16, 2012</u>
12	§ 7c	Survey Deadline	<u>May 7, 2012</u>
13	§ 8c(2)	Survey Objection Deadline	<u>May 13, 2012</u>
14	§ 7b	Document Request Deadline	<u>May 16, 2012</u>
15	§ 7d(5)	CIC Documents Objection Deadline	N/A
16	§ 8b	Off-Record Matters Deadline	<u>May 15, 2012</u>
17	§ 8b	Off-Record Matters Objection Deadline	<u>May 16, 2012</u>
18	§ 8f	Right of First Refusal Deadline	N/A
19	§ 10a	Seller's Property Disclosure Deadline	N/A
20	§ 10b	Inspection Objection Deadline	<u>N/A</u>
21	§ 10c	Resolution Deadline	<u>N/A</u>
22	§ 10d	Property Insurance Objection Deadline	<u>N/A</u>
23	§ 25e	<b>Approval Deadline</b>	
24	§ 12	<b>Closing Date</b>	<u>May 17, 2012*</u>
25	§ 17	Possession Date	<u>May 17, 2012</u>
26	§ 17	Possession Time	5 p.m.
27	§ 30	<b>Acceptance Deadline Date</b>	<u>May 11, 2012</u>
28	§ 30	<b>Acceptance Deadline Time</b>	5 p.m.

**d. Attachments.** The following are a part of this Contract: Exhibit "A" (Legal Description); [other, if any: \_\_\_\_\_].

\* Date subject to acceptance of Contract by Westminster City Council.

28 e. **Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The  
 29 abbreviation "N/A" or the word "Deleted" means not applicable when inserted on any line in **Dates and Deadlines** (§ 2c),  
 30 and it means that the corresponding provision of the Contract to which reference is made is deleted. The abbreviation  
 31 "MEC" (mutual execution of this contract) means the latest date upon which both parties have signed this Contract.  
 32

33 **3. INCLUSIONS AND EXCLUSIONS.**

34 a. **Inclusions.** The Purchase Price includes the following items (Inclusions):

35 (1) ~~Fixtures.~~ If attached to the Property on the date of this Contract, lighting, heating, plumbing,  
 36 ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants,  
 37 mirrors, floor coverings, intercom systems, built in kitchen appliances, sprinkler systems and controls, built in vacuum  
 38 systems (including accessories), garage door openers including \_\_\_\_\_ remote controls; and  \_\_\_\_\_  
 39 \_\_\_\_\_

40 (2) **Personal Property.** The following are included if on the Property whether attached or not on the date  
 41 of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings,  
 42 curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys.  
 43 If checked, the following are included:  **Water Softeners**  **Smoke/Fire Detectors**  **Security Systems**   
 44 **Satellite Systems** (including satellite dishes)

45 (3) **Other Inclusions.** The Property is vacant land. The Purchase price shall include any fixtures or other  
 46 appurtenances located at or on the Property as of the effective date of this Contract \_\_\_\_\_  
 47 \_\_\_\_\_

48 The Personal Property to be conveyed at Closing shall be conveyed, by Seller, free and clear of all taxes  
 49 (except personal property taxes for the year of Closing), liens and encumbrances, except None.  
 50 Conveyance shall be by bill of sale or other applicable legal instrument.

51 (4) ~~Trade Fixtures.~~ With respect to trade fixtures, Seller and Buyer agree as follows:

52  
 53  
 54 The Trade Fixtures to be conveyed at Closing shall be conveyed, by Seller, free and clear of all taxes (except  
 55 personal property taxes for the year of Closing), liens and encumbrances, except none.  
 56 Conveyance shall be by bill of sale or other applicable legal instrument.

57 (5) **Parking and Storage Facilities.**  **Use Only**  **Ownership** of the following parking facilities:  
 58 \_\_\_\_\_; and  **Use Only**  **Ownership** the following storage facilities: \_\_\_\_\_

59 (6) **Water Rights.** The following legally described water rights: all rights tributary to the Property None.  
 60 Any water rights shall be conveyed by N/A deed or other applicable legal instrument. The Well Permit # is N/A.

61 (7) **Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows: N/A.

62 b. **Exclusions.** The following items are excluded: N/A.

63 **4. PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer  
 64 as follows:  
 65

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$ <u>7,000.00</u>	
2	§ 4a	Earnest Money		\$ <u>0.00</u>
3	§ 4d(1)	New First Loan		<u>0.00</u>
4	§ 4d(2)	New Second Loan		<u>0.00</u>
5	§ 4e	Assumption Balance		<u>0.00</u>
6	§ 4f	Seller or Private Financing		<u>0.00</u>
7				
8				
9	§ 4b	Cash at Closing		<u>7,000.00</u>
10		<b>TOTAL</b>	\$ <u>7,000.00</u>	\$ <u>7,000.00</u>

66 Note: If there is an inconsistency between the Purchase Price on the first page and this § 4, the amount in § 4 shall control.  
 67

68 a. **Earnest Money.** The Earnest Money set forth in this section, in the form of Good Funds N/A is part payment  
 69 of the Purchase Price and shall be payable to and held by N/A Title Company (Earnest Money Holder),  
 70 in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract  
 71 unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 2c) for its payment. The parties authorize  
 72 delivery of the Earnest Money deposit to the closing company, if any, at or before Closing. In the event Earnest Money  
 73 Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing  
 74 affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest  
 75 Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

76 **b. Cash at Closing.** All amounts paid by Buyer at Closing including cash at Closing, plus Buyer's closing costs,  
77 shall be in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified  
78 check, savings and loan teller's check and cashier's check (Good Funds).

79 **c. Down Payment Assistance; Seller Paid Costs.** Seller, at Closing, shall credit \$ N/A to Buyer to assist with  
80 Buyer's down payment. Seller shall also, at Closing, credit to Buyer the amount of \$ N/A to assist with Buyer's closing  
81 costs, not to exceed the amount due from Buyer for such costs. These amounts are in addition to any sum Seller has agreed  
82 to pay or credit Buyer elsewhere in this Contract.

83 **d. New Loan. N/A**

84 **(1) New First Loan.** Buyer shall obtain a new loan set forth in this section as follows:

85  **Conventional**  **FHA**  **VA**  **Other** \_\_\_\_\_.

86 This loan will be secured by a \_\_\_\_\_ (1st, 2nd, etc.) deed of trust.

87 The loan may be increased to add the cost of mortgage insurance, VA funding fee and other items for a total loan  
88 amount, not in excess of \$ \_\_\_\_\_, which shall be amortized over a period of \_\_\_\_\_  **Years**  **Months** at  
89 approximately \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and interest not to exceed \_\_\_\_\_%  
90 per annum, plus, if required by Buyer's lender, a deposit of \_\_\_\_\_ of the estimated annual real estate taxes,  
91 property insurance premium, and mortgage insurance premium. If the loan is an adjustable interest rate or graduated  
92 payment loan, the payments and interest rate initially shall not exceed the figures set forth above.

93 Loan discount points, if any, shall be paid to lender at Closing and shall not exceed \_\_\_\_\_% of the total loan amount.  
94 Notwithstanding the loan's interest rate, the first \_\_\_\_\_ loan discount points shall be paid by \_\_\_\_\_,  
95 and the balance, if any, shall be paid by \_\_\_\_\_.

96 Buyer shall timely pay Buyer's loan costs and a loan origination fee not to exceed \_\_\_\_\_% of the loan amount. If  
97 the loan is an FHA/VA insured or guaranteed loan, Seller shall pay closing costs and fees, not to exceed \$ \_\_\_\_\_,  
98 that Buyer is not allowed by law to pay for tax service and \_\_\_\_\_.

99 **(2) New Second Loan.** Buyer shall obtain a new loan set forth in this section as follows:

100 This loan will be secured by a \_\_\_\_\_ (2nd, etc.) deed of trust.

101 The total loan amount, not in excess of \$ \_\_\_\_\_, shall be amortized over a period of \_\_\_\_\_

102  **Years**  **Months** at approximately \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and  
103 interest not to exceed \_\_\_\_\_% per annum. If the loan is an adjustable interest rate or graduated payment loan, the  
104 payments and interest rate initially shall not exceed the figures set forth above.

105 Loan discount points, if any, shall be paid to lender at Closing and shall not exceed \_\_\_\_\_% of the total loan amount.  
106 Notwithstanding the loan's interest rate, the first \_\_\_\_\_ loan discount points shall be paid by \_\_\_\_\_  
107 \_\_\_\_\_, and the balance, if any, shall be paid by \_\_\_\_\_.

108 Buyer shall timely pay Buyer's loan costs and a loan origination fee not to exceed \_\_\_\_\_% of the loan amount.

109 **e. Assumption. N/A** Buyer agrees to assume and pay an existing loan in the approximate amount of the

110 Assumption Balance set forth in this section, presently payable at \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and  
111 interest presently at \_\_\_\_\_% per annum, and also including escrow for the following as indicated:  **Real Estate Taxes**  
112  **Property Insurance Premium**  **Mortgage Insurance Premium** and  \_\_\_\_\_.

113 Buyer agrees to pay a loan transfer fee not to exceed \$ \_\_\_\_\_. At the time of assumption, the new interest  
114 rate shall not exceed \_\_\_\_\_% per annum and the new payment shall not exceed \$ \_\_\_\_\_ per \_\_\_\_\_ principal  
115 and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption  
116 Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than \$ \_\_\_\_\_,  
117 then  **Buyer May Terminate** this Contract effective upon receipt by Seller of Buyer's written notice of termination or  
118  \_\_\_\_\_.

119 Seller  **Shall**  **Shall Not** be released from liability on said loan. If applicable, compliance with the  
120 requirements for release from liability shall be evidenced by delivery at Closing of an appropriate letter of commitment  
121 from lender. Cost payable for release of liability shall be paid by \_\_\_\_\_ in an amount not to  
122 exceed \$ \_\_\_\_\_.

123 **f. Seller or Private Financing. N/A** Buyer agrees to execute a promissory note payable to: \_\_\_\_\_

124 \_\_\_\_\_, as  **Joint Tenants**  **Tenants in Common**

125  **Other** \_\_\_\_\_, on the note form as indicated:

126  **(Default Rate) NTD 81 10 06**  **Other** \_\_\_\_\_ secured by a \_\_\_\_\_

127 (1st, 2nd, etc.) deed of trust encumbering the Property, using the form as indicated:  **Strict Due On Sale** (TD 72 10 06)

128  **Creditworthy** (TD 73 10 06)  **Assumable - Not Due On Sale** (TD 74 10 06)

129  **Other** \_\_\_\_\_.

130 The promissory note shall be amortized on the basis of \_\_\_\_\_  **Years**  **Months**, payable at \$ \_\_\_\_\_  
131 per \_\_\_\_\_ including principal and interest at the rate of \_\_\_\_\_% per annum. Payments shall commence  
132 \_\_\_\_\_ and shall be due on the \_\_\_\_\_ day of each succeeding \_\_\_\_\_.

133 If not sooner paid, the balance of principal and accrued interest shall be due and payable \_\_\_\_\_ after Closing.  
134 Payments  **Shall**  **Shall Not** be increased by \_\_\_\_\_ of estimated annual real estate taxes, and  **Shall**  **Shall**

135 ~~Not be increased by \_\_\_\_\_ of estimated annual property insurance premium. The loan shall also contain the following~~  
136 ~~terms: (1) if any payment is not received within \_\_\_\_\_ calendar days after its due date, a late charge of \_\_\_\_\_% of~~  
137 ~~such payment shall be due, (2) interest on lender disbursements under the deed of trust shall be \_\_\_\_\_% per annum,~~  
138 ~~(3) default interest rate shall be \_\_\_\_\_% per annum, (4) Buyer may prepay without a penalty except \_\_\_\_\_~~  
139 ~~\_\_\_\_\_ and (5) Buyer  Shall  Shall Not execute and deliver, at~~  
140 ~~Closing, a Security Agreement and UCC 1 Financing Statement granting the holder of the promissory note a \_\_\_\_\_ (1st,~~  
141 ~~2nd, etc.) lien on the personal property included in this sale.~~  
142 ~~\_\_\_\_\_ Buyer  Shall  Shall Not provide a mortgagee's title insurance policy, at Buyer's expense.~~

143  
144 **5. FINANCING CONDITIONS AND OBLIGATIONS. ~~N/A~~**

145 ~~a. Loan Application. If Buyer is to pay all or part of the Purchase Price by obtaining a new loan, or if an~~  
146 ~~existing loan is not to be released at Closing, Buyer, if required by such lender, shall make a verifiable application by **Loan**~~  
147 ~~**Application Deadline** (§ 2c). Buyer shall cooperate with Seller and lender to obtain loan approval, **DILIGENTLY AND**~~  
148 ~~**TIMELY PURSUE SAME IN GOOD FAITH**, execute all documents and furnish all information and documents~~  
149 ~~required by lender, and, subject to subsections 4d(1) and (2) and § 4e, timely pay the costs of obtaining such loan or~~  
150 ~~lender's consent. Buyer agrees to satisfy the reasonable requirements of lender, and shall not withdraw the loan or~~  
151 ~~assumption application, nor intentionally cause any change in circumstances that would prejudice lender's approval of the~~  
152 ~~loan application or funding of the loan. Buyer may obtain different financing provided Seller incurs no additional delay,~~  
153 ~~cost or expense, and provided Buyer is approved for such substitute loan.~~

154 ~~b. Loan Conditions. If Buyer is to pay all or part of the Purchase Price by obtaining a new loan as specified in~~  
155 ~~§ 4b, this Contract is conditional upon Buyer's approval of the availability, terms, conditions and cost for the new loan.~~  
156 ~~This condition is for the benefit of Buyer and shall be deemed waived unless Seller receives from Buyer, no later than **Loan**~~  
157 ~~**Conditions Deadline** (§ 2c), written notice of Buyer's election to terminate this Contract as such loan was not satisfactory~~  
158 ~~to Buyer, Buyer shall not have the right to terminate under this § 5b based on the terms or conditions of any loan that is the~~  
159 ~~same as set forth in § 4. If Buyer so notifies Seller, this Contract shall terminate. **IF SELLER DOES NOT RECEIVE**~~  
160 ~~**WRITTEN NOTICE TO TERMINATE AND BUYER DOES NOT CLOSE, BUYER SHALL BE IN DEFAULT.**~~

161 ~~c. Credit Information and Buyer's New Senior Loan. If Buyer is to pay all or part of the Purchase Price by~~  
162 ~~executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is~~  
163 ~~conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which~~  
164 ~~approval shall be at Seller's sole and absolute discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit**~~  
165 ~~**Information Deadline** (§ 2c), at Buyer's expense, information and documents (including a current credit report)~~  
166 ~~concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial~~  
167 ~~ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in~~  
168 ~~confidence, and not released to others except to protect Seller's interest in this transaction; (4) in the event Buyer is to~~  
169 ~~execute a promissory note secured by a deed of trust in favor of Seller, this Contract, for the benefit of Seller, is conditional~~  
170 ~~upon Seller's approval of the terms and conditions of any new loan to be obtained by Buyer if the deed of trust to Seller is~~  
171 ~~to be subordinate to Buyer's new loan (**Buyer's New Senior Loan**); Seller shall not have the right to terminate under this~~  
172 ~~§ 5c for any loan when all such specific terms and provisions (e.g., interest rate, principal, payments, prepayment penalties,~~  
173 ~~due date, etc.) are met as set forth in § 4 or elsewhere in this Contract; and (5) if Seller does not deliver written notice of~~  
174 ~~Seller's disapproval of Buyer's financial ability and creditworthiness or of **Buyer's New Senior Loan** to Buyer by~~  
175 ~~**Disapproval of Buyer's Credit Information Deadline** (§ 2c), then Seller waives the conditions set forth in this section. If~~  
176 ~~Seller does deliver written notice of disapproval to Buyer on or before said date, this Contract shall terminate.~~

177 ~~d. Existing Loan Review. If an existing loan is not to be released at Closing, Seller shall deliver copies of the~~  
178 ~~loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§~~  
179 ~~2c). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan~~  
180 ~~documents. If written notice of objection to such loan documents, signed by Buyer, is not received by Seller by **Existing**~~  
181 ~~**Loan Documents Objection Deadline** (§ 2c), Buyer accepts the terms and conditions of the documents. If the lender's~~  
182 ~~approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without~~  
183 ~~change in the terms of such loan, except as set forth in § 4e. If lender's approval is not obtained by **Loan Transfer**~~  
184 ~~**Approval Deadline** (§ 2c), this Contract shall terminate on such date. If Seller is to be released from liability under such~~  
185 ~~existing loan and Buyer does not obtain such compliance as set forth in § 4e, this Contract may be terminated at Seller's~~  
186 ~~option.~~

187  
188 **6. APPRAISAL PROVISIONS.**

189 **a. Appraisal Condition.**

190  (1) **Not Applicable.** This § 6a. shall not apply.  
191  (2) **Conventional.** Buyer shall have the sole option and election to terminate this Contract if the Purchase  
192 Price exceeds the Property's valuation determined by an appraiser engaged by \_\_\_\_\_.

193 This Contract shall terminate by Buyer delivering to Seller written notice of termination and either a copy of such appraisal  
194 or written notice from lender that confirms the Property's valuation is less than the Purchase Price, received on or before  
195 **Appraisal Deadline** (§ 2c). If Seller does not receive such written notice of termination on or before **Appraisal Deadline**  
196 (§ 2c), Buyer waives any right to terminate under this subsection.

197  (3) **FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the Purchaser  
198 (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by  
199 forfeiture of Earnest Money deposits or otherwise unless the Purchaser (Buyer) has been given in accordance with  
200 HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans  
201 Affairs, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than  
202 \$\_\_\_\_\_. The Purchaser (Buyer) shall have the privilege and option of proceeding with the consummation of  
203 the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the  
204 maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor  
205 the condition of the Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the  
206 Property are acceptable.

207  (4) **VA.** It is expressly that, notwithstanding any other provisions of this Contract, the purchaser (Buyer)  
208 shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the  
209 Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by  
210 the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding  
211 with the consummation of this Contract without regard to the amount of the reasonable value established by the Department  
212 of Veterans Affairs.

213 **b. Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by  
214  Buyer  Seller.

215  
216 **7. EVIDENCE OF TITLE.**

217 **a. Evidence of Title.** On or before **Title Deadline** (§ 2c), Seller shall cause to be furnished to Buyer, at Seller's  
218 expense ~~obtain~~, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the  
219 Purchase Price, ~~or if this box is checked,  An Abstract of title certified to a current date.~~ At Seller's expense, Seller  
220 shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a title  
221 insurance commitment is furnished, it  ~~Shall~~  **Shall Not** commit to delete or insure over the standard exceptions  
222 which relate to:

- 223 (1) parties in possession,
- 224 (2) unrecorded easements,
- 225 (3) survey matters,
- 226 (4) any unrecorded mechanic's liens,
- 227 (5) gap period (effective date of commitment to date deed is recorded), and
- 228 (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

229 Any additional premium expense to obtain this additional coverage shall be paid by  Buyer  Seller.

230 **b. Copies of Exceptions.** On or before **Title Deadline** (§ 2c), Seller, at Seller's expense, shall furnish to Buyer  
231 and N/A, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a  
232 title insurance commitment is required to be furnished, and if this box is checked  **Copies of any Other Documents** (or,  
233 if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not  
234 checked, Seller shall have the obligation to furnish these documents pursuant to this subsection if requested by Buyer any  
235 time on or before **Document Request Deadline** (§ 2c). This requirement shall pertain only to documents as shown of  
236 record in the office of the clerk and recorder where the Property is located. The abstract or title insurance commitment,  
237 together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents  
238 (Title Documents).

239 **c. Survey.** On or before **Survey Deadline** (§ 2c),  Seller  Buyer shall cause ~~Buyer~~Seller (and the  
240 issuer of the Title Commitment or the provider of the opinion of title if an abstract) to receive a current  **Improvement**  
241 **Survey Plat**  **Improvement Location Certificate**  Survey shall meet ALTA/ASCM standards (the description  
242 checked is known as Survey). An amount not to exceed \$\_\_\_\_\_ for Survey shall be paid by  Buyer  Seller. If  
243 the cost exceeds this amount,  Buyer  Seller shall pay the excess on or before Closing unless Buyer delivers to Seller  
244 before Survey is ordered, Buyer's written notice allowing the exception for survey mattersAll survey costs shall be paid by  
245 Buyer.

246 **d. Common Interest Community Documents.**  
247  (1) **Not Applicable.** This § 7d. shall not apply.  
248 (2) **Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON  
249 INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER  
250 OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE  
251 COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE

252 ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL  
253 OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY  
254 ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE  
255 ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE  
256 DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE  
257 OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE  
258 ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.  
259 PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE  
260 FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY  
261 READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF  
262 THE ASSOCIATION.

263  (3) **Not Conditional on Review.** Buyer acknowledges that Buyer has received a copy of the owners'  
264 association (Association) declarations, bylaws, rules and regulations, party wall agreements, minutes of most recent annual  
265 owners' meeting and minutes of any directors' meetings during the 6-month period immediately preceding Title Deadline,  
266 if any (Governing Documents), most recent financial documents consisting of (a) annual balance sheet, (b) annual income  
267 and expenditures statement, and (c) annual budget (Financial Documents), if any (collectively CIC Documents). Buyer has  
268 reviewed them, agrees to accept the benefits, obligations and restrictions that they impose upon the Property and its owners  
269 and waives any right to terminate this Contract due to such documents, notwithstanding the provisions of § 8e.

270 (4) **CIC Documents to Buyer.**  
271  (a) **Seller to Provide CIC Documents.** Seller shall cause the CIC Documents to be provided to  
272 Buyer, at Seller's expense, on or before **Title Deadline** (§ 2c).  
273  (b) **Seller Authorizes Association.** Seller authorizes the Association to provide the CIC Documents  
274 to Buyer, at Seller's expense.  
275 (c) **Seller's Obligation.** Seller's obligation to provide the CIC Documents shall be fulfilled upon  
276 Buyer's receipt of the CIC Documents, regardless of who provides such documents.

277 (5) **Conditional on Buyer's Review.** If the box in either subsection 7d(4)(a) or subsection 7d(4)(b) is  
278 checked, the provisions of this subsection 7d(5) shall apply. Written notice of any unsatisfactory provision in any of the  
279 CIC Documents, in Buyer's subjective discretion, signed by Buyer, or on behalf of Buyer, and delivered to Seller on or  
280 before **CIC Documents Objection Deadline** (§ 2c), shall terminate this Contract.

281 Should Buyer receive the CIC Documents after **Title Deadline** (§ 2c), Buyer shall have the right, at Buyer's  
282 option, to terminate this Contract by written notice delivered to Seller on or before ten calendar days after Buyer's receipt of  
283 the CIC Documents. If Buyer does not receive the CIC Documents, or if such written notice to terminate would otherwise  
284 be required to be delivered after the Closing Date, Buyer's written notice to terminate shall be received by Seller on or  
285 before three calendar days prior to **Closing Date** (§ 2c). If Seller does not receive written notice from Buyer within such  
286 time, Buyer accepts the provisions of the CIC Documents, and Buyer's right to terminate this Contract pursuant to this  
287 subsection is waived, notwithstanding the provisions of § 8e.

288 NOTE: If no box in this § 7d is checked, the provisions of subsection 7d(4)(a) shall apply.

290 **8. TITLE AND SURVEY REVIEW.**

291 a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of  
292 unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the  
293 Title Documents, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Title**  
294 **Objection Deadline** (§ 2c), or within five calendar days after receipt by Buyer of any change to the Title Documents or  
295 endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller  
296 does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title  
297 Documents as satisfactory.

298 b. **Matters Not Shown by the Public Records.** Seller shall deliver to Buyer, on or before **Off-Record Matters**  
299 **Deadline** (§ 2c) true copies of all leases and surveys in Seller's possession pertaining to the Property and shall disclose to  
300 Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or  
301 other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of  
302 which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has  
303 any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary  
304 line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection,  
305 notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Off-Record Matters**  
306 **Objection Deadline** (§ 2c). If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights,  
307 if any, of third parties of which Buyer has actual knowledge.

308 c. **Survey Review.**  
309  (1) **Not Applicable.** This § 8c shall not apply.  
310  (2) **Conditional on Survey.** If the box in this subsection 8c(2) is checked, Buyer-Seller shall have the right  
311 to inspect the Survey. If written notice by or on behalf of Buyer-Seller of any unsatisfactory condition shown by the Survey,

312 notwithstanding § 8b or § 13, is received by ~~Seller~~Buyer on or before **Survey Objection Deadline** (§ 2c) then such  
313 objection shall be deemed an unsatisfactory ~~title~~ condition and Seller may terminate this Contract without penalty. If Seller  
314 does not receive Buyer's notice by **Survey Objection Deadline** (§ 2c), Buyer accepts the Survey as satisfactory.

315 **d. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**  
316 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**  
317 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**  
318 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO**  
319 **SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE**  
320 **INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN**  
321 **INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS**  
322 **OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL**  
323 **LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN**  
324 **INCREASE IN SUCH MILL LEVIES.**

325 In the event the Property is located within a special taxing district and Buyer desires to terminate this Contract as a  
326 result, if written notice, by or on behalf of Buyer, is received by Seller on or before **Off-Record Matters Objection**  
327 **Deadline** (§ 2c), this Contract shall terminate. If Seller does not receive Buyer's notice by such date, Buyer accepts the  
328 effect of the Property's inclusion in such special taxing district and waives the right to terminate for that reason.

329 **e. Right to Object, Cure.** Buyer's right to object shall include, but not be limited to, those matters listed in § 13.  
330 If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as  
331 provided in §§ 8a, b, c and d above, Seller shall use reasonable efforts to correct said items and bear any nominal expense to  
332 correct the same prior to Closing. If such unsatisfactory title condition is not corrected to Buyer's satisfaction on or before  
333 Closing, this Contract shall terminate; provided, however, Buyer may, by written notice received by Seller on or before  
334 Closing, waive objection to such items.

335 **f. Right of First Refusal or Approval.** Seller warrants there are no rights of first refusal on the Property or any  
336 rights to approve this Contract held by others.

337 **g. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be  
338 reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use  
339 of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and  
340 claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning  
341 land use, development and environmental matters. **The surface estate may be owned separately from the underlying**  
342 **mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water**  
343 **rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the**  
344 **Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or  
345 not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as  
346 there are strict time limits provided in this Contract (e.g., **Title Objection Deadline** [§ 2c] and **Off-Record Matters**  
347 **Objection Deadline** [§ 2c]).

348  
349 ~~**9. LEAD-BASED PAINT.** Unless exempt, if the improvements on the Property include one or more residential~~  
350 ~~dwelling for which a building permit was issued prior to January 1, 1978, this Contract shall be void unless a completed~~  
351 ~~Lead Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensees, which must occur prior~~  
352 ~~to the parties signing this Contract. Buyer acknowledges timely receipt of a completed Lead Based Paint Disclosure (Sales)~~  
353 ~~form signed by Seller and the real estate licensees.~~

354  
355 ~~**10. PROPERTY DISCLOSURE, INSPECTION, INSURABILITY AND BUYER DISCLOSURE.**~~

356 ~~**a. Seller's Property Disclosure Deadline.** On or before **Seller's Property Disclosure Deadline** [§ 2c], Seller~~  
357 ~~agrees to deliver to Buyer the most current version of the Seller's Property Disclosure form completed by Seller to the best~~  
358 ~~of Seller's actual knowledge, current as of the date of this Contract.~~

359 ~~**b. Inspection Objection Deadline.** Buyer shall have the right to have inspections of the physical condition of~~  
360 ~~the Property and Inclusions, at Buyer's expense. If the physical condition of the Property or Inclusions is unsatisfactory in~~  
361 ~~Buyer's subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 2c):~~

362 ~~(1) notify Seller in writing that this Contract is terminated, or~~

363 ~~(2) deliver to Seller a written description of any unsatisfactory physical condition which Buyer requires~~  
364 ~~Seller to correct (Notice to Correct).~~

365 ~~If written notice is not received by Seller on or before **Inspection Objection Deadline** (§ 2c), the physical condition~~  
366 ~~of the Property and Inclusions shall be deemed to be satisfactory to Buyer.~~

367 ~~**c. Resolution Deadline.** If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in~~  
368 ~~writing to a settlement thereof on or before **Resolution Deadline** (§ 2c), this Contract shall terminate one calendar day~~

369 following ~~Resolution Deadline~~ (§ 2c), unless before such termination Seller receives Buyer's written withdrawal of the  
370 Notice to Correct.

371 ~~d. Insurability. Intentionally omitted.~~

372 ~~e. Damage, Liens and Indemnity. Buyer is responsible for payment for all inspections, tests, surveys,  
373 engineering reports, or any other work performed at Buyer's request and shall pay for any damage which occurs to the  
374 Property and Inclusions as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property  
375 for inspections, tests, surveys, engineering reports, or any other work performed on the Property at Buyer's request. Buyer  
376 agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by  
377 Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and  
378 expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney and legal fees. The provisions  
379 of this subsection shall survive the termination of this Contract.~~

380 ~~f. Buyer Disclosure. Buyer represents that Buyer  Does  Does Not need to sell and close a property to  
381 complete this transaction.~~

382 ~~Note: Any property sale contingency should appear in Additional Provisions (§ 25).~~

383

384 **11. METHAMPHETAMINE LABORATORY DISCLOSURE.** The parties acknowledge that Seller is required to  
385 disclose whether Seller knows that the Property was previously used as a methamphetamine laboratory. No disclosure is  
386 required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to §  
387 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial  
388 hygienist to test whether the Property has ever been used as a methamphetamine laboratory. In the event that the Property  
389 has been used as a methamphetamine laboratory, Buyer may deliver written notice to Seller, on or before Closing, to  
390 terminate this Contract.

391

392 **12. CLOSING.** Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date  
393 specified as the **Closing Date** (§ 2c) or by mutual agreement at an earlier date. The hour and place of Closing shall be by  
394 mutual agreement as designated by \_\_\_\_\_ Buyer \_\_\_\_\_ Seller.

395

396 **13. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with  
397 the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer,  
398 at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as  
399 provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special  
400 improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject  
401 to:

402 a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents  
403 accepted by Buyer in accordance with § 8a (Title Review),

404 b. distribution utility easements (including cable TV),

405 c. those specifically described rights of third parties not shown by the public records of which Buyer has actual  
406 knowledge and which were accepted by Buyer in accordance with § 8b (Matters Not Shown by the Public Records) and §  
407 8c (Survey Review),

408 d. inclusion of the Property within any special taxing district,

409 e. the benefits and burdens of any recorded declaration and party wall agreements, if any, and

410 f. ~~other. None~~ Seller's right of reverter, pursuant to 25.h. of this Contract.

411

412 **14. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from  
413 the proceeds of this transaction or from any other source.

414

415 **15. CLOSING COSTS, DOCUMENTS AND SERVICES.**

416 a. **Good Funds.** Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items  
417 required to be paid at Closing, except as otherwise provided herein.

418 b. **Closing Documents.** Buyer and Seller shall sign and complete all customary or reasonably required  
419 documents at or before Closing.

420 c. **Closing Services Fee.** Fees for real estate Closing services shall be paid at Closing by  Buyer  Seller  
421  **One-Half by Buyer and One-Half by Seller.**

422 d. **Status Letter and Transfer Fees.** Any fees incident to the issuance of Association's statement of  
423 assessments (Status Letter) shall be paid by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.** Any  
424 fees incident to the transfer from Seller to Buyer assessed by the Association (Association's Transfer Fee) shall be paid by  
425  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.** N/A.

426 e. **Local Transfer Tax.** The local transfer tax of \_\_\_\_\_% of the Purchase Price shall be paid at Closing by  
427  Buyer  Seller  One-Half by Buyer and One-Half by Seller. N/A.  
428 f. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction shall be paid when due  
429 by  Buyer  Seller  One-Half by Buyer and One-Half by Seller.  
430

431 **16. PRORATIONS.** The following shall be prorated to **Closing Date** (§ 2c), except as otherwise provided:

432 a. **Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing, based on   
433 **Taxes for the Calendar Year Immediately Preceding Closing**  **Most Recent Mill Levy and Most Recent Assessed**  
434 **Valuation**  **Other** \_\_\_\_\_.

435 b. **Rents.** Rents based on  **Rents Actually Received**  **Accrued.** Security deposits held by Seller shall be  
436 credited to Buyer. Seller shall assign all leases to Buyer and Buyer shall assume such leases. N/A

437 c. **Association Assessments.** Current regular Association assessments and Association dues (Association  
438 Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association  
439 Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise  
440 provided by the Governing Documents. Any special assessment by the Association for improvements that have been  
441 installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed  
442 prior to **Closing Date** (§ 2c) by the Association shall be the obligation of  **Buyer**  **Seller.** Seller represents that the  
443 amount of the Association Assessments is currently payable at \$\_\_\_\_\_ per \_\_\_\_\_ and that there are no unpaid  
444 regular or special assessments against the Property except the current regular assessments and except \_\_\_\_\_

445 \_\_\_\_\_ Such assessments are subject to change as  
446 provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing**  
447 **Date** (§ 2c) a current Status Letter. N/A.

448 d. **Other Prorations.** None.

449 e. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.  
450

451 **17. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** at **Possession Time** (§  
452 2c); ~~subject to the following leases or tenancies:~~

453  
454  
455 ~~\_\_\_\_\_ If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be~~  
456 ~~additionally liable to Buyer for payment of \$10.00 per day (or any part of a day) from the Possession Date and Possession~~  
457 ~~Time (§ 2c) until possession is delivered.~~

458 Buyer  **Does**  **Does Not** represent that Buyer will occupy the Property as Buyer's principal residence.  
459

460 **18. ASSIGNABILITY.** This Contract   **Shall**   **Shall Not** be assignable by Buyer without Seller's prior  
461 written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal  
462 representatives, successors and assigns of the parties.  
463

464 ~~**19. INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS.** Except as otherwise~~  
465 ~~provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this~~  
466 ~~Contract, ordinary wear and tear excepted.~~

467 ~~a. **Casualty Insurance.** In the event the Property or Inclusions shall be damaged by fire or other casualty prior~~  
468 ~~to Closing, in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same~~  
469 ~~before **Closing Date** (§ 2c). In the event such damage is not repaired within said time or if the damages exceed such sum,~~  
470 ~~this Contract may be terminated at the option of Buyer by delivering to Seller written notice of termination on or before~~  
471 ~~Closing. Should Buyer elect to carry out this Contract despite such damage, at Closing, Buyer shall be entitled to a credit~~  
472 ~~for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the~~  
473 ~~Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not~~  
474 ~~exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, then Seller shall~~  
475 ~~assign such proceeds, at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but~~  
476 ~~not to exceed the total Purchase Price.~~

477 ~~b. **Damage, Inclusions and Services.** Should any Inclusion or service (including systems and components of~~  
478 ~~the Property, e.g. heating, plumbing, etc.) fail or be damaged between the date of this Contract and Closing or possession,~~  
479 ~~whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion or service with a unit of~~  
480 ~~similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such~~  
481 ~~Inclusion, service or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by~~  
482 ~~Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty~~  
483 ~~programs that may be purchased and may cover the repair or replacement of such Inclusions. The risk of loss for damage to~~

484 ~~growing crops by fire or other casualty shall be borne by the party entitled to the growing crops as provided in subsection~~  
485 ~~3a(7) and such party shall be entitled to such insurance proceeds or benefits for the growing crops.~~

486 ~~c. **Walk Through and Verification of Condition.** Buyer, upon reasonable notice, shall have the right to walk~~  
487 ~~through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this~~  
488 ~~Contract.~~

489  
490 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller  
491 acknowledge that the respective broker has advised that this document has important legal consequences and has  
492 recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.  
493

494 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any note or check received  
495 as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any  
496 obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

497 **a. If Buyer is in Default:**

498  (1) **Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest  
499 Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and retained by Seller; and Seller may  
500 recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller  
501 shall have the right to specific performance ~~or damages, or both.~~

502  (2) **Liquidated Damages.** All Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer,  
503 paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed  
504 that the Earnest Money specified in § 4 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is  
505 fair and reasonable and (except as provided in §§ 10e, 19, 21c, 22, 23), said forfeiture shall be SELLER'S SOLE AND  
506 ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of  
507 specific performance and additional damages.

508 **b. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money  
509 received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat  
510 this Contract as being in full force and effect and Buyer shall have the right to specific performance ~~or damages, or both.~~

511 **c. Cost and Expenses.** In the event of any arbitration or litigation relating to this Contract, the arbitrator or  
512 court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.  
513

514 **22. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties  
515 shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an  
516 impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions.  
517 The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable  
518 mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the  
519 event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered  
520 by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless  
521 otherwise agreed.  
522

523 **23. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder shall release the  
524 Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy  
525 regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be  
526 required to take any action. Earnest Money Holder, at its option and sole discretion, may (a) await any proceeding, (b)  
527 interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and  
528 reasonable attorney and legal fees, or (c) deliver written notice to Buyer and Seller that unless Earnest Money Holder  
529 receives a copy of the Summons and Complaint or Claim (between Buyer and Seller), containing the case number of the  
530 lawsuit (Lawsuit) within 120 calendar days of Earnest Money Holder's written notice is delivered to the parties, Earnest  
531 Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a  
532 copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder shall disburse the  
533 Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of Mediation (§ 22).  
534

535 **24. TERMINATION.** In the event this Contract is terminated, all Earnest Money received hereunder shall be returned  
536 and the parties shall be relieved of all obligations hereunder, subject to §§ 10e, 22 and 23.  
537

538 **25. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real  
539 Estate Commission.)

540 **a. Broker Commissions.** Buyer warrants to Seller that it has not dealt with any real estate brokers in connection with  
541 this transaction and shall not be liable for the payment of any brokerage commission. Seller shall indemnify and hold

542 Buyer harmless from any brokerage or other commissions that may be payable in connection with this or any other transfer  
543 of the Property or any part thereof, unless such claims arise through the Buyer.  
544

545 **b. Representations And Warranties.** Seller represents and warrants to Buyer both as of the date hereof and as of the  
546 date of Closing that:

547 (1) Seller is not a "foreign Person" but is a "United States person" as such terms are defined in Section 1445 and  
548 7701 of the Internal Revenue Code of 1986 as amended.

549 (2) As of the date of Closing there shall be no parties in possession of any portion of the Property, except Seller.

550 (3) No work shall have been performed or shall be in progress by Seller, and no materials shall have been  
551 furnished to the Property or any portion thereof in connection with such work that might give rise to mechanic's liens  
552 against the Property or any portion thereof. At Closing, there will be no unpaid bills or claims in connection with any such  
553 work on the Property.

554 (4) No portion of the Property is subject to an earnest money contract, right of first refusal or similar contractual  
555 right.

556 (5) To the best of Seller's actual knowledge, there is no suit, action, legal or other proceeding pending, or to  
557 Seller's best knowledge, threatened which affects the Property.

558 (6) Seller has received no notice from any governmental authority of zoning, building, fire, water, use, health,  
559 environmental or other statutory or regulatory violation issued in respect of the Property which has not been heretofore  
560 corrected.

561 (7) No action in condemnation, eminent domain or public taking proceedings are now pending or contemplated  
562 against the Property;

563 (8) No ordinance or hearing is now before any local governmental body which either contemplates or authorizes  
564 any public improvements or special tax levies, the cost of which may be assessed against the Property;

565 (9) The Property is in compliance with all City of Westminster subdivision and platting regulations and with  
566 applicable rules, regulations, ordinances, and requirements of the City;

567 (10) (i) To the best of Seller's actual knowledge, the Property does not contain asbestos or underground  
568 storage tanks and has not been used for the purpose of receiving, handling, using, storing, treatment, transporting owned or  
569 disposing of (A) any hazardous material as defined in any applicable federal, state, county or local statutes, laws,  
570 regulations, rules, ordinances, codes, standards, orders, licenses and permits of any governmental authorities relating to  
571 environmental matters (being hereinafter collectively referred to as the "Environmental Laws"), (B) other toxic, dangerous  
572 or hazardous chemicals, materials, substances, pollutants and wastes, or any chemical, material or substance, exposure to  
573 which is prohibited, limited or regulated by any federal, state, county, regional or local authority or (C) petroleum products  
574 (all the foregoing being hereinafter collectively referred to as "Hazardous Materials");

575 (ii) To the best of Seller's actual knowledge, there are no existing or pending remedial actions or  
576 other work, repairs, construction or capital expenditures with respect to the Property in connection with the Environmental  
577 Laws, nor has Seller received any notice of the same;

578 (iii) To the best of Seller's actual knowledge, no Hazardous Materials have been or will be released  
579 into the environment, or have been or will be deposited, spilled, discharged, placed or disposed of at, on or adjacent to the  
580 Property, nor has the Property been used at any time by any person as a landfill or a disposal site for Hazardous Materials  
581 or for garbage, waste or refuse of any kind; and

582 (iv) To the best of Seller's actual knowledge, no notices of any violation of any of the matters  
583 referred to in the foregoing subsections relating to the Property or its use have been received by Seller and there are no  
584 writs, injunctions, decrees, orders or judgments outstanding, no lawsuits, claims, proceedings or investigations pending or  
585 threatened, relating to the ownership, use, maintenance or operation of the Property, nor, is there any basis for any such  
586 lawsuit, claim, proceeding or investigation being instituted or filed.  
587

588 The representations and warranties set forth in this Section 25(b) shall be continuing and shall be true and correct  
589 on and as of the Closing Date with the same force and effect as if made at that time. Seller shall not be responsible for any  
590 liabilities assumed by the title company under the title policy to be issued to Buyer, nor shall Seller be liable for any  
591 indirect or consequential damages in the event of a breach of any of the foregoing representations and warranties. In the  
592 event of such breach by Seller, Seller's liability shall be limited to the actual cost of remedying the breach.  
593

594 **c. Time of Performance.** If any date for performance falls on a Saturday, Sunday or legal holiday, then the date for  
595 performance shall be extended to the next day which is not a Saturday, Sunday or holiday.  
596

597 **d. Authorization.** Buyer and Seller represent to each other that all necessary steps have been taken to authorize this  
598 Contract and that each has the requisite authority to enter into and perform this Contract in accordance with its terms.  
599

600 **e. Development Approvals.** This paragraph 25e. X shall \_\_\_\_\_ shall not apply. Buyer shall have until the  
601 Closing Date to coordinate, cooperate and ~~Approval Deadline (§ 2e) to~~ process any applications or requests for zoning,  
602 platting or other governmental and quasi-governmental approvals, permits or certifications that Seller requires under its  
603 laws, rules, ordinances and regulations as a condition to issuing building permits for Buyer's intended development and use  
604 of the Property, including site plan approval and amended ODP and PDP ("Approvals"). Seller shall not unduly delay its  
605 review of Buyer's applications and requests for Approvals, provided that Seller shall not be required to perform acts or  
606 expend funds that are not in conformance with the laws, rules, or regulations of the City of Westminster, Colorado. Should  
607 Buyer not obtain all Approvals upon terms and conditions satisfactory to Buyer prior to the **Approval Deadline**, Buyer  
608 may terminate this Contract by notifying Seller prior to the **Approval Deadline**. In the event Buyer terminates prior to or  
609 on the **Approval Deadline**, the Earnest Money shall be returned to Buyer.

611 **f. Tax Deferred Exchange.** This paragraph 25f. \_\_\_\_\_ shall X shall not apply. Seller agrees to cooperate  
612 with any tax deferred exchange (whether a 1031 or 1033) that Buyer desires to complete with respect to this transaction,  
613 provided there is no expense to Seller.

615 **g. Open Space Purchase.** This paragraph 25g. \_\_\_\_\_ shall \_\_\_\_\_ X shall not apply. The deed shall  
616 include the following statement: "This property was purchased using City of Westminster Open Space sales tax funds."

618 **h. Right of Reverter.** Seller shall retain a possibility of reverter in the Property, such that, if Buyer fails to process,  
619 build and complete the currently proposed restaurant/patio improvements to the Property, as approved by the City, to the  
620 Property by 12/31/2012, the Property shall revert to the Seller automatically without any further action of the Parties, and  
621 the Seller shall refund the Purchase Price to the Buyer, without interest, upon receipt by Seller of a title commitment  
622 insuring that no encumbrances have been placed on the Property in the intervening time period.

624 **i. Covenant regarding future sale.** Buyer agrees that a separate covenant document shall be recorded with the  
625 special warranty deed for the Property that restricts future alienations of the Property unless the Property is alienated or  
626 transferred with Lot 3, Westminster Promenade East Subdivision, Westminster, CO. It is the intention of the Parties hereto  
627 that the Property and Lot 3, Westminster Promenade East Subdivision be treated as one parcel for the purposes of future  
628 sales, transfers, or alienations of either parcel.

630 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This agreement constitutes the entire Contract  
631 between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have  
632 been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be  
633 valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this  
634 Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

636 **27. FACSIMILE.** Signatures X may \_\_\_\_\_ may not be evidenced by facsimile. Documents with original  
637 signatures shall be provided to the other party at Closing, or earlier upon request of any party.

639 **28. FORECLOSURE DISCLOSURE AND PROTECTION.** Seller acknowledges that, to Seller's current actual  
640 knowledge, the Property  IS  IS NOT in foreclosure. In the event this transaction is subject to the provisions of the  
641 Colorado Foreclosure Protection Act (the Act) (i.e., generally the Act requires that the Property is residential, in foreclosure,  
642 and Buyer does not reside in it for at least 1 year), a different contract that complies with the provisions of the Act is  
643 required, and this Contract shall be void and of no effect unless the Foreclosure Property Addendum is executed by all  
644 parties concurrent with the signing of this Contract. The parties are further advised to consult with their own attorney.

646 **29. NOTICE, DELIVERY, AND CHOICE OF LAW.**

647 **a. Physical Delivery.** Except for the notice requesting mediation described in § 22, delivered after Closing, and  
648 except as provided in § 28b below, all notices must be in writing. Any notice to Buyer shall be effective when received by  
649 Buyer or by Selling Brokerage Firm, and any notice to Seller shall be effective when physically received by Seller or  
650 Listing Brokerage Firm.

651 **b. Electronic Delivery.** As an alternative to physical delivery, any signed document and written notice may be  
652 delivered in electronic form by the following indicated methods only:  Facsimile  E-mail  No Electronic  
653 **Delivery.** Documents with original signatures shall be provided upon request of any party.

654 **c. Choice of Law.** This Contract and all disputes arising hereunder shall be governed by and construed in  
655 accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this  
656 state for property located in Colorado.

658 **30. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal shall expire unless accepted in writing, by  
659 Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant

660 to § 29 on or before **Acceptance Deadline Date** (§ 2c) and **Acceptance Deadline Time** (§ 2c). If accepted, this document  
661 shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and  
662 when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract  
663 between the parties.  
664  
665

666 Date: \_\_\_\_\_ Date: \_\_\_\_\_  
667

668 Buyer: Westminster Boulevard Amstar/Sage Westminster Holdings, LLC

669 Buyer

670 Address:

671 1050 17th Street, Suite 2300

672 Denver, CO 80265

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

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

675 Email Address: \_\_\_\_\_

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

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

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

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

676 ~~[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 31]~~  
677

678 Date: \_\_\_\_\_ Date: \_\_\_\_\_  
679

680 Seller

Seller: City of Westminster

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

Address: 4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031

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

Phone No.: 303-658-2400

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

Fax No.: 303-706-3920

684 Email Address: \_\_\_\_\_

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

685 **31. COUNTER; REJECTION.** This offer is  **Countered**  **Rejected.**

686 **Initials only of party (Buyer or Seller) who countered or rejected offer** \_\_\_\_\_  
687  
688  
689

690 **END OF CONTRACT**

691 **Note: Closing Instructions and Earnest Money Receipt should be signed**  
692 **on or before Title Deadline (§ 2c).**  
693  
694

695 **SELLING BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

696 (To be completed by Selling Broker)

697 Selling Broker  **Does**  **Does Not** acknowledge receipt of Earnest Money deposit specified in § 4 and, while not a  
700 party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.  
701

702 Selling Broker is working with Buyer as a  **Buyer's Agent**  **Transaction-Broker** in this transaction.  This is a  
703 Change of Status.  
704

705 Seller  **IS**  **IS NOT** a customer working with Selling Broker as a Buyer's Agent.  
706

707 Selling Brokerage Firm's compensation or commission is to be paid by  **Listing Brokerage Firm**  **Buyer**  
708  **Other** \_\_\_\_\_  
709

710 Selling Brokerage Firm's Name: \_\_\_\_\_  
711

712 Date: \_\_\_\_\_  
713

714 Broker  
715

716 Address: \_\_\_\_\_  
717 Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_  
718 Email Address: \_\_\_\_\_

719 \_\_\_\_\_

720 **LISTING BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

721 (To be completed by Listing Broker)

722

723 Listing Broker  **Does**  **Does Not** acknowledge receipt of Earnest Money deposit specified in § 4 and, while not a  
724 party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.

725

726 Listing Broker is working with the Seller as a  **Seller's Agent**  **Transaction-Broker** in this transaction.  This is  
727 a Change of Status.

728

729 Buyer  **IS**  **IS NOT** a customer working with Listing Broker as a Seller's Agent.

730

731 Listing Brokerage Firm's compensation or commission is to be paid by  **Seller**  **Buyer**

732  **Other** \_\_\_\_\_

733

734 Listing Brokerage Firm's Name: \_\_\_\_\_

735

736 Date: \_\_\_\_\_

737

Broker

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

739 Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

740 Email Address: \_\_\_\_\_

EXHIBIT A  
LAND PARCEL A  
SHEET 1 OF 2

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF TRACT C, FIRST REPLAT WESTMINSTER PROMENADE EAST (REC. NO F1064574), LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN IN THE CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN AT A FOUND 3 1/4" ALUMINUM CAP L.S. NUMBER 23899; THENCE S67°11'59"E 1628.51' TO A POINT ON THE WESTERLY LOT LINE OF SAID LOT 3 AND THE EASTERLY LINE OF SAID TRACT C BEING THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE WESTERLY LINE OF SAID LOT 3 ALSO BEING THE EASTERLY LINE OF SAID TRACT C S35°00'08"E 45.98 FEET TO A POINT OF CURVATURE; THENCE CONTINUE ALONG THE WESTERLY LINE OF SAID LOT 3 AND THE EASTERLY LINE OF TRACT C 40.21 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 35°17'58", A RADIUS OF 65.27 FEET AND WHOSE CHORD BEARS S17°21'09"E 39.58 FEET; THENCE DEPARTING SAID WESTERLY LINE OF LOT 3 AND THE EASTERLY LINE OF TRACT C N35°00'08"W 83.69 FEET; THENCE N55°00'00"E 12.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.020 ACRES (859 SQ. FT.), MORE OR LESS.

BASIS OF BEARING:

ALL BEARINGS AS SHOWN HEREON ARE BASED UPON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN AS SHOWN ON THE FIRST REPLAT WESTMINSTER PROMENADE EAST IS ASSUMED TO BEAR N00°18'04"E, SAID LINE BEING ESTABLISHED BY THE SOUTHWEST CORNER (A 3-1/4" ALUMINUM CAP L.S. 5239) AND THE WEST QUARTER CORNER (A 3-1/4" ALUMINUM CAP L.S. 23899) OF SAID SECTION 12.

PREPARED BY: NEIL LUCKINBILL  
REVIEWED BY: RICHARD A. NOBBE, P.L.S.  
FOR AND ON BEHALF OF  
MARTIN/MARTIN CONSULTING ENGINEERS, INC.  
12499 WEST COLFAX AVENUE  
LAKEWOOD, COLORADO 80215



LOT 2B  
WESTMINSTER PROMENADE EAST  
(REC. NO. F1084600)

NW CORNER SW 1/4  
SECTION 12, T2S, R69W  
FND. 3-1/4" ALUM. CAP  
L.S. #23899

BASIS OF BEARING  
N00°18'04"E

S67°11'59"E  
1628.51'

N55°00'00"E  
12.00'

POINT OF BEGINNING

TRACT C  
WESTMINSTER PROMENADE EAST  
(REC. NO. F1064574)

N35°00'08"W  
83.69'

S35°00'08"E  
45.98'

$\Delta = 35^{\circ}17'58''$   
R = 65.27'  
L = 40.21'  
CH = S17°21'09"E  
39.58'

SE CORNER SW 1/4  
SECTION 12, T2S, R69W  
FND. 3-1/4" ALUM.  
CAP L.S. #5239

LAND PARCEL A  
859 S.F.  
0.020 AC.

LOT 3  
WESTMINSTER  
PROMENADE EAST  
(REC. NO. F1064574)

LOT 6  
WESTMINSTER  
PROMENADE EAST  
(REC. NO. F1064574)



APRIL 18, 2012

EXHIBIT "A"  
WESTMINSTER PROMENADE EAST COMMERCIAL  
SHEET 2 OF 2

0 30 60  
SCALE 1" = 60'

THIS EXHIBIT DOES NOT REPRESENT  
A MONUMENTED SURVEY. IT IS  
INTENDED ONLY TO DEPICT THE  
ATTACHED DESCRIPTION.



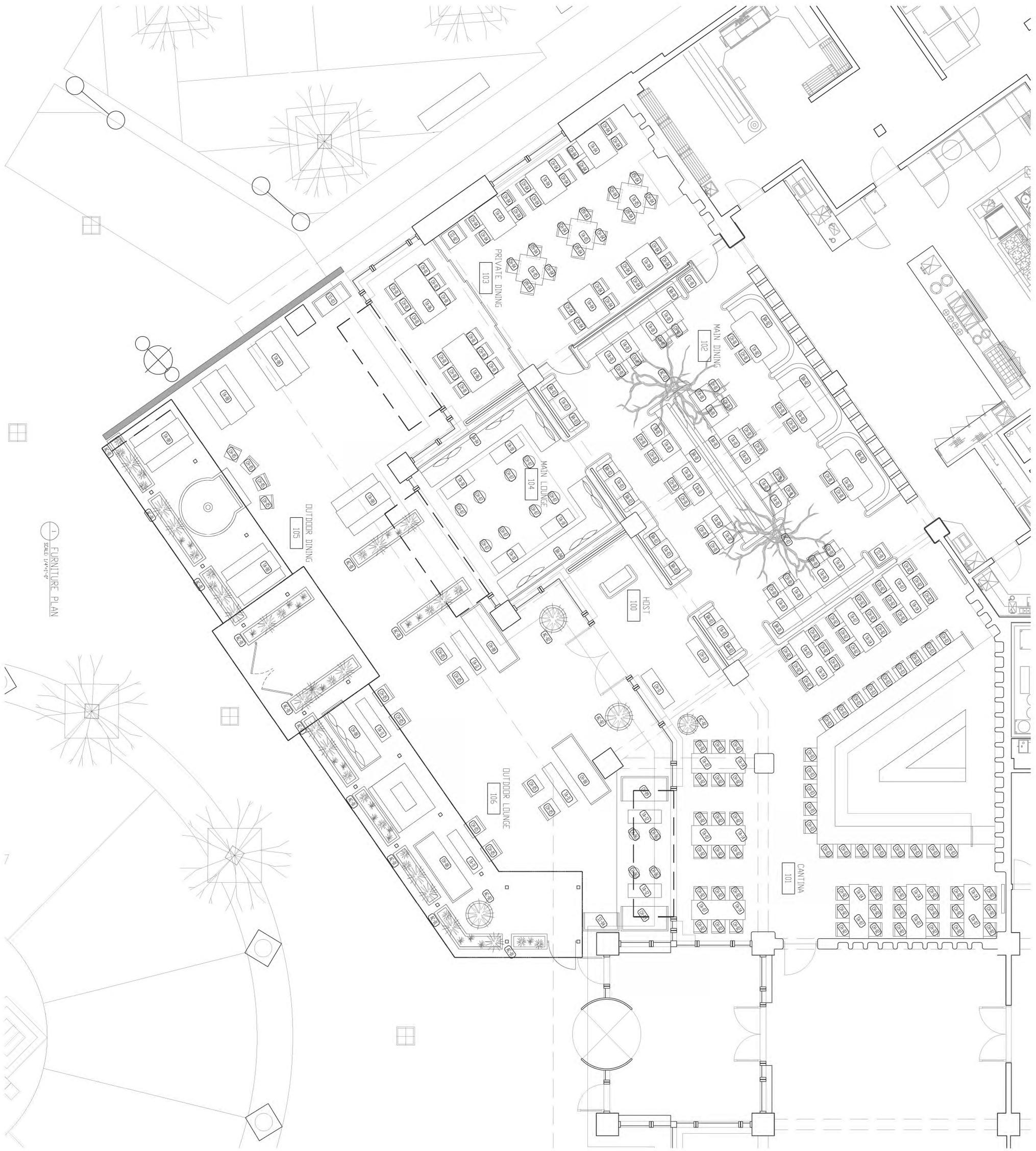
MARTIN / MARTIN  
CONSULTING ENGINEERS

12499 WEST COLFAX AVE.  
P.O. BOX 151500  
LAKEWOOD, CO 80215  
303.431.6100  
FAX 303.431.4028

WMFPD Station No. 8  
(null)

No	Bearing	Chord	Radius	M Arc	C Arc	Delta
001	S35-00-08E	45.980				
002	S17-21-09E	39.580	65.270	40.210	40.213	035-18-00 CW
003	N35-00-08W	83.690				
004	N55-00-00E	12.000				

CLOSURE = 0.007 N30-49-53W  
PERIMETER = 181.883 PRECISION = 1: 24585  
AREA = 859.47 SQ. FEET OR 0.019731 ACRES



1 FURNITURE PLAN  
SCALE: 1/4" = 1'-0"

A-1.40	FURNITURE PLAN		
	KACHINA - WESTMINSTER, CO	date: 3/4/12	
	scale: 1/4" = 1'-0"	notes:	
Project #: 1016 101 W. 3rd Street #110 Brooklyn, NY, 11211 T: 718 384 2822 info@cremedesign.com F: 718 384 9828 www.cremedesign.com		Architects Furniture Interiors <b>POWASSOCALDESIGN, INC.</b> 747 Grandview Avenue 3005-3009-4348 3005-3009-4372 Fax info@powassocaldesign.com	



Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Development Agreement with Renaissance I, LLLP re Lowell Plaza Project

**Prepared By:** Tony Chacon, Senior Projects Coordinator

**Recommended City Council Action**

Authorize the City Manager to enter into a development agreement with Renaissance I, LLLP, in substantially the same form as the attached agreement.

**Summary Statement**

- Renaissance I, LLLP, (Developer) is proposing to construct a 3-story mixed use project along the west side of Lowell Boulevard immediately south of 73<sup>rd</sup> Avenue, that would include about 7,700 square foot of commercial space at ground level and about 48 apartments above.
- All of the apartments will be affordable to households earning 60% or less of Area Median Income (AMI). At least half the units will rent at or below 50% AMI and 5% will be restricted at 30% AMI.
- About 3,250 square feet of the commercial space would be made available for use as a community theater and the balance would be leased to small businesses.
- The estimated cost of the project is \$11,233,709 of which about \$1.5 million is the estimated cost for land acquisition, environmental remediation, and demolition and removal of existing structures.
- The Developer has secured verbal development funding commitments totaling \$8,896,209 from sources other than the City and the Westminster Housing Authority.
- The Developer is requesting about \$2,187,500 of Federal funds provided to the City from the U.S. Department of Housing and Urban Development (HUD), including \$487,500 in Community Development Block Grant (CDBG), \$200,000 in HOME and a \$1.5 million HUD Section 108 loan.
- The Developer is requesting an allocation of up to \$6.0 million of Private Activity Bond (PAB) capacity.
- The City would acquire and prepare the property for development using Section 108 funds prior to conveying the property to the Developer. The Developer would assume responsibility for repayment of the Section 108 loan upon conveyance of the property by the City. The City would guarantee repayment of this loan through future CDBG funding, whereby an amount equal to the annual payment can be withheld by HUD if the Developer fails to make a loan payment.
- The Developer is also requesting that development-related fees and use tax be waived or rebated by the City and that the City incur the cost of utility undergrounding using its dedicated funds.
- The historic Penguin Building will remain and the property frontage improved as a plaza at City cost.
- The Developer anticipates proceeding with construction on the project in October/November 2012.
- Approval of the development agreement does not constitute approval of the development plans. A PDP/ODP plan submittal will be presented to City Council for action at subsequent meeting in future.

<b>Expenditure Required:</b>	\$8,437,500
<b>Source of Funds:</b>	\$1,500,000 HUD Section 108 Loan
	\$ 200,000 HOME Funds
	\$ 487,500 CDBG Funds
	\$6,000,000 Private Activity Bond Allocation (borrowing capacity up to)
	\$ 250,000 (est.) Fee/Tax Waiver/Rebate and the Undergrounding Fund

**Policy Issue**

Should the City provide up to \$8,437,500 in financial assistance and lending capacity to assist in the construction of commercial space and affordable housing units in the South Westminster revitalization area?

**Alternative**

The City could choose not to provide the requested City funding or seek other redevelopment proposals. Staff recommends that these alternatives not be pursued. Without the City funding, the project will not be financially viable to proceed and there are no other realistic alternatives in the near term given current market conditions and the continued perception that investment in the neighborhood is risky.

**Background Information**

A prospective development team (Developer) comprised of Everwood Company, a for-profit developer out of Minneapolis, Minnesota, and Community Resources and Housing Development Corporation (CRHDC), a non-profit affordable housing provider based in Westminster, Colorado, is proposing to construct a vertical mixed use project along the west side of Lowell Boulevard, immediately south of 73<sup>rd</sup> Avenue. The project proposes the demolition of four one-story structures and one two-story structure built in the 1950's, each of which is in severe decline and disrepair. The locally landmarked (historic) two-story Penguin Building would remain in place with the new development occurring on both the north and south side of the building. The development would comprise about 7,700 square feet of ground floor commercial space along with about 45 apartments on two levels above the commercial space and along 73<sup>rd</sup> Avenue and Lowell Boulevard. In addition to the commercial space, there are three proposed live/work units proposed fronting Lowell Boulevard on the ground floor. The new buildings would be three levels in height. The new buildings would be built to the edge of the public sidewalk along Lowell Boulevard. The plan further contemplates converting the existing parking lot in front of the Penguin Building into a public plaza. Parking for both the new development and the Penguin Building would be provided on the back side of the development accessed by the city-owned alley.

Residential Component

The Developer is proposing to construct about 48 apartment units all of which will be made available to households earning 60% or less of Area Median Income (AMI) as established by HUD for the Denver Metropolitan Area (DMA). At 60% of AMI, rents would range from about \$710 for a one-bedroom unit to \$1,153 for a three bedroom unit. Pursuant to Colorado Division of Housing requirements, at least 50 % of the units must be made available to households earning less than 50% AMI and 5% of the total units (3 units based on a total of 48) be restricted to households earning 30% or less of AMI. Following are the estimated 2012 rents for the project based on HUD allowances.

<b><u>Type of Unit</u></b>	<b><u>Estimated Rents @ 60% AMI</u></b>	<b><u>Estimate Rents @50% AMI</u></b>	<b><u>Estimated Rents @30% AMI</u></b>
1 Bedroom:	\$ 710	\$677	\$379
2 Bedroom:	\$ 880	\$817	\$461
3 Bedroom:	\$1,153	\$947	--

As an affordable housing project, HUD also stipulates the maximum household incomes that are eligible to rent any of the units. The following chart shows the current maximum income ranges for households by household size.

<u>Family Size</u>	<u>30% AMI</u>	<u>50% AMI</u>	<u>60% AMI</u>
1	\$15,950	\$26,600	\$31,900
2	\$18,200	\$30,400	\$36,400
3	\$20,500	\$34,200	\$41,000
4	\$22,750	\$37,950	\$45,500

These eligible income levels are adjusted by HUD annually.

Commercial Component

The Developer is proposing to construct about 7,700 square feet of commercial space at ground level. It is estimated that the base rent to prospective tenants would initially be in the range of \$10 per square foot compared to rents of new commercial space in newer parts of Westminster of \$20 to \$30 per square foot. In addition to the base rent, tenants would pay a Common Area Maintenance (CAM) fee of about \$4 per square foot per year to cover costs associated with the maintenance of the commercial space, property taxes, parking lot and landscaping. These lower rent rates would be more attractive to smaller, independently owned businesses.

Per the agreement, the City would contribute up to \$487,500 in Community Development Block Grant Funds towards the project. In exchange, the Developer would provide the City with a pre-paid 15-year lease for 3,250 square foot space, within which the City could continue to host a community theater. The City would be obligated to pay an estimated \$9,750 to \$13,000 in CAM charges per year. After 15 years, the space would be transferred to City ownership at no additional cost. The Developer will lease the remainder of the commercial space to private businesses.

Project Cost and Funding

The Developer has estimated the cost to construct the project at \$11,233,709 of which about \$8.8 million has been secured from sources other than the City and the WHA. Based on rent revenue projections, the Developer will be able to carry a permanent mortgage of about \$3.0 million, which represents about 27% of the project cost. As an affordable housing project, the Developer also expects to generate about \$2.4 million in equity funding through the sale of federal Low Income Housing Tax Credits. In addition, the Developer has secured a total of \$1,000,000 in federal HOME fund commitments from Adams County and the Colorado Division of Housing. CRHDC has also committed \$2.0 million in federal funds currently in their possession and is working to obtain a \$500,000 grant from NeighborWorks, a national affordable housing funding provider.

The development agreement would commit the City to cash contributions of \$487,500 in CDBG funds and \$200,000 in HOME funds, both of which are federal grant proceeds that must be used to benefit low to moderate income areas or provide affordable housing. The agreement further requires the City to incur the cost of undergrounding the overhead utilities in the City-owned alley (estimated at \$100,000) using the dedicated City and Xcel undergrounding funds.

The agreement provides for the City to provide a HUD Section 108 loan of \$1.5 million. The City received a \$2.5 million Section 108 loan program award in 2011 from HUD to be used specifically towards loaning money for new affordable housing development and economic development activities in south Westminster. The loan proceeds would be used specifically for the purpose of purchasing the properties, environmental cleanup, building demolition, tenant relocations, and other eligible site improvements. The Developer would be responsible for repayment of the loan. The City's annual CDBG allocation will be used as guarantee for the annual interest payment as required by HUD.

Other City considerations include the waiver or rebate of development-related fees and use tax, estimated at \$150,000 and an assignment of up to \$6.0 million of available Private Activity Bond (PAB) capacity. The City would also contribute a parcel of land now utilized as a parking lot towards the project at no cost.

### Land Acquisitions

The redevelopment project incorporates six parcels of land encompassing 48,000 square feet or 1.1 acres of land. Four one-story and one two-story buildings built in the 1950's currently occupy the properties and are in severe decline and disrepair. Three of the parcels are owned by private parties, an existing parking lot is owned by the City, and the two remaining parcels are owned by the Westminster Housing Authority (WHA). The City will purchase the three private party parcels and the WHA parcels utilizing HUD Section 108 funds. The cost to acquire and prepare the land for development has a collective cost of about \$1.3 to \$1.5 million. This cost is high because the properties have buildings on them which increase the value. The financial contributions to be provided by the City are intended to assist in offsetting this excessive land cost. The Developer has already secured the three privately owned parcels under contract. The contracts would be assigned by the Developer to the City at the contractually agreed to prices and no additional cost. After the land is ready for development, the City will transfer the ownership of the properties to the Developer who will also assume the HUD Section 108 loan at that time.

### The Penguin Building and Property

The Penguin Building structure will remain in place with the exception of the attached garage on the west side of the building, which is proposed to be removed given its poor structural condition. Per the agreement, the City would be responsible for working with the owner of the property to improve the appearance of the building and constructing a plaza in front. These improvements would be made at City cost. The Developer would be responsible for coordinating and incurring costs relative to improvements, including parking, landscaping and water quality, made on the backside of the Penguin Building.

Approval of the redevelopment agreement supports the following Strategic Plan Goals and Objectives of the City:

#### Goal: Strong, Balanced Local Economy

- Maintaining and expanding a healthy retail base, increasing sales tax receipts;
- Develop business-oriented mixed use development;
- Retain and expand current businesses; and,
- Develop a reputation as a great place for small and/or local businesses.

#### Goal: Vibrant Neighborhoods In One Livable Community

- Maintain and improve neighborhood infrastructure and housing;
- Develop Westminster as a cultural art community; and,
- Have a range of quality homes for all stages of life (type, price) throughout the City.

The project will further contribute towards the continued reinvestment in the south Westminster area, particularly those improvements and investments made along Lowell Boulevard and Meade Street. The project will provide one more visual feature that will lead to further interest in investment and redevelopment activity.

Respectfully submitted,

J. Brent McFall, City Manager

**DRAFT**

**A DEVELOPMENT AGREEMENT**

**Between**

**The City of Westminster and the Westminster Housing Authority**

**And**

**RENAISSANCE I, LLLP**

Related to the

**The RENAISSANCE ON LOWELL  
REDEVELOPMENT PROJECT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WESTMINSTER (City), the WESTMINSTER HOUSING AUTHORITY (WHA) and RENAISSANCE I, LLP (Developer).

WHEREAS, the City has indicated its desire to redevelop the Redevelopment Parcel, as defined below, in the immediate vicinity of Lowell Boulevard and 73<sup>rd</sup> Avenue, including property in the 7200 block of Lowell Boulevard, consisting of the following addresses:

- 7235 Lowell Boulevard;
- 7247 Lowell Boulevard;
- 7253 Lowell Boulevard;
- 7277 Lowell Boulevard;
- 7287 Lowell Boulevard;
- 3630 W. 73<sup>rd</sup> Avenue;

and,

WHEREAS, the Developer has submitted a proposal to redevelop the Redevelopment Parcel in accordance with the South Westminster Urban Renewal Plan; and,

WHEREAS, the Developer has obtained options to purchase those properties in the Redevelopment Parcel not owned by WHA or the City; and,

WHEREAS, the Developer is required to prepare a Preliminary Development Plan (PDP) and Official Development Plan (ODP) for City staff review and City Council approval in accordance with standard development review procedures established by the Westminster City Council; and,

WHEREAS, the City, the WHA and the Developer wish to set forth the terms upon which the Developer shall proceed in preparing the required plan submittals and establishing the Parties' respective financial obligations.

NOW, THEREFORE, in consideration of the above premises, covenants, promises, and agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS: The following words shall have the following meanings in this Agreement unless the context clearly indicates otherwise;

ACQUISITION PARCELS means the properties or parcels of land required to complete the Project, more specifically identified as:

- 7235 Lowell Boulevard;
- 7247 Lowell Boulevard;
- 7253 Lowell Boulevard;

- 7277 Lowell Boulevard;
- 7287 Lowell Boulevard; and,
- 3630 W. 73<sup>rd</sup> Avenue.

DEFAULT means those occurrences or events specified and defined in Section 9 of this Agreement.

ENVIRONMENTAL LAWS means (i) The Clean Air Act, as amended, 42 U.S.C. Sections 7401-7642; (ii) the Clean Water Act, as amended, 33 U.S.C. Sections 1251-1387; (iii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Sections 6901-6991K; (iv) the Toxic Substance Control Act, as amended, 15 U.S.C. Sections 2601-2671; (v) the Safe Drinking Water Control Act, as amended, 42 U.S.C. Sections 300f-300i-26; (vi) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended; (vii) the Occupational Safety and Health Act of 1970, as amended, 19 U.S.C. Section 651, et. seq.; (viii) the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended; and (ix) any other federal, state, or local law, regulation, rule, or ordinance pertaining to public health or employee health and safety.

FEES shall mean: the required development and building-related fees and taxes applicable to the Project, including but not limited to:

- a. Planning and Engineering Processing Fees, as applicable and more specifically detailed in Exhibit B;
- b. Building Permit Fees, as applicable and reflected in Exhibit C;
- c. Construction-related Use Tax;
- d. School Land Dedication Fee;
- e. Park Improvement Fee; and,
- f. Park Land Dedication Fee

FORCE MAJEURE means damages or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather condition such as, by way of illustration and not limitation, snow storms which prevent outdoor work from being accomplished, severe rain storms, severe hail storms, or below freezing temperatures of abnormal degree or for an abnormal duration, or tornadoes, earthquakes, floods, or other events or conditions beyond the reasonable control of the party affected, which shall not include the party's inability to pay its debts, which in fact prevents the party from discharging its respective obligations hereunder.

HAZARDOUS MATERIALS means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable Environmental Laws, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended.

OFF SITE IMPROVEMENTS shall mean any improvements not located within the ownership boundaries of the Redevelopment Parcel as described in Exhibit A, excepting those improvements necessary to provide access and utility service to the Redevelopment Parcel which shall be construed to be part of the Redevelopment Parcel improvements.

PARTIES shall refer to the collective entities of the City, WHA, and the Developer;

PROJECT shall mean the redevelopment of the Redevelopment Parcel as described in Exhibit A, pursuant to a City-approved Official Development Plan, and including the historic Penguin Building located at 7267 Lowell Blvd.;

REDEVELOPMENT PARCEL shall mean the parcel as legally described and shown in Exhibit A attached hereto.

SECTION 108 LOAN shall refer to a source of funds made available to the City of Westminster by the U.S. Department of Housing and Urban Development, with which to provide loans to eligible development projects;

2. LAND ACQUISITION, SITE PREPARATION AND OWNERSHIP

2.1 The Developer shall assign its rights, under any existing option agreements, to purchase the Acquisition Parcels upon the City's receipt of Section 108 loan proceeds from HUD.

2.2 The City shall be responsible for closing on the purchase of the Acquisition Parcels, providing the cost to purchase said properties shall not exceed One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00). The City shall be responsible for conducting any property appraisals, if necessary, to acquire said properties.

2.3 The City shall close on the Acquisition Parcels no later than August 15, 2012. The City agrees that upon acquisition, it shall not convey the Acquisition Parcels to any person other than the Developer prior to the termination of this Agreement.

2.4 The City and Developer shall enter into a purchase agreement, substantially in the form attached hereto as Exhibit D, for the sale of the Acquisition Parcels at 7235, 7247, 7253, 7277, and 7287 Lowell Boulevard and 3630 W. 73<sup>rd</sup> Avenue, and, pursuant thereto, convey said property to the Developer upon receiving written confirmation of final construction financing for the Project and upon receiving final development and building permit approvals for the Project, but no sooner than 30 days prior to commencement of construction. The Developer shall provide written documentation to the City providing evidence of funding and approvals.

2.5 The City shall retain a lien on the Redevelopment Parcel, subordinate to construction and permanent financing, until such time as the HUD Section 108 Loan, as provided for in Subsection 5.1, is fully repaid.

2.6 The City shall convey the City-owned property at 7235 Lowell Boulevard to Developer at no cost, no later than August 31, 2012, upon the Developer meeting all of the conditions as required in Section 2.4 above.

2.7 The City shall deliver the all parcels, pursuant to Subsections 2.4 and 2.6 above, in a development-ready state and cleared of all hazardous material liability in accordance with the State of Colorado Department of Health and Environment Voluntary Cleanup Program.

a. Prior to the purchase of the Acquisition Parcels, the City shall conduct an environmental assessment of the soil, water and buildings and, as needed, coordinate with appropriate departments and divisions of the State of Colorado relative to any potential remediation activity and shall pay any associated costs. The City agrees to provide the Developer and the Developer agrees to provide the City, a copy of any environmental reports provided by the State to them, no later than 30 days prior to the conveyance of the parcels described in Subsections 2.4 and 2.6 above. Any environmental report commissioned by the Parties or either of them shall be addressed jointly to the City and the Developer and shall be provided by the environmental consultant jointly to each of the City and the Developer. The City agrees to cooperate with the Developer to cause the environmental consultant to provide reliance letters to such persons as may be reasonably requested by Developer in connection with its development of the Project.

b. In the event the cost of remediation exceeds the difference between the \$1,500,000 set aside for acquisition and the actual cost of acquisition, and/or any on-going annual costs related to remediation or monitoring are required, the Developer and City shall reevaluate the financial viability of the Project and mutually determine whether or not to proceed prior to closing on the properties to be purchased.

c. In the event contamination is identified, the City agrees to pursue a grant from the Colorado Brownfield's Revolving Loan Fund to be applied towards environmental remediation and demolition of the Redevelopment Parcel as applicable; provided, that if funds received from the Colorado Brownfield's Revolving Loan Fund are made available for improvements to the Redevelopment Parcel, the Developer shall have no responsibility for the repayment of any funds derived from the Colorado Brownfield's Revolving Loan Fund. The funds derived from the Colorado Brownfield's Revolving Loan Fund shall be used by the City solely for eligible environmental remediation and demolition of existing structures on the Redevelopment Parcel.

d. In the event it is determined that remediation is required, the City will work with the State of Colorado Department of Health and Environment to attain a letter of "No Further Action" prior to conveying the parcels described in Subsections 2.4 and 2.6 above to the Developer.

2.8 The City shall be responsible for, and incur the cost of, relocating businesses and residents in accordance with Federal Uniform Relocation Act.

2.9 The Westminster Housing Authority will be admitted as a special limited partner in the Project, as provided for in Section 12.21, below, for a period of 15 years from the date of receiving a Certificate of Occupancy (CO) from the City or until such time as the Section 108 Loan is fully repaid to the United States Department of Housing and Urban Development.

2.10 The Developer shall enter into a 15-year lease for 3,250 square feet of unfinished ground floor commercial space, in a form attached hereto as Exhibit E, to the City or organization designated by the City for the purpose of providing space for a community theater. The City shall pre-pay the rental pursuant to the lease for such space in the amount of Four Hundred Eighty-Seven Thousand Five Hundred Dollars (\$487,500). Upon expiration of the lease, the Developer shall convey ownership of the space to the City at no additional cost.

### 3. PREPARATION OF DEVELOPMENT PLANS AND LAND USE CONSIDERATIONS

3.1 The Developer agrees to proceed with, and incur associated costs relative to, the preparation of plans necessary to fulfill the submittal requirements of the City of Westminster relative to submittal of a Comprehensive Land Use Plan Amendment, a Preliminary Development Plan, an Official Development Plan, and Subdivision Plat.

3.2 The Developer shall adhere to a plan processing and review timeline as determined and agreed to by the City's Planning Division. The City agrees to work with the Developer to ensure the project is completed in the most efficient time frame.

3.3 In the event the Developer terminates the project as a result of its own choice or action, the City and the WHA shall not be required to reimburse the Developer for any of Developer's costs incurred up to such date.

3.4 In the event the Developer is unable to meet the City's development requirements and, thus, is unable to receive an official development plan approval for the Project, this agreement is terminated without further action required of any of the parties.

3.5 The Developer shall cooperate with the City in the incorporation of the public plaza, described in 4.1, below, into Developer's plans for the Redevelopment Parcel, and shall cooperate with the adjacent owner of the Penguin Building in those respects in which Developer's plans affect that property.

#### 4. PUBLIC IMPROVEMENTS

4.1 The City shall assume responsibility for securing the land and constructing a public plaza in front of the "Penguin" building at 7267 Lowell Boulevard to be designed by and paid for by the City with its own funds (and without regard to any use of Section 108 Loan, as defined in Section 5.1 below, or other restrictions under Section 5 with respect to Section 108 Loan funds). All agreements, including without limitation any development agreement, architectural agreement, construction agreement, use agreement, plans and specifications, relating to the design and construction of the public plaza in front of the Penguin building shall be subject to approval of the Developer and the concurrence of the City.

4.2 Except as provided for in Section 6.5, the Developer shall be responsible for off site improvements (including, but not limited to, streetscape, water/sanitary/drainage, and undergrounding of overhead utilities) immediately adjacent to the development site and any utility connections to the nearest utility facility which are determined to be necessary and mutually acceptable to the Developer and the City.

#### 5. FINANCING

5.1 The City shall commit One Million Five Hundred Thousand and 00/100 (\$1,500,000.00) of its Section 108 Loan Fund to the Project (Section 108 Loan), as follows:

a. The City shall apply the Section 108 Loan funds to land acquisition, site preparation, demolition, environmental remediation and project soft costs (i.e. planning, engineering, assessments, etc.); provided, however, that any draw under this Section 5.1.a. shall not be authorized unless accompanied by the written approval of the Developer. After the City conveys the Redevelopment Parcel to the Developer pursuant to Section 2, any amounts of the Section 108 Loan that have not been spent for Project purposes may be drawn by the Developer and used for the Project for Section 108 "eligible activities".

b. The Developer shall accept an assignment of the obligations of the Section 108 Loan from the City at such time as the Redevelopment Parcel is conveyed to the Developer.

c. The loan amount shall be incorporated as part of the Project cost and shall be repaid fully, including principal and interest, by the Developer in accordance with terms and conditions to be stipulated in the loan agreement documents. The loan shall be made available to the Developer at 3% interest, on a non-amortizing basis, and payable solely from available cash flow from the Project, and shall be due in full on or before December 31, 2027. The promissory note shall provide that interest shall be required to be payable monthly.

5.2 The City shall apply for a contribution of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) of HOME funds from Adams County to the Project, in the form of a grant, as match towards a similar grant from the State of Colorado Division of Housing. The Developer shall be responsible for securing such HOME funding from the State of Colorado Division of Housing.

5.3 The City shall provide an assignment of its then current Private Activity Bond (PAB) allocation of up to Six Million and 00/100 Dollars (\$6,000,000.00) if available upon request of the Developer. The City agrees that it shall impose no initial or annual issuer fees as consideration for issuance of said bonds.

5.4 The City will assume responsibility for ensuring improvements are completed to the property at 7267 Lowell Boulevard, known as the Penguin Building, in a manner supportive of and complimentary to the Project. Any exterior improvements to the Penguin Building shall require the written consent of the Developer unless otherwise consented to by the Developer as part of the ODP. Any costs of improvements to the Penguin Building shall be the sole responsibility of the City and shall not be payable from the Section 108 Loan funds. The Parties acknowledge that the ODP may contain certain reasonable restrictions on the use of the plaza in front of the Penguin Building to insure compatibility between the use of the plaza and the uses and operating characteristics of the Project. Additionally, the following provisions shall apply:

a. The City shall incur the cost, as solely determined by the City, of constructing a public plaza in front of the Penguin Building at 7267 Lowell Boulevard.

b. The City shall assist the owner of 7267 Lowell Boulevard to make improvements to the exterior façade of the building by no later than 30 days prior to completion of the Project. Any costs of improvements to 7267 Lowell Boulevard shall be the sole responsibility of the City and shall not be payable from the Section 108 Loan;

c. Prior to the delivery of the Acquisition Parcels pursuant to 2.7, above, the Developer and the City shall formalize an agreement relative to the future maintenance of the plaza.

5.5 The City shall waive or otherwise reimburse the Developer for payment of development-related fees and use tax, excepting that portion of the sales and use tax dedicated to the City's Open Space Program and Public Safety, as follows:

- a. Planning and engineering processing fees;
- b. Building permit fees related to demolition and construction activity;
- c. School Land Dedication Fee;
- d. Use tax as it relates to the cost of construction, including tenant finish and initial installation of business fixtures; or,
- e. Park Development Fee.

5.6 The City shall waive the Park Land Dedication (PLD) requirement given the Project's proximity to other existing and planned public parks and open space.

5.7 The City shall allocate the value of any available water and sewer tap credits from the Redevelopment Parcel towards the Project which shall be used in conjunction with the approved development plans.

5.8 The City shall contribute an additional \$200,000 allocation of its HOME funds towards construction related expenses on the Project incurred by the Developer.

## 6. UTILITIES

6.1 The City shall provide full water and sewer service to the Project.

6.2 The Developer shall be responsible for incurring the costs to upgrade water and sewer service deemed by the City as absolutely necessary to service the Project adequately.

a. The City will work with the Developer to develop options and solutions that minimize the cost of utility upgrades.

b. The Developer shall be eligible for “cost recovery” for any capacity and delivery enhancements providing a benefit to a broader range of properties and the community in general.

6.3 The City agrees to waive the requirement for the Project to participate in the City’s Growth Management Residential Competition to receive a tap allocation, and shall ensure that taps necessary to complete the Project are made available when needed, so long as all other obligations of the Developer pursuant to this agreement and future agreements with the City and WHA are met.

6.4 The Developer agrees to pay the full cost for City water and sewer taps based on a Rate Schedule in effect at the time the first building permit is requested.

a. The City shall defer payment for water and sewer taps under City control until such time as the Developer applies for a Certificate of Occupancy from the City.

b. The Developer shall be required to pay the Metro Denver Wastewater portion of the sewer tap fee at the time of building permit issuance.

6.5 If funds are available in the City utility undergrounding fund and/or the Xcel Energy 1% set-aside fund, the City shall be responsible for the undergrounding of all overhead utilities located on and adjacent to the Redevelopment Parcel.

## 7. REPRESENTATIONS AND WARRANTIES.

### 7.1 REPRESENTATIONS AND WARRANTIES BY THE DEVELOPER.

The Developer represents and warrants to the City that:

a. The Developer is duly organized, validly existing and in good standing and authorized to operate in the State of Colorado; has the legal capacity to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto; the execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement and such documents and that such performance and observance are valid and binding upon the Developer. The execution and delivery of this Agreement, the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulations applicable to the Developer or the Developer’s governing documents; (ii) result in the breach of any of the terms or provisions of, or constitute a default under, any agreement or other instrument to which the Developer is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the Developer.

b. The Developer knows of no action, suit, proceeding or governmental investigation that is threatened or pending contesting the powers of the City, WHA, the Developer or any of its principals with respect to the Project or this Agreement that has not been disclosed in this Agreement.

c. The Developer has the necessary financial and legal ability to perform this Agreement and to construct the Improvements.

### 7.2 REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents and warrants to Developer that:

a. The City is a home-rule governmental subdivision of the State of Colorado and has the power to enter into and has taken all actions required to date to authorize this Agreement and to carry out its obligations hereunder.

b. The activities of the City in the Project area are undertaken for the purpose of eliminating and preventing the development or spread of blight, revitalizing the physical and economic structure of the community, and providing housing to an underserved population.

c. The City knows of no litigation, threatened litigation, proceeding, initiative, referendum or investigation or threat or any of the same contesting the powers of the City or its officials with respect to the Project or this Agreement that has not been disclosed in this Agreement.

d. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the City or to the City's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligations of the City.

e. The City and WHA are political subdivisions of the State of Colorado and are exempt from the payment of property taxes levied pursuant to §3, Article X of the Colorado Constitution.

## 8. INSURANCE; INDEMNIFICATION

### 8.1 INSURANCE.

a. At all times while the Developer is engaged in the Project, the Developer will provide the City with proof of payment of premiums and certificates of insurance showing that the Developer is carrying, or is causing its prime contractor to carry, the builder's risk, comprehensive general liability and worker's compensation insurance policies in amounts and coverages reasonably satisfactory to the City. Such proof of payment and certificates of insurance shall be provided to Tony Chacon, or his successor in the City's Department of Community Development. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least 30 days advance written notice to the City in the event of cancellation or change in coverage and shall name the City as an additional insured specifying that the insurance shall be treated as primary insurance.

b. At all times while the City is engaged in the Project, the City will provide the Developer with proof of payment of premiums and certificates of insurance showing that the City is carrying, or is causing its prime contractor to carry, the builder's risk, comprehensive general liability and worker's compensation insurance policies in amounts and coverages reasonably satisfactory to the Developer. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least 30 days advance written notice to the Developer in the event of cancellation or change in coverage and shall name the Developer as an additional insured specifying that the insurance shall be treated as primary insurance.

8.2 INDEMNIFICATION. The Developer shall defend, indemnify, assume all responsibility for and hold the City and its elected officials, consultants, officers and employees and the WHA harmless (including, without limitation, attorneys' fees and costs) from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the Developer's activities, and not caused by the City's or WHA's activities, under this Agreement or while making tests or surveys on the Project area, whether such activities are undertaken by the Developer or

anyone directly or indirectly employed by or under contract to the Developer and whether such damage shall accrue or be discovered before or after completion or termination of this Agreement.

## 9. EVENTS OF DEFAULT AND REMEDIES

9.1 DEFAULT BY THE DEVELOPER. Default by the Developer shall mean one or more of the following events:

a. The Developer abandons construction of the Project. Abandonment of construction occurs if construction activities on a Site cease for a period of thirty (30) consecutive days at any time after issuance of building permits for that Site; provided however, that a temporary cessation of construction activities resulting from Force Majeure shall not be deemed to be abandonment for the duration of such Force Majeure.

b. The Developer fails to pay promptly any uncontested cost or expense required to be paid by the Developer under the terms of this Agreement. Developer may contest any cost or expense so long as adequate security is provided to the City.

c. The Developer transfers or assigns its interest in this Agreement or in any Site or the Improvements, or any interest in the Developer is transferred or assigned, without the written consent of the City.

d. The Developer commences a voluntary bankruptcy case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or is the subject of any involuntary case of such nature not dismissed within ninety (90) days after such is filed, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) of the Developer or of any substantial part of its property, or the Developer makes any general assignment for the benefit of creditors or generally fails to pay its debts as they become due or takes any action in furtherance of such action.

e. The Developer fails to substantially observe or perform any covenant, obligation or agreement of the Developer as provided in this Agreement.

9.2 DEFAULT BY THE CITY. Default by the City means the failure of the City to substantially observe or perform any covenant, obligation or agreement required under this Agreement.

9.3 NOTICE OF DEFAULT. No Default under paragraph 9.1 or paragraph 9.2 shall constitute an event of Default until actual notice of such Default shall be given by the non-defaulting party in accordance with paragraph 13.9 to the defaulting party and the defaulting party shall have had thirty (30) days after the receipt of such notice to correct said Default or cause said Default to be corrected, and shall not have corrected said Default or caused said Default to be corrected within the applicable period. If said Default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted within the applicable period and diligently pursued until the Default is corrected and is completed no later than ninety (90) days after receipt of notice. No party, nor any successor in interest or permitted assigns, shall be considered in breach of, or in default of, its obligations under this Agreement in the event of any delay caused by Force Majeure.

## 9.4 REMEDIES IN THE EVENT OF DEFAULT

a. REMEDIES OF THE CITY. In the event of default by the Developer, the City may do any or all of the following:

(1) Seek any available remedy at law, including damages, but under no circumstances shall the Developer be liable for consequential or punitive damages.

(2) Seek enforcement of any of the Developer's obligations hereunder by any equitable remedy, including specific performance or injunction.

(3) Suspend performance hereunder.

(4) Elect to terminate this Agreement.

(5) Exercise the Option to Purchase provided for in section 10, below.

b. REMEDIES OF DEVELOPER. In the event of default by the City, the Developer may do any or all of the following:

(1) Seek any available remedy at law, but under no circumstances shall City be liable for consequential or punitive damages.

(2) Seek enforcement of any of the City's obligations hereunder by any equitable remedy, including specific performance or injunction.

(3) Suspend performance or elect to terminate this Agreement.

10. SUBORDINATION. The City agrees to subordinate its interests in this Agreement to any lender of the Developer for purposes of development of the Project upon request of the Developer. In addition to any other remedies provided in paragraph 9.4, upon Default by the Developer which is not cured under paragraph 9.4, the City shall have an option to repurchase any Sites that have not been completed and any improvements constructed or under construction and to receive an assignment of any leases for any of the improvements or Sites, subject to any encumbrances incurred by the Developer and approved by the City. In the event the City exercises its option to purchase a Site and any improvements or leases by written notice in accordance with paragraph 11, Developer shall deliver to the City within fifteen days of receipt of the notice a deed reconveying the Redevelopment Parcel(s) to the City and all necessary documents assigning Developer's interest in any leases or contracts for the Improvements.

11. RESALE OF REDEVELOPMENT PARCELS. After conveyance of the Redevelopment Parcel(s) and assignment of any leases to the City pursuant to paragraph 10, the City will use its best efforts to resell the Redevelopment Parcel in accordance with applicable law to a qualified and responsible party or parties who will assume the obligation of completing the Project in accordance with the approved development plans. The proceeds of such resale shall be applied first to repay any outstanding private-lending encumbrances secured by the Redevelopment Parcel, then to repay the City for all amounts expended pursuant to this Agreement, and then to pay costs of the City incurred by the Default, by the exercise of the option to purchase pursuant to paragraph 10, and by the resale of the Redevelopment Parcel. Any sums remaining following reimbursement as noted shall then be paid to the Developer.

12. RESTRICTIONS ON ASSIGNMENT AND TRANSFER.

12.1 NO SALE OR TRANSFER WITHOUT CONSENT. Prior to the issuance of certificates of occupancy, the Developer shall not close on any total or partial sale or transfer in any form of the Agreement, the Redevelopment Parcels, or any part thereof or any interest therein, without the prior written approval of the City, which approval shall not be reasonably withheld. Notwithstanding any other provision of this Agreement, the City acknowledges that the Developer may assign its interests in this Agreement to an affiliated entity for the purpose of constructing and operating the Project. The City will

consent to such assignment upon submission by Developer of all documents related to the assignment and approval by the City indicating that all conditions of this Agreement have been satisfied.

12.2 CONDITIONS TO THE CITY'S CONSENT. The City may require as a condition to its approval any or all of the following:

a. Any transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary to fulfill the obligations of the Developer under the Agreement.

b. Any transferee, by instrument satisfactory to the City, shall assume all of the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject or such different obligations approved by the City. The fact that any such transferee or successor has not assumed such obligations or so agreed shall not relieve such transferee or successor from such obligations, conditions or restrictions, or limit any rights or remedies of the City with respect to the Redevelopment Parcels. No transfer of ownership of all or any part of the Redevelopment Parcel or any interest therein, however occurring and whether voluntary or involuntary, shall limit City's rights, remedies or controls provided in this Agreement.

c. The Developer shall submit to the City for review all instruments and other legal documents involved in effecting transfer, and, if approved by the City, its approval shall be indicated to the Developer in writing.

d. The Developer and its transferee shall comply with such other reasonable conditions as the City may reasonably require to safeguard the purposes of the revitalization efforts and the South Westminster Urban Renewal Plan.

12.3 NO TRANSFER WITHOUT CONSENT. In the absence of specific written agreement by the City, no transfer of the Redevelopment Parcel prior to the completion of the Project shall relieve the Developer or any party bound by the Agreement or otherwise, from any of its obligations.

### 13. MISCELLANEOUS

13.1 CONTROLLING LAW AND VENUE. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Venue for any action arising under this Agreement or any amendment or renewal thereof shall be in the District Court of Adams County, Colorado.

13.2 ATTORNEYS' FEES. In any proceeding brought to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to an award of reasonable attorneys' fees, actual court costs and other expenses incurred.

13.3 TITLES OF SECTIONS. Any titles of the several part sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

13.4 CONFLICTS OF INTEREST. None of the following shall have any interest, direct or indirect, in this Agreement: any member of the governing body of the City; an employee of the City who exercises responsibility concerning the project or any agreement implementing the South Westminster Urban Renewal Plan, or an individual or firm providing consulting or legal services in connection with the project. None of the above persons or entities shall participate in any decision relating to this Agreement that effects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

13.5 TIME OF THE ESSENCE. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

13.6 SEVERABILITY. If any court determines that any provision hereof is unenforceable, it is the intention of the Parties that this Agreement shall not thereby be terminated but that the court reform this Agreement to the extent required to make it valid and enforceable, to the extent such reformation may be accomplished without materially and adversely affecting intended benefits and burdens of the Parties under this Agreement.

13.7 GOOD FAITH OF THE PARTIES; CONSENT OR APPROVAL. In performance of this Agreement or in considering requests for an extension of time, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Agreement. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. The Developer agrees and acknowledges that in each instance in this Agreement or elsewhere where City is required or has the right to review or give its approval or consent, no such review, approval or consent shall imply or be deemed to constitute an opinion by the City, nor impose upon the City, any responsibility for the design or construction of building elements, including but not limited to the structural integrity or life/safety requirement or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the environmental laws. All reviews, approval, and consent by City under the terms of this Agreement are for the sole and exclusive benefit of the Developer and no other person or party shall have the right to rely thereon.

13.8 SURVIVAL. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement. The representations, warranties and indemnities made by the parties to this Agreement and the covenants and agreements to be performed or complied with by the respective parties under this Agreement before Closing shall be deemed to be continuing and shall survive the Closing. Nothing in this Section shall affect the obligations and indemnities of the parties with respect to covenants and agreements contained in this Agreement that are permitted or are required to be performed in whole or in part after the Closing.

13.9 NOTICES. A notice, demand, or other communication under this Agreement by any party to the other shall be in writing and shall be sufficiently given, delivered in person, by prepaid overnight express mail or express courier, electronic mail or if it is dispatched in writing by registered or certified mail, postage prepaid, return receipt requested:

City of Westminster, WHA and WEDA  
4800 West 92nd Avenue  
Westminster, Colorado 80031  
Attention: J. Brent McFall, City Manager  
Telephone: (303) 658-2400  
Fax: (303) 706-3921  
Email: [bmcfall@cityofwestminster.us](mailto:bmcfall@cityofwestminster.us)

Renaissance I, LLP  
3550 Labore Road, Suite 10  
Saint Paul, Minnesota 55110  
Attention: Ryan Sailer  
Telephone: (612) 508-4627  
Email: [ryan@everwoodcompany.com](mailto:ryan@everwoodcompany.com)

With a copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota, 55402  
Attention: Jon L. Peterson, Esq.  
Telephone: (612) 604-6736  
Email: [jpeterson@winthrop.com](mailto:jpeterson@winthrop.com)

13.10 COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one in the same instrument.

13.11 INCORPORATION OF EXHIBITS. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

13.12 NO THIRD PARTY BENEFICIARIES. No third party beneficiary rights are intended or created in favor of any person not a party to this Agreement.

13.13 ENTIRE AGREEMENT; AMENDMENTS. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and replaces in their entirety any agreements, understandings, warranties, or representations between the parties. This Agreement shall not be amended except by written instrument. Each amendment, which is in writing and signed and delivered by the parties, shall be effective to amend this Agreement.

13.14 FURTHER ASSURANCES. The parties agree to execute such documents and take such action as shall be reasonably requested by the other party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the provisions and intent of this Agreement.

13.15 ESTOPPEL CERTIFICATE. The parties agree to execute such documents as the other party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the respective obligations of the parties and such other matters as the requesting party shall reasonably request.

13.16 WAIVER. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement shall constitute a waiver of such breach or of any other covenant, agreement, term or condition. Any party by giving notice to the other parties may, but shall not be required to, waive any of its rights or any conditions to any of its obligations under this Agreement. No waiver shall effect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

13.17 THE CITY AND WHA NOT A PARTNER; DEVELOPER NOT THE AGENT OF THE CITY. Except as described in Section 12.21, below, the City and WHA shall not be deemed or constituted a partner or joint venturer of the Developer, the Developer shall not be the agent of the City or the WHA and the City and the WHA shall not be responsible for any debt or liability of the Developer.

13.18 NONLIABILITY OF CITY OFFICIALS AND EMPLOYEES. No councilor, commissioner, Board member, official, employee, agent or consultant of the City shall be personally liable to the Developer in the event of default, or breach or event of a default by the City or for any amount that may become due to the Developer under the terms of this Agreement.

13.19 CITY COOPERATION. The City will cooperate with the Developer to obtain the City's approval of the ODP, any amendment to the ODP, and the City's issuance of any permits,

licenses, or commitments necessary for the Project; provided, however, that approval or issuance of such permits, licenses or commitments lies in the sole and exclusive discretion of the City.

13.20 RECORDING. This Agreement shall be recorded in the public records of the Clerk and Recorder of Adams County, Colorado.

13.21 SPECIAL LIMITED PARTNER. The Westminster Housing Authority will participate in the Project's ownership as a special limited partner but will be subject to no additional conditions for its participation other than those set forth in this Agreement.

IN WITNESS THEREOF, the undersigned have executed this agreement as of the date first above written.

CITY OF WESTMINSTER

RENAISSANCE I, LLLP

\_\_\_\_\_  
J. Brent McFall  
City Manager

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
City Clerk

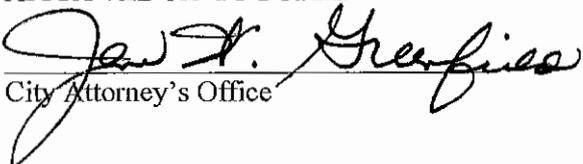
WESTMINSTER HOUSING AUTHORITY

\_\_\_\_\_  
J. Brent McFall  
Executive Director

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney's Office



**EXHIBIT "B"**

**PLANNING & ENGINEERING FEE SCHEDULE**

<b>Planning</b>	<b>Processing Fees</b>
PDP or Amendment – Concept Review	\$350 (x) sq. rt. of acres (\$350 min.)
PDP or Amendment – Technical Review	\$350 (x) sq. rt. of acres (\$350 min.)
ODP or Amendment – Concept Review	\$400 (x) sq. rt. of acres (\$400 min.)
ODP or Amendment – Technical Review	\$400 (x) sq. rt. of acres (\$400 min.)
<b>Combined PDP/ODP (Including Amendments)</b>	
Concept Review	\$550 (x) sq. rt. of acres (\$550 min.)
Technical Review	\$550 (x) sq. rt. of acres (\$550 min.)
1 <sup>st</sup> Concept Development Proposal Sign Posting Fee	\$50
Rezoning, Establishment of Zoning	\$500
Annexation	\$300
Comprehensive Land Use Plan (CLUP) Amendment	\$500
Administrative Amendment (PDP/ODP) that does <u>not</u> require mylars	\$250
Public Hearing	\$350
ODP Waiver	\$250
Special or Conditional Use Permit	\$450
Temporary Use Permit	\$100
Zoning Verification Letter	\$50
Affidavit of Correction	\$100
Recording Fees – Oversize and mylars	\$50 + \$20/pg
Letter and legal size (to be E-filed)	\$10/pg
Comprehensive Land Use Plan	\$45
Comprehensive Land Use Plan Disk	\$5
Plan Submittal Document	\$20
Northeast Comprehensive Development Plan	\$5
Copies of Plans on File	\$5/pg
<b>Engineering</b>	<b>Processing Fees</b>
Construction Drawing Review *	\$750 + \$75 (x) the sq. rt. of acres (\$1,125 max.)
Minor Replat (Lot Line Adjustment)	\$300
Vacations (R.O.W. and Easements)	\$300
Land Disturbance Permit	\$250
R.O.W./Street Permit	\$50 (+) Trench Cut Impact Fee
Flood Plain Information (Non-Residents Only)	\$20
Blue-line Copies	\$5/Sheet

\* *Construction Drawing Review includes: Final Plat, Address Plat, Construction Drawings and Public Improvements Agreements (PIA)*

**EXHIBIT "C"**

**BUILDING PERMIT FEE SCHEDULE**

TOTAL VALUATION	FEE <sup>1</sup>
\$1 to \$500	\$19.50
\$501 to \$2,000	\$19.50 for the first \$500 plus \$2.65 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$59.25 for the first \$2,000 plus \$11.90 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$332.95 for the first \$25,000 plus \$8.55 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$546.70 for the first \$50,000 plus \$5.95 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$844.20 for the first \$100,000 plus \$4.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$2,684.20 for the first \$500,000 plus \$3.95 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$4,659.20 for the first \$1,000,000 plus \$2.65 for each additional \$1,000 or fraction thereof

**Miscellaneous Permit Fees:**

Solar Systems	\$300.00
Mobile Home Set-up w/elec	\$125.00
Construction trailer w/elec	\$125.00
Banners	\$25.00
Bus Bench	\$25.00
Election Sign	\$25.00
Permanent Sign	Per Fee Schedule

**Miscellaneous SFD Residential Permit Fees:**

Detached Storage Shed	\$80.00
Re-Roofing	\$100.00
Water Heater Replacement	\$40.00
Air Conditioner	\$80.00*
Furnace Replacement	\$60.00*
Evaporative Cooler	\$60.00*
Lawn Irrigation Sprinkler	\$60.00
Aboveground Pool	\$50.00
Spas/Hot Tub	\$80.00*
Gas Log	\$60.00**
Fence	\$50.00

\*May also require an electrical permit fee.

\*\* See Section 11-9-3(E)2 for exceptions.

**Fire Department Fees**

- Operational permits, per event: \$50.00
- Construction permits: Based on valuation and assessed in accordance with the building permit fee schedule.

**Other Inspections and Fees:**

1. Inspections outside of normal business hours	\$50.00 per hr. minimum charge of two hrs
2. Reinspection fees	\$50.00
3. Inspections for which no fee is specifically indicated	\$50.00 per hr
4. Additional plan review required by changes, additions, or other revisions to plans including individual residential lot grading re-reviews or reinspections	\$50.00 per hr.
5. For use of outside consultants for plan review and inspection, or both	actual costs***
6. Copy of previously issued Certificate of Occupancy	\$5.00 each
7. Letter of code compliance	\$25.00
8. Removal of stop work order	\$250.00
9. Temporary Certificate of Occupancy	5% of permit fee but not less than \$100.00
10. Plan Review Fee	65% of building permit fee.
11. Estimated Use Tax	3.85% of 50% of total valuation
12. Plan Review and Inspection Fee for Individual Residential Lot Grading	\$400 per lot

\*\*\* Actual costs are those above and beyond the plan review fee as established by Section 11-9-3(E)4.

<sup>1</sup> Additional permit and plan review fees will be due if more than one trade (building, electrical, plumbing or mechanical) is involved in the project as Westminster issues permits for a project, not based on trade. Sub contractor permit and plan review fees are calculated as a percentage of the general building permit and plan review fees. For work involving more than one primary trade, contact the building Division for permit costs.

Exhibit "D"  
Acquisition Parcels

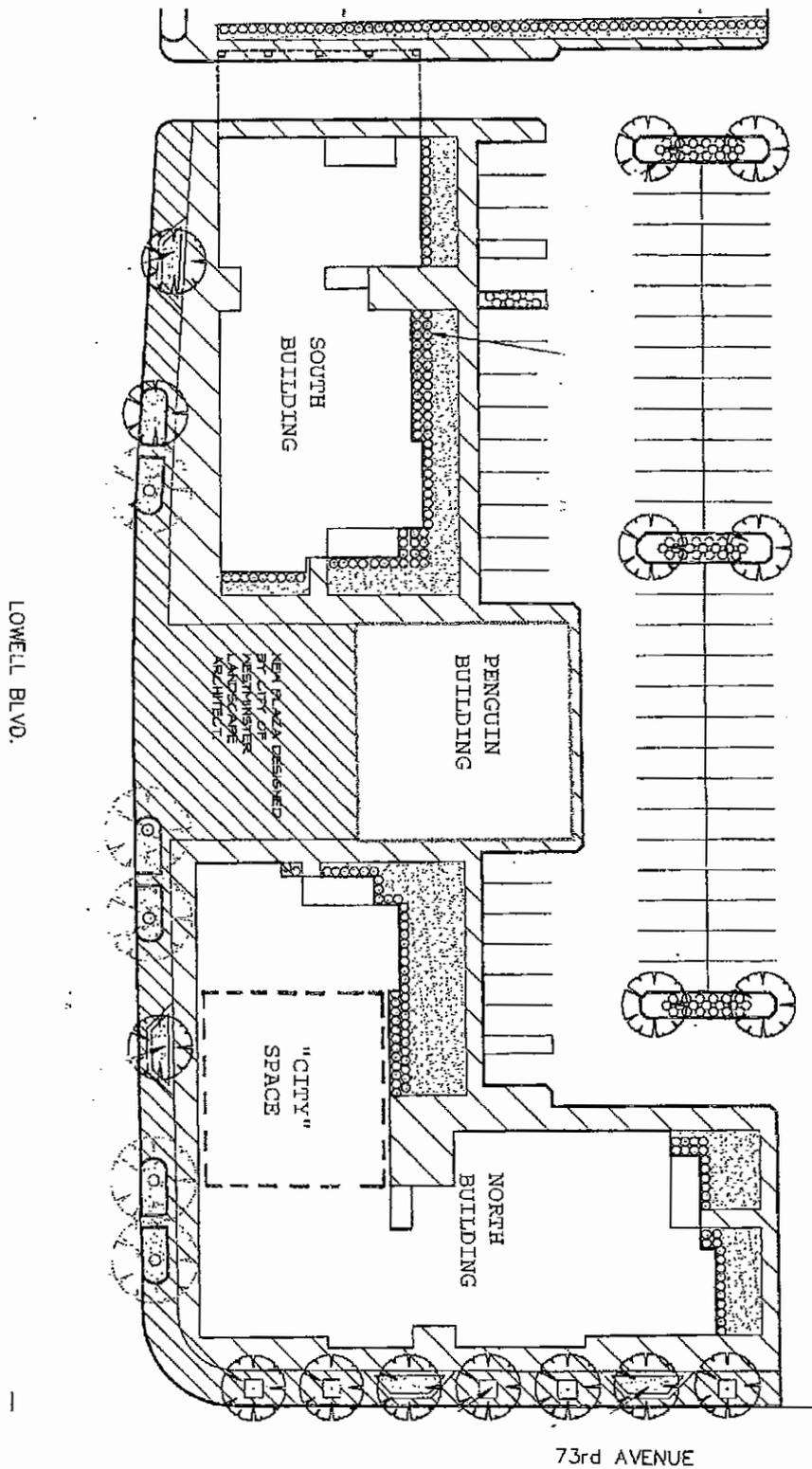


Parcels to be place under Purchase & Sale Agreements



EXHIBIT "E"

General Location of Commercial Space to be Designated to City





## Agenda Item 10 A-D

### Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Public Hearing and Action on the Preliminary Development Plan and Sixth Amended Official Development Plan for My Business Park at Mandalay

**Prepared By:** Walter Patrick, Planner II

### Recommended City Council Action

1. Hold a public hearing.
2. Approve the combined Preliminary Development Plan and Sixth Amended Official Development Plan for My Business Park at Mandalay allowing sports and physical education training facilities including aerobics, dance, gymnastics, cheerleading, swimming, exercise/physical education instruction and classes, organized coaching for team sports, and similar training or classes, to be added as a new land use (collectively, “sports training facility”).
3. Do not approve the proposed places of assembly use.
4. Do not approve the proposed reduction in the required parking for a sports training facility.

### Summary Statement

- The applicants, Bob Yost and Norm Moormeier of My Realty LLC, property owner, propose adding sports training facility and place of assembly as two new land uses to their combined Preliminary Development Plan (PDP) and Official Development Plan (ODP).
- In addition, the applicants are requesting a reduction in the required parking for the sports training facility use.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Planning Commission Recommendation**

This request was heard by the Planning Commission on April 24, 2012. Five people spoke at the public hearing: one neighboring resident spoke in opposition to the proposal stating concerns including traffic, noise issues and height of the approved buildings. One resident wanted clarification that this amendment would not include any design changes to the approved buildings. Three people, including a prospective tenant in the development and two real estate agents, spoke in favor of the proposal. Staff also received one letter that indicated support of the proposed amendment.

The Planning Commission voted 7-0 to recommend approval of the sports training facility use. The Commission voted 6-1 (McConnell) to recommend denial of the place of assembly use and also voted 6-1 to recommend denial of the reduction in parking for the sports training facility use. Commissioner McConnell voted against the denial of the place of assembly use and parking reduction stating that he also believes a 24-screen theater is a place of assembly (referring to the AMC Theatre in the Westminster Promenade that is also located within the Airport Critical Zone), which has already been allowed in the Critical Zone.

Per the Municipal Code, Section 11-5-9(B)(2), amendments to preliminary development plans that cannot be administratively approved, as is the case with this amendment, require a Planning Commission public hearing and recommendation, followed by a City Council public hearing and final decision.

**Policy Issue**

Should the City Council approve the combined PDP and Sixth Amended ODP for My Business Park at Mandalay allowing sports training type facilities to be added as a new land use but not allowing the addition of a place of assembly use or a reduction in the required parking for sports training facilities?

**Alternatives**

Approve all proposed changes, different proposed changes than recommended by staff, or none of the proposed changes. These options are not recommended. Sports training facility use such as dance, gymnastics and cheerleading are generally acceptable to business park developments; however, Staff believes the place of assembly use should not be supported based on its incompatibility with City Code requirements. Further, a reduction in parking for sports training facility use should not be approved as training facilities can be large parking generators, depending on the operational characteristics of the business. No professional parking study was prepared or submitted to indicate that the proposed reductions are adequate to ensure that there is enough parking for the entire development (the applicants are currently proposing 1 space per 600 square feet of building area for this use). It has been City policy in the past to require a professional parking study when a parking reduction is proposed.

**Background Information**Nature of Request

The applicants are proposing the addition of two new land uses to their existing combined PDP/ODP. The uses are as follows: sports training facility that includes aerobics, dance, gymnastics, cheerleading, swimming, exercise/physical education instruction and classes, organized coaching for team sports, and similar training or classes, and a place of assembly use. In addition, the applicants are requesting a reduction in parking for the sports training facility use. Sports training and exercise instruction uses are considered similar to office uses and are listed as such in Title 11, Chapter 4, of the Municipal Code. Therefore, the code requires the same parking requirements for both of these uses. The City's off-street parking requirement for this use is listed at 1 space per 250 square feet of gross floor area. The applicants are requesting a parking reduction from this requirement to 1 space per 600 square feet of gross floor area and, specifically for swimming training, the applicants are requesting a reduction to 1 space per 250 square feet of office area and 1 space per swim lane.

Background

The original My Business Park at Mandalay annexation and combined Preliminary and Official Development Plan were approved in 2006 with several subsequent amendments revising the site plan and building facades. The development will eventually contain 4 buildings to be built out in 4 phases (see attached site plan). Currently, all phase 1 improvements are complete, which includes one of four completed buildings. Other phases are expected to begin after the property owners have secured tenants for the existing structure.

This property was previously regulated by the Northeast Comprehensive Development Plan (NECDP), an intergovernmental agreement between the City of Westminster and Jefferson County that established land use and other development regulations on portions of unincorporated Jefferson County, as well as properties once they are annexed into the City. The NECDP made it difficult for private land owners to request additional land uses for their property, as an Amendment to the NECDP would be necessary and would require approvals from both the City of Westminster and Jefferson County. The NECDP was formally dissolved earlier this year by the City of Westminster and Jefferson County, thereby releasing My Business Park at Mandalay from any restrictions that may have been imposed by the document.

Location

My Business Park at Mandalay is located at the northeast corner of Zephyr Court and 108<sup>th</sup> Avenue, just west of Wadsworth Boulevard. The property is located within the Rocky Mountain Metropolitan Airport Critical Zone. The Airport Critical Zone is an area surrounding the airport that includes the Runway Approach Zone.

My Business Park at Mandalay Surrounding Land Use and Comprehensive Land Use Plan Designations

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: Green Knolls Subdivision	PUD	R-3.5	Single Family Residential
West: Green Knolls Subdivision	PUD	R-3.5	Single Family Residential
East: Unincorporated Jefferson County	P-D	Office/Industrial-Unincorporated	Vacant
South: Unincorporated Jefferson County	SR-1	Suburban Residential-Unincorporated	Vacant

Site Plan Information

- Traffic and Transportation: The proposed sports training facility and place of assembly use would have the potential of creating greater traffic impacts than the current allowed uses. The proposed reduction in parking, if approved, would potentially have a very large impact to pedestrian and vehicle circulation within the development, resulting in customers looking for parking off-site.
- Site Design: No proposed changes.
- Landscape Design: No proposed changes.
- Architecture/Building Materials: No proposed changes.
- Signage: No proposed changes.
- Lighting: No proposed changes.

Applicants/Property Owner

Bob Yost & Norm Moormeier  
My Realty LLC  
1370 Bellaire Street  
Broomfield, Colorado 80020

Service Commitment Category – not applicable.

Referral Agency Responses – As indicated above, the Rocky Mountain Metropolitan Airport has responded to the proposed plan and stated in a January 13, 2012, letter attached here as Attachment D, that per the Rocky Mountain Metropolitan Airport policies, the assembly use is not supported. Specifically, the airport’s Environs Land Use Plan, Section 1.3.5 Airport Critical Zones, Objective A, Policy 1, states as follows:

*“Structures that accommodate large gatherings of people, such as schools, churches, etc, should not be placed in Airport Critical Zones.”*

As stated in the January 13, 2012, letter, “Rocky Mountain Airport strongly discourages a church<sup>1</sup> as a Permitted Use of land located within the Airport Critical Zone. It is recommended this item is removed from the list of Permitted Uses.”

Neighborhood Meeting and Public Comments

A neighborhood meeting was held on February 21, 2012, to allow neighboring residents an opportunity to hear from the applicants and express their opinions on the proposal. About 10 residents attended this meeting. Some residents expressed concerns about additional traffic and noise being created from the proposed uses, especially during evenings hours and weekends. There was also concern that the proposed uses were moving away from the ‘9 to 5’ office type uses that some neighbors perceived to be the original intent of the development.

It should be noted that an 8 ft. tall masonry wall is required at the western portion of the north property line in the second phase of development. This wall is immediately adjacent to 3 residences on the north side of the property and is required to help buffer any negative impacts from the development. Large evergreens were used to buffer the eastern side of the property in an area where the homes to the north move away from the property line to the northeast.

Municipal Code Criteria

Section 11-5-15: Standards for Approval of Official Development Plans and Amendments to Official Development Plans.

(A) In reviewing an application for approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.  
Staff Comment: A reduction in the required parking for sports training facilities would not be in conformance with the City Code without a professional parking study, which has not been submitted.
2. The plan is in conformance with an approved Preliminary Development Plan (PDP) or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).  
Staff Comment: The proposed plan, including the new uses and the parking reduction, does not conform to the approved PDP/ODP. The applicants are requesting an Amendment to the PDP/ODP to allow their proposed changes.

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<sup>1</sup> The application itself seeks “churches” as a permitted use. However, under the City’s land use code, churches are treated as places of assembly, along with assembly halls and event centers. Accordingly, the City uses the term “place of assembly.”

3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.  
Staff Comment: The placement of an assembly use within the Airport Critical Zone and a substantial reduction in required parking spaces would not exhibit sound, creative or efficient planning. The Jefferson County airport staff, through their comments in the referral letter sent to the City of Westminster, indicate that the assembly use is not appropriate. Their staff are experts in airport operations and needs. Our staff concurs with their recommendations of land use in this area.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.  
Staff Comment: The reduction of required parking is not a necessity as a result of design or other special amenities with this proposal. Reductions in parking, without a parking study to indicate why these reductions are necessary, does not meet the spirit and intent of this provision. This provision generally allows PUDs to be creative in their design, without being restricted by old, antiquated zoning requirements. However, without a parking study to indicate how this reduction in parking requirements will provide a “special amenity” or similar design feature, the application fails to satisfy this criteria.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.  
Staff Comment: The plan would not be compatible with other public and private development. An assembly use located in the Airport Critical Zone is not consistent with the recommendation of the nearby airport. The Jefferson County staff have evaluated the potential impacts of an assembly use within the Airport Critical Zone and have concluded that the characteristics of an assembly use are not compatible with an airport use. This is based primarily on safety for those in attendance at the place of assembly and also considers potential noise concerns with ongoing airport operations. City Staff concur with the airport staff on this application at this location and do not consider this criteria to be satisfied.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.  
Staff Comment: The plan is not protected from surrounding influences as assembly type uses are not recommended in the Airport Critical Zone. The surrounding area would not be protected from potential impacts resulting from the assembly use and its incompatibility with airport operations at this location. These concerns include potential safety and noise issues with placing the use within the Airport Critical Zone at this location. Additionally, parking may (or may not) be adequately addressed, depending on the size of the assembly use that may restrict future development of the site, as the parking requirement for assembly uses is greater than that of a warehouse.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.  
Staff Comment: No adverse impacts are foreseen on future land uses or development. The surrounding residential neighborhood, to the north and west, is fully developed. The vacant lot to the east, located in unincorporated Jefferson County, currently has a development plan that allows similar uses to the My Business Park development.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.  
Staff Comment: This plan does not provide for safe uses and facilities as the proposed assembly use is not recommended within the Airport Critical Zone and is not convenient or harmonious given its location within the Airport Critical Zone, as analyzed by the Jefferson County airport staff. City

Staff concur with the airport staff's recommended denial. Additionally, a reduction in parking could also have negative impacts within and outside of the development, such as congestion, circulation and overflow parking on adjacent or nearby streets. No parking study has been provided to indicate such a reduction is warranted in this situation.

9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.  
Staff Comment: This criterion is not affected by the plan.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.  
Staff Comment: This criterion is not affected by the plan.
11. The Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.  
Staff Comment: An 8 ft. tall screen wall is required to be built in phase II of the project, along a portion of the north property line immediately adjacent to the bordering residences. Large evergreens were used to buffer the northern property line on the eastern side of the property. These requirements are intended to buffer negative impacts from the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.  
Staff Comment: This criterion is not affected by the plan.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.  
Staff Comment: Existing streets are suitable and adequate to carry traffic within this development; however, the addition of an assembly use could cause a parking shortage could result in traffic spilling out onto 108<sup>th</sup> Avenue and/or Zephyr Court.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.  
Staff Comment: The assembly use and the proposed reduction in required parking spaces for sports training uses could negatively impact safe and free flow of traffic within the parking area. A parking study was not provided to demonstrate how the increased usage of this area, with different uses at different times of the day than what was originally approved, meets this criteria.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.  
Staff Comment: The proposed assembly use and the proposed reduction in the required parking for sports training facilities has the potential to have a negative effect on pedestrian movement and safety on the site, should a shortage in parking spaces occur.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.  
Staff Comment: This criterion is not affected by the plan.
17. The applicant is not in default or does not have any outstanding obligations to the City.  
Staff Comment: There are no outstanding obligations to the City known at this time.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

Public Notification

Westminster Municipal Code, Section 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published and posted at least 4 days prior to such hearing. Notice was published in the Westminster Window on May 3, 2012.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. A sign was posted on the property on May 3, 2012.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowners' associations registered with the City within 300 ft of the subject property. The applicants have provided the Planning Manager with a certification that the required notices were mailed on May 1, 2012.

Staff Analysis

Staff has provided an analysis of each of the applicants' requests.

**Proposed Sports Training Facility Land Use:**

Training facilities of this nature are generally acceptable uses to flex office space developments as the proprietors benefit from the open floor plan and high ceilings associated with these buildings, and the impacts from these uses are considered similar to office uses. Sports training facilities currently exist on similar properties, such as the Park Centre Business Park development located north of 120<sup>th</sup> Avenue in Westminster, and are parked at approximately 1 space per 250 sq. ft. Provided the square footage of the business can be kept to a size that would not require more parking than currently required by City Code (1 space per 250 sq. ft. of gross floor area) or additional parking could be provided onsite at the expense of future building space, this use should be acceptable in this development. For example, the parking for the existing buildings (built and future) was predicated on a ratio of office to warehouse use. Warehouse uses were required 1 space per 1,000 sq. ft., and office was required 1 space per 250 sq. ft. Any major shift in the portion of non-warehouse space would cause more spaces to be needed. Therefore, it may become necessary to either further reduce the allowed office (or similar) use within future buildings in order to keep the ratio the same or reduce the gross floor area of future buildings to add more parking. This is a choice the applicant can make at a later date, and is very typical in phased developments.

**Proposed Place of Assembly Land Use:**

An assembly use is incompatible with the existing development because of potential safety and noise concerns. The Jefferson County airport staff have evaluated this issue and have recommended that the City of Westminster not approve this land use at this location. The County airport staff are experts in airport operations and maintenance, and City Staff look to them for recommendations on this issue. City Staff concur with the County airport staff on the incompatibility of the proposed assembly use at this location.

Further, parking requirements for assembly uses are currently listed at 1 space per 3 persons seating capacity, plus two spaces per classroom. Parking could potentially become an issue with this use if an assembly is large. At this point, the applicant does not have a specific assembly use in mind. Without knowing the size of the proposed assembly use, parking deficiencies can not be quantified; however, a parking shortage at this location would create negative impacts for the surrounding community. For this reason and in addition to the noise/safety objections noted above, Staff recommends not approving this use.

In addition, the Rocky Mountain Metropolitan Airport staff has responded to the applicants' proposed uses by stating that assembly uses should not be placed in an Airport Critical Zone, in which this property is located.

**Proposed Parking Reduction:**

For a sports training facility, current parking requirements are 1 space per 250 square feet of gross floor area. The requested reduction to 1 space per 600 square feet of gross floor area and, specifically for swimming training, 1 space per 250 square feet of office area and 1 space per swim lane, is a dramatic decrease in the number of required parking spaces. Current code allows a parking reduction of twenty percent between *shared* uses if a parking study is provided demonstrating the reduced need for parking (or more, as approved by City Council). The applicants' parking reduction request is well over twenty percent and a professional parking study has not been provided.

At buildout, this development will contain four buildings and 122 parking spaces. The current Official Development Plan contemplates a mixture of office and warehouse space in each building. Office areas have a parking requirement of 1 space per 250 square feet of gross floor area and warehouse areas require 1 space per 1000 square feet of gross floor area. The size of three of the four buildings in the development is approximately 16,064 square feet each. The fourth building is slightly smaller at 14,777 square feet.

All of the gross floor area for each of the buildings could not be used for office-type uses, since that would increase the need for parking on site. It is a business decision for the owners about whether or not it makes financial sense to reduce the overall gross floor area of the site to allow more floor area to be used for office-type uses. Either the gross square footage needs to be reduced or the parking needs to be increased if more than the anticipated floor area is used for office-type uses.

If the entire building were to be used for a sports training facility, at current parking requirements, the use would require about 64 parking spaces, which is more than double the spaces currently allocated for this building. Clearly, the intent and design of these buildings was to have a majority of the building space being utilized as warehouse space. Further, the applicants have not produced a professional parking study indicating 1 space per 600 square feet of gross floor area is adequate for a sports training facility use.

Accordingly, it is Staff's recommendation that the sports training facility use be approved as an amendment, as it meets all criteria for such approval as set forth in the Municipal Code, Section 11-5-15(A)(1)-(17). It is Staff's recommendation that the assembly use be denied as an amendment for its failure to meet the requirements of the Municipal Code, Section 11-5-15(A)(2),(3),(5),(6),(8),(13),(14) and (15). In addition, it is Staff's recommendation that the parking reduction be denied as an amendment for its failure to meet the requirements of the Municipal Code, Section 11-5-15(A) (1),(2),(3),(4),(6),(8),(14) and (15).

Strategic Plan Goals

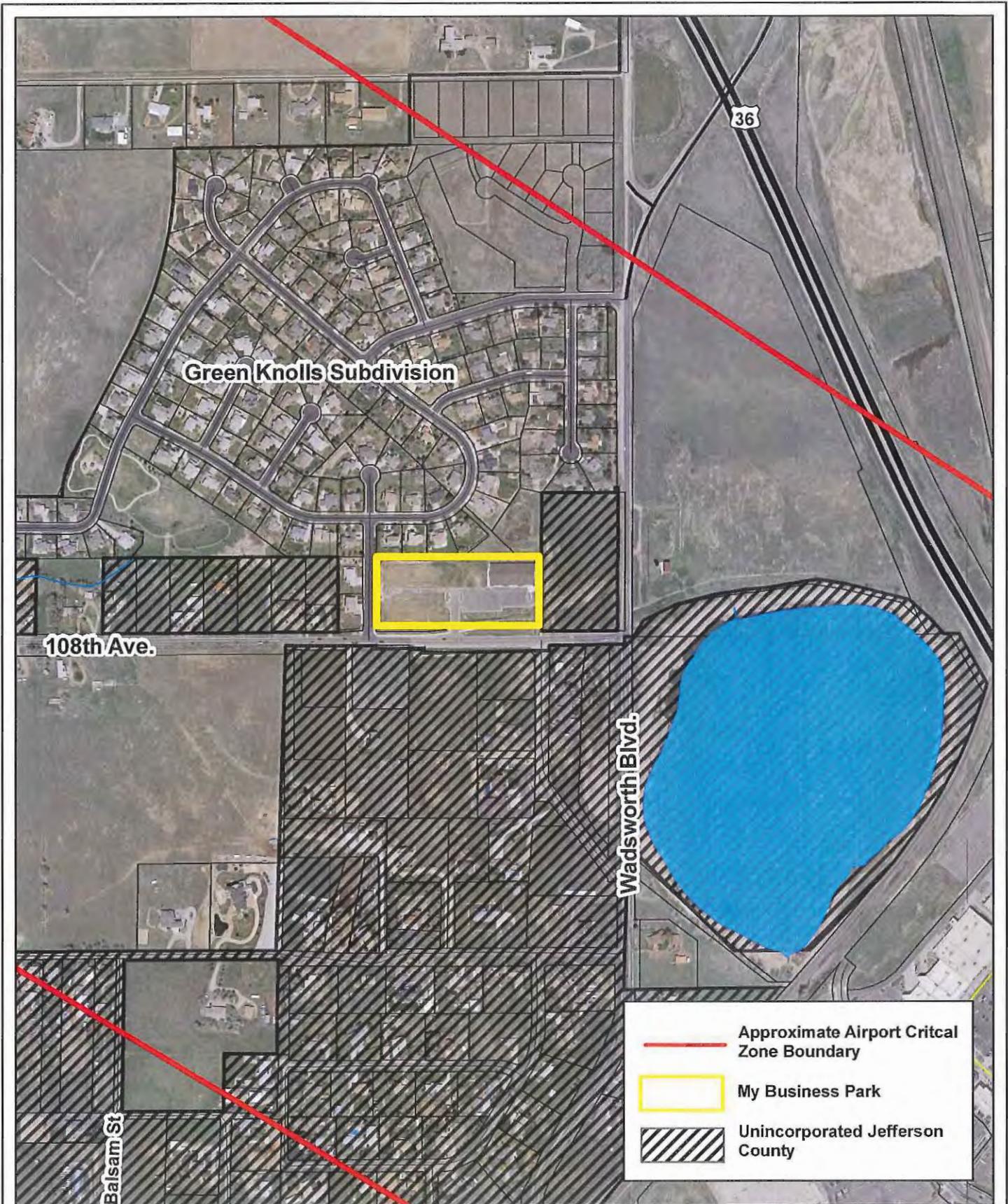
Staff considers the proposed combined Preliminary Development Plan and Sixth Amended Official Development Plan for My Business Park at Mandalay to be consistent with the City Council's Strategic Plan goals of Safe and Secure Community, Beautiful and Environmentally Sensitive City, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall, City Manager

Attachments

- Attachment A - Vicinity Map
- Attachment B - Site Plan
- Attachment C - Criteria for Land Use Applications
- Attachment D - Airport Letter



### Vicinity Map My Business Park





## **Criteria and Standards for Land Use Applications**

### *Comprehensive Land Use Plan Amendments*

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

### *Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)*

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

***Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)***

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

***City Initiated Rezoning***

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

***Official Development Plan (ODP) Application***

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.

2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.



**ROCKY MOUNTAIN**  
METROPOLITAN AIRPORT

January 13, 2012

Mr. Walter Patrick  
City of Westminster  
4800 W. 92nd Ave.  
Westminster, CO 80031

Letter  
from  
Airport

Dear Mr. Patrick:

I have reviewed the Amended Official Development Plan for My Business Park at Mandalay. Per my letter submitted to Ms. Heather Gutherless with Jefferson County Planning and Zoning on October 12, 2010, I explained following:

“The proposed facility is within an Airport Critical Zone, which is an area surrounding the airport that includes the Runway Protection Zone and Runway Approach Zone, as defined by the *Rocky Mountain Metro Airport Environs Land Use Plan, 2010*. Structures that accommodate large gatherings of people, such as schools, churches, etc., should not be placed in Airport Critical Zones. An Indoor Sports Training Center is considered a compatible land use with minimal impacts of and to Airport Critical Zones.”

The most recent submittal of the Amended ODP for My Business Park at Mandalay has expanded the Permitted Uses under the Planning and Design Criteria to include a Church as listed in item Number 11. Per the *Rocky Mountain Metropolitan Airport, Environs Land Use Plan 2010*, Section 1.3.5 Airport Critical Zones, Objective A, Policy 1:

“Structures that accommodate large gatherings of people, such as schools, churches, etc, should not be placed in Airport Critical Zones.”

Rocky Mountain Metropolitan Airport strongly discourages a church as a Permitted Use of land located within the Airport Critical Zone. It is recommended this item is removed from the list of Permitted Uses.

Additional comments include:

1. If you have not done so already, secure an Avigation Easement over the entire site. Obtaining an easement provides notification to property owners of the potential influence of aviation activities. This disclosure helps protect the City, the County, the Airport, and Developers from lawsuits pertaining to aircraft operations. Please contact me for a sample Avigation Easement if you need.

2. Once obtained, please include the book and page number for the Avigation Easement on the future Development Plan.
3. File the appropriate FAA Form 7460-1 Notice of Proposed Construction or Alteration for both the building height and any construction cranes necessary for future projects on this site. Building height restrictions exist under the Colorado Land Use Recommendations, in which Title 14 CFR Part 77, *Safe, Efficient Use, and Preservation of the Navigable Airspace*, governs the height of objects around airports which may become an obstruction to air navigation
4. Design all future structures to be sound attenuated to achieve a 25dB sound reduction of outside to inside noise levels.
5. Please update the vicinity map to reflect Rocky Mountain Metropolitan Airport, as well as an outline of the runways on the airfield instead of a simple box indicating the location of the airport.

Thank you for the opportunity to comment on the amendment to the development plan for My Business Park at Mandalay. Please feel free to contact me with any further questions or comments.

Sincerely,



Georgiann Briggs  
Airport Development Manager



## Agenda Item 10 E

### Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Resolution No. 12 re Compliance Hearing for the Little Dry Creek Property Annexation

**Prepared By:** Jana Easley, Principal Planner

### Recommended City Council Action

Adopt Resolution No. 12 accepting the annexation petition submitted by the Westminster Housing Authority and Adams County and make the findings required by State Statute on the sufficiency of the petition. This resolution sets the date of June 25, 2012, for the annexation hearing.

### Summary Statement

- The Little Dry Creek property consists of 44.197 acres and is generally located between Lowell Blvd. and Clay Street, and between 67th Place and 71st Avenue.
- The property is owned by the City of Westminster and Westminster Housing Authority (71%) and the Colorado Department of Transportation and Burlington Northern and Santa Fe Railroad rights-of-way comprise 29% of the area.
- Pursuant to an Intergovernmental Agreement (IGA) dated June 16, 2010, by and between the City of Westminster and Adams County, six parcels that were previously owned by Adams County for regional detention purposes are required to be annexed by the City.
- Pursuant to an agreement with the Regional Transportation District (RTD), the area shall be annexed into the City for accommodation of a regional drainage and detention facility that will benefit Westminster Station, the first commuter rail station for Westminster slated to open in 2016.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City annex the Little Dry Creek property?

**Alternatives**

1. Make a finding that there is no community of interest with any of the Little Dry Creek property and take no further action. If this course is taken, the property will remain unincorporated. This alternative is not recommended because the IGA between the City and Adams County states that the City will annex the six parcels deeded to the City by Adams County. Also, Staff believes that the regional drainage and park improvements that the City will construct and maintain should be within the City limits. This alternative would also be contrary to the agreement with RTD.
2. Make a finding that there is no community of interest with one or more of the parcels or right-of-way. This alternative is not recommended because the result could be that the boundary does not meet the 1/6th contiguity requirement, or that the boundary is incongruent. Staff believes that the area, as a whole, has a community of interest with the City; the area will serve as a regional drainage facility and park that will be maintained by the City. It is consistent to annex rights-of-way simultaneously with the adjacent property for a uniform city boundary.

**Background Information**

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with §31-12-107(1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary;
2. An allegation that the requirements of §31-12-104 and §31-12-105 C.R.S. have been met (these sections are to be reviewed by the Council at the formal public hearing);
3. Signatures and mailing addresses of at least 50% of the landowners owning at least 50% of the land (in this case, the City of Westminster owns 24.56 acres, Westminster Housing Authority owns 6.76 acres, and the remaining land is railroad and state right-of-way (13.02 acres));
4. The legal description of the land to be annexed;
5. The date of each signature; and
6. An attached map showing the boundaries of the area.

Planning Staff has reviewed the petition and has determined that it complies with the above requirements.

The proposed annexation meets Council's goals of "Vibrant Neighborhoods in One Livable Community" and "Beautiful and Environmentally Sensitive City."

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date recommended to be June 25, 2012, at which time the Council will review the merits of the proposed annexation.

Respectfully Submitted,

J. Brent McFall  
City Manager

**Attachments**

- Annexation Map
- Compliance Resolution

# ANNEXATION MAP

## LITTLE DRY CREEK ANNEXATION TO THE CITY OF WESTMINSTER

PORTIONS OF SECTIONS 5 AND 6, TOWNSHIP 3 SOUTH,  
RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 1 OF 6

**DESCRIPTION OF LAND TO BE ANNEXED**

A PORTION OF SECTION 5 AND A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 6; ALL IN TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING A PORTION OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY AND THE FOLLOWING PARCELS CONVEYED TO THE CITY OF WESTMINSTER AND THE WESTMINSTER HOUSING AUTHORITY:

**NOTE:**

1. THE BASIS OF BEARINGS IS THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 5, T3S, R68W 6TH P.M. AS MONUMENTED WITH AN ALUMINUM CAP PLS 16406 IN A MONUMENT BOX ON THE WEST AND AN ALUMINUM CAP PLS 26288 ON THE EAST WITH A BEARING OF N 89°47'54" E A DISTANCE OF 2635.75 FEET (CITY OF WESTMINSTER DATUM).

**CITY OF WESTMINSTER PARCELS:**

RECEPTION NUMBER 2011000067850;  
BOOK 4996 PAGE 59;  
RECEPTION NUMBERS 2008000000229 AND 2008000000231, LESS RECEPTION NUMBER 2011000082324;  
RECEPTION NUMBER 2010000065696;  
BOOK 4852 PAGE 403;  
RECEPTION NUMBER 2010000031068;  
BOOK 4866 PAGE 156;  
BOOK 5088 PAGE 621 AND CORRECTED IN BOOK 5158 PAGE 820;

**WESTMINSTER HOUSING AUTHORITY PARCELS:**

RECEPTION NUMBER 20050422000421310  
RECEPTION NUMBER 200411160011162080;

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 5, AN ALUMINUM CAP PLS 26288; THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 125.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, AS DESCRIBED IN BOOK 749 AT PAGE 342, AND THE POINT OF BEGINNING:

THENCE S 00°47'33" W, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 48, BLOCK 8 COLLEGE CREST SUBDIVISION, BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST 68TH AVENUE;

THENCE S 89°47'54" W, ALONG SAID NORTHERLY LINE OF LOT 48, BLOCK 8, A DISTANCE OF 64.36 FEET TO THE NORTHWEST CORNER OF SAID LOT 48, BLOCK 8;

THENCE S 00°04'54" E, ALONG THE WESTERLY LINE OF SAID LOT 48, BLOCK 8, A DISTANCE OF 50.04 FEET TO A POINT OF INTERSECTION WITH SAID WESTERLY LINE AND THE SOUTHERLY LINE OF OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL A, EXTENDED EASTERLY;

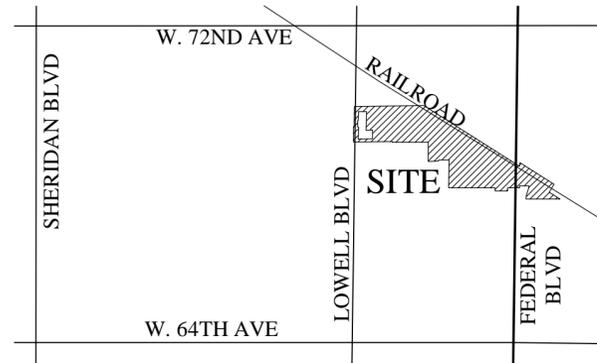
THENCE S 89°47'57" W, ALONG SAID SOUTHERLY LINE AND SAID SOUTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 200.87 FEET TO A POINT ON THE EASTERLY LINE OF BLOCK 7 COLLEGE CREST SUBDIVISION, BEING THE WESTERLY RIGHT OF WAY LINE OF GREEN STREET;

THENCE N 00°04'35" W, ALONG SAID EASTERLY LINE, A DISTANCE OF 50.03 FEET TO THE NORTHEAST CORNER OF LOT 48, BLOCK 7 COLLEGE CREST SUBDIVISION;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID BLOCK 7, BLOCK 6 AND A PORTION OF BLOCK 5 COLLEGE CREST SUBDIVISION, A DISTANCE OF 745.33 FEET TO THE INTERSECTION OF SAID NORTHERLY LINE OF BLOCK 5 WITH THE EASTERLY LINE OF THE AMENDED PLAT DOOSE SUBDIVISION, RECORDED AT FILE 10 MAP 7, EXTENDED SOUTHERLY;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 451.11 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL D;

(CONTINUED ON SHEET 2 OF 5)



VICINITY MAP  
1"=2000'

**CITY OF WESTMINSTER**

I, J. BRENT MCFALL, CITY MANAGER OF THE CITY OF WESTMINSTER, PROERTY OWNER, DO SO APPROVE THIS (PDP/ODP) FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
CITY MANAGER

**WESTMINSTER HOUSING AUTHORITY**

I, J. BRENT MCFALL, CITY MANAGER OF THE CITY OF WESTMINSTER, PROERTY OWNER, DO SO APPROVE THIS (PDP/ODP) FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
CITY MANAGER

**CITY ACCEPTANCE**

ACCEPTED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
MAYOR

ATTEST: CITY CLERK (SEAL)

**CLERK AND RECORDER'S CERTIFICATION**

RECEPTION NUMBER \_\_\_\_\_  
ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF ADAMS COUNTY AT BRIGHTON, COLORADO ON THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_ O'CLOCK \_\_.M..

\_\_\_\_\_  
ADAMS COUNTY CLERK AND RECORDER

BY: DEPUTY (SEAL)

**SURVEYOR'S CERTIFICATION**

I, EJ GRABOWSKI, CERTIFY THAT THIS MAP IS A TRUE AND ACCURATE REPRESENTATION OF THE AREA TO BE ANNEXED TO THE CITY OF WESTMINSTER.

THE LAND DESCRIBED HEREON IS CONTIGUOUS TO THE CITY OF WESTMINSTER AND MEETS THE REQUIREMENTS SET FORTH IN COLORADO REVISED STATUES 1973, 31-12-104-(1)(A) THAT ONE-SIXTH OR MORE OF THE PERIMETER TO BE ANNEXED IS CONTIGUOUS WITH THE ANNEXING MUNICIPALITY.

**CONTIGUOUS STATEMENT**

TOTAL PERIMETER OF AREA CONSIDERED FOR ANNEXATION	11,167.32	100%
ONE-SIXTH OF TOTAL PERIMETER OF AREA	1,861.22	16.67%
PERIMETER OF THE AREA CONTIGUOUS WITH EXISTING CITY LIMITS	3,706.44	33.19%

\_\_\_\_\_  
EJ GRABOWSKI  
PLS 22097



Revision \_\_\_\_\_  
 Date of Survey 03/07/2012  
 Control File 10007  
 Job Number 11007.1

LAND SURVEYING AND MAPPING  
 LAFAYETTE - WINTER PARK  
 Ph 303 666 0379 Fx 303 665 6320

# ANNEXATION MAP

## LITTLE DRY CREEK ANNEXATION TO THE CITY OF WESTMINSTER

PORTIONS OF SECTIONS 5 AND 6, TOWNSHIP 3 SOUTH,  
RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 2 OF 6

**DESCRIPTION OF LAND TO BE ANNEXED**  
(CONTINUED FROM SHEET 1 OF 5)

THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF SAID PARCEL D, A DISTANCE OF 160.33 FEET TO A POINT OF NON TANGENT CURVATURE ON THE TEMPORARY TURN AROUND AS SHOWN ON AMENDED PLAT DOOSE SUBDIVISION;

THENCE ALONG A CURVE TO THE LEFT, ALONG SAID TEMPORARY TURN AROUND, A DISTANCE OF 118.38 FEET TO A POINT OF NON TANGENCY ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED AT 2011000082324, SAID CURVE HAVING A RADIUS OF 45.00 FEET, A DELTA ANGLE OF 150°43'28" AND A CHORD DISTANCE OF 87.08 FEET WHICH BEARS N 54°44'12" W;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 4.47 FEET TO THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED AT 2011000082324;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED AT 2011000082324, A DISTANCE OF 104.12 FEET TO THE EASTERLY LINE OF RESUBDIVISION OF LINDIE HEIGHTS SUBDIVISION, RECORDED IN PLAT BOOK 5 PAGE 31 (FILE 10 MAP 77);

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE AND THE EASTERLY LINE OF NASH SUBDIVISION, RECORDED AT FILE 17 MAP 341, A DISTANCE OF 233.06 FEET TO THE NORTHEAST CORNER OF SAID NASH SUBDIVISION;

THENCE S 89°53'23" W, ALONG THE NORTHERLY LINE OF SAID NASH SUBDIVISION, A DISTANCE OF 581.98 FEET TO A POINT ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 8.40 FEET THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159 AND SAID NORTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 582.00 FEET TO A POINT ON THE WEST LINE OF SECTION 5;

THENCE N 89°21'18" W A DISTANCE OF 40.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF LOWELL BOULEVARD BEING A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 596 A70-4;

THENCE N 00°38'42" E, ALONG SAID ORDINANCE 596 A70-4, A DISTANCE OF 242.76 FEET TO A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 550 A68-1;

THENCE ALONG SAID ORDINANCE 550 A68-1, THE FOLLOWING FOUR (4) COURSES:  
1. THENCE S 89°21'18" E A DISTANCE OF 10.00 FEET;  
2. THENCE N 00°38'42" E A DISTANCE OF 326.16 FEET;  
3. THENCE S 89°54'05" E A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST LINE OF SECTION 6;  
4. THENCE N 89°05'58" E A DISTANCE OF 1084.14 FEET;

THENCE S 57°36'54" E, CONTINUING ALONG SAID ORDINANCE 550 A68-1, ALONG ORDINANCE 710 A72-10 AND ALONG ORDINANCE 1873 A88-4, A DISTANCE OF 1825.55 FEET;

THENCE CONTINUING ALONG ORDINANCE 1873 A88-4, THE FOLLOWING TWO (2) COURSES:  
1. THENCE N 00°47'33" E A DISTANCE OF 58.70 FEET;  
2. THENCE S 57°36'54" E A DISTANCE OF 129.14 FEET TO THE NORTHWEST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 200607000687800;

THENCE ALONG SAID RECEPTION NUMBER 200607000687800, THE FOLLOWING THREE (3) COURSES:  
1. THENCE S 00°47'33" W A DISTANCE OF 39.92 FEET;  
2. THENCE S 57°36'54" E A DISTANCE OF 511.45 FEET;  
3. THENCE N 32°23'06" E A DISTANCE OF 34.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

(CONTINUED)

**DESCRIPTION OF LAND TO BE ANNEXED**  
CONTINUED

THENCE S 57°36'54" E, ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 237.75 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 14 AS DESCRIBED IN BOOK 5088 AT PAGE 621 AND CORRECTED IN BOOK 5158 AT PAGE 820;

THENCE ALONG SAID PARCEL 14, THE FOLLOWING FIVE (5) COURSES:  
1. THENCE S 84°16'12" E A DISTANCE OF 196.66 FEET;  
2. THENCE S 57°36'54" E A DISTANCE OF 130.95 FEET;  
3. THENCE S 42°19'48" E A DISTANCE OF 182.93 FEET;  
4. THENCE S 57°36'54" E A DISTANCE OF 382.30 FEET;  
5. THENCE S 00°31'06" W A DISTANCE OF 47.10 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE S 32°23'06" W A DISTANCE OF 150.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE N 57°36'54" W ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1844.06 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, PROJECT NO. F004-1(20) AS DESCRIBED IN BOOK 749 AT PAGE 342;

THENCE S 00°47'33" W, ALONG SAID WESTERLY LINE, A DISTANCE OF 279.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 45.839 ACRES MORE OR LESS.

EXCEPTING THEREFROM:

LOTS 1-9 NORTH MOUNTAIN VIEW SUBDIVISION, FILE 9 MAP 126, LESS THAT PORTION OF LOWELL BOULEVARD RIGHT OF WAY, RECEPTION NUMBERS C0747799 AND C0810426;

CONTAINING 1.642 ACRES MORE OR LESS.

TOTAL ANNEXATION CONTAINING IN TOTAL 44.197 ACRES MORE OR LESS.

**NOTE**

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE (3) YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN (10) YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

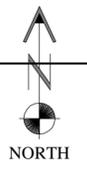
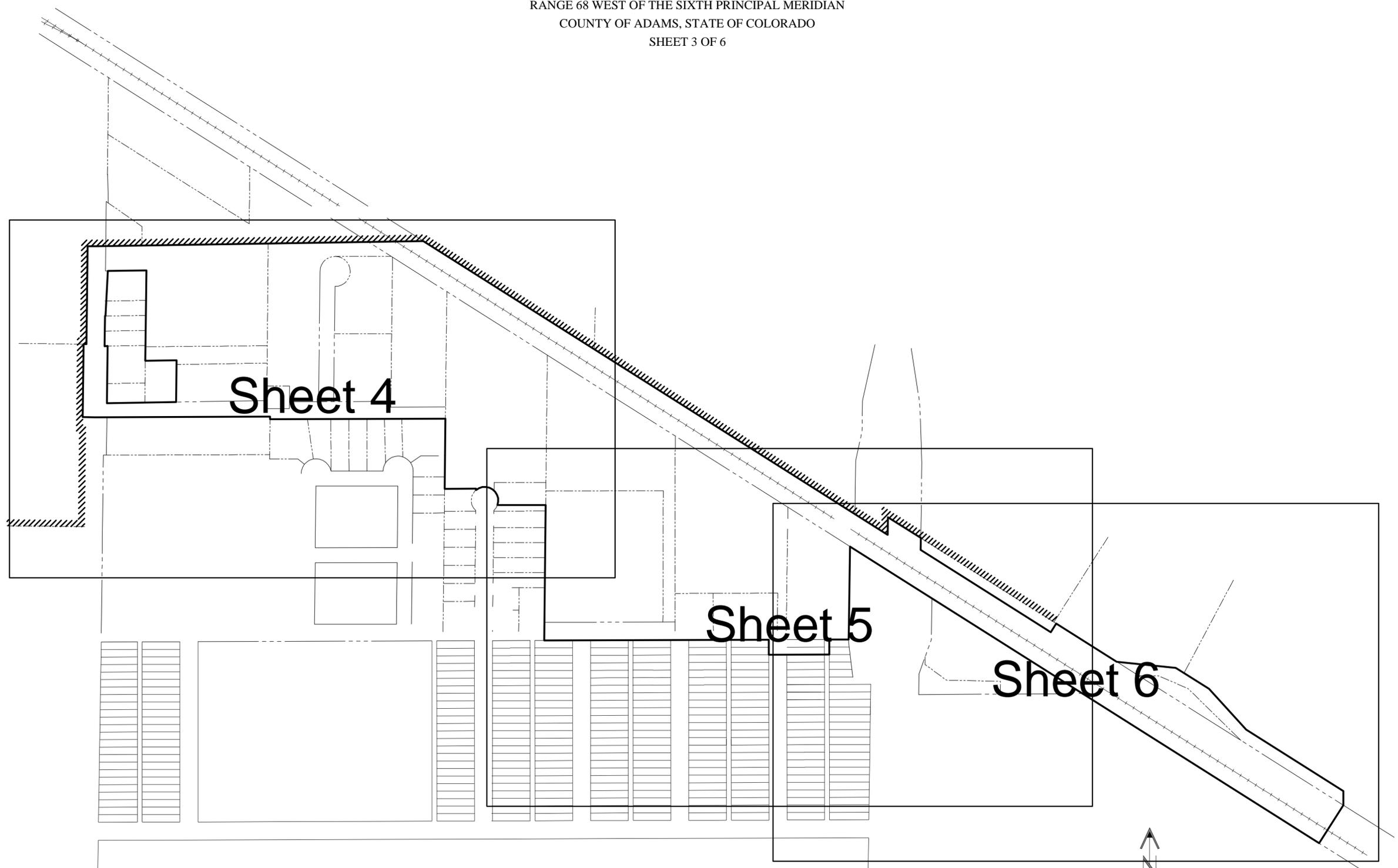
ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT, LAND BOUNDARY MONUMENT, OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE § 18-4-508, C.R.S.

Revision	
Date of Survey	03/07/2012
Control File	10007
Job Number	11007.1



**LAND SURVEYING AND MAPPING**  
**LAFAYETTE - WINTER PARK**  
Ph 303 666 0379 Fx 303 665 6320

**ANNEXATION MAP**  
**LITTLE DRY CREEK ANNEXATION**  
**TO THE CITY OF WESTMINSTER**  
 PORTIONS OF SECTIONS 5 AND 6, TOWNSHIP 3 SOUTH,  
 RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
 COUNTY OF ADAMS, STATE OF COLORADO  
 SHEET 3 OF 6



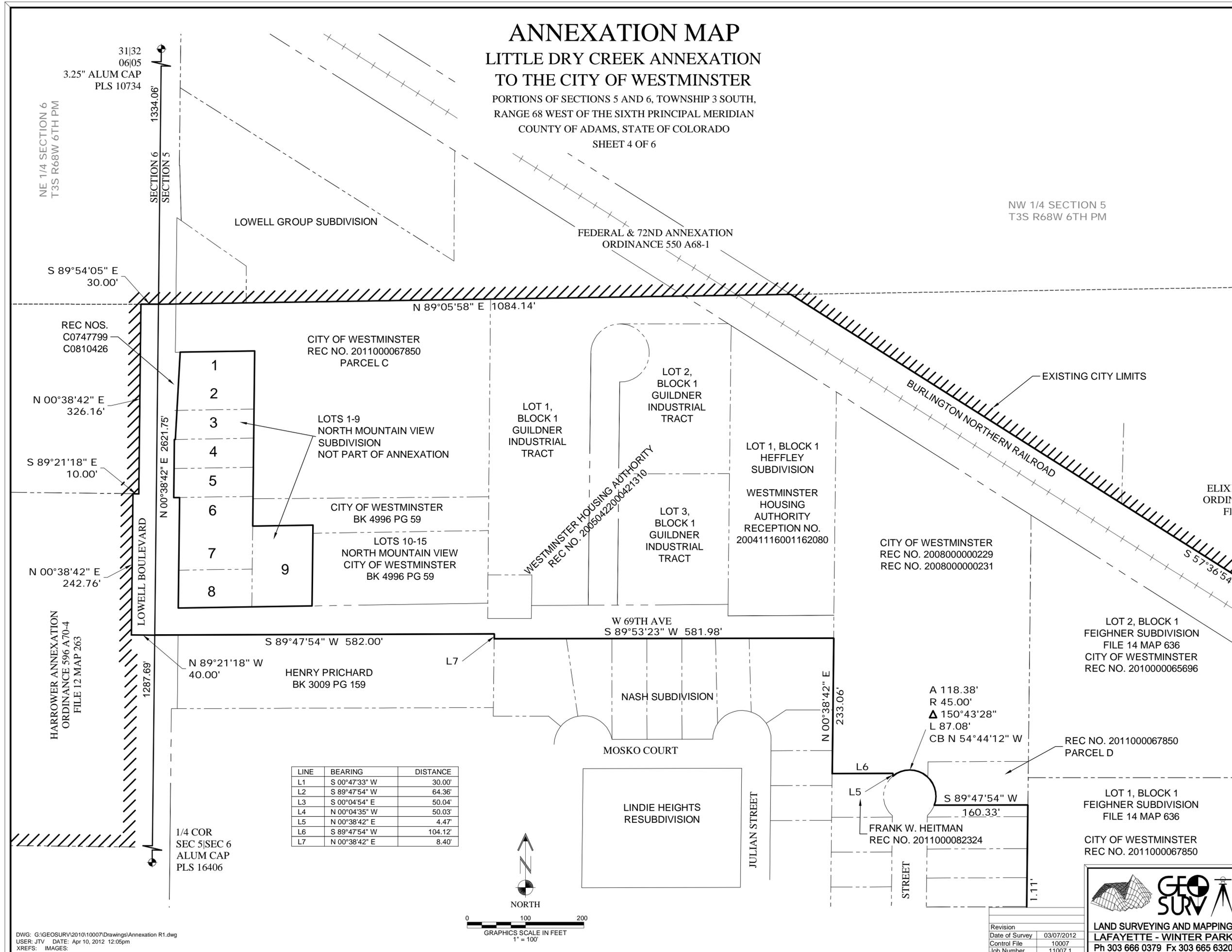
<b>LAND SURVEYING AND MAPPING</b> <b>LAFAYETTE - WINTER PARK</b> <b>Ph 303 666 0379 Fx 303 665 6320</b>	
Revision	
Date of Survey	03/07/2012
Control File	10007
Job Number	11007.1

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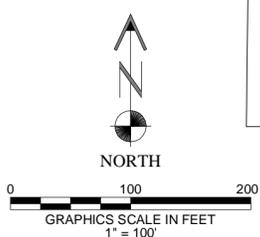
# ANNEXATION MAP

## LITTLE DRY CREEK ANNEXATION TO THE CITY OF WESTMINSTER

PORTIONS OF SECTIONS 5 AND 6, TOWNSHIP 3 SOUTH,  
RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 4 OF 6



LINE	BEARING	DISTANCE
L1	S 00°47'33" W	30.00'
L2	S 89°47'54" W	64.36'
L3	S 00°04'54" E	50.04'
L4	N 00°04'35" W	50.03'
L5	N 00°38'42" E	4.47'
L6	S 89°47'54" W	104.12'
L7	N 00°38'42" E	8.40'



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Revision	
Date of Survey	03/07/2012
Control File	10007
Job Number	11007.1

**LAND SURVEYING AND MAPPING**  
**LAFAYETTE - WINTER PARK**  
 Ph 303 666 0379 Fx 303 665 6320

# ANNEXATION MAP

## LITTLE DRY CREEK ANNEXATION TO THE CITY OF WESTMINSTER

PORTIONS OF SECTIONS 5 AND 6, TOWNSHIP 3 SOUTH,  
RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 5 OF 6

ELIXIR ANNEXATION  
ORDINANCE 710 A72-10  
FILE 13 MAP 65

N 1/4 SEC 5  
3.25" ALUM CAP  
PLS 23053

CITY OF WESTMINSTER  
REC NO. 200800000229  
REC NO. 2008000000231

LOT 2, BLOCK 1  
FEIGNER SUBDIVISION  
FILE 14 MAP 636  
CITY OF WESTMINSTER  
REC NO. 2010000065696

A 118.38'  
R 45.00'  
Δ 150°43'28"  
L 87.08'  
CB N 54°44'12" W

REC NO. 2011000067850  
PARCEL D

LOT 1, BLOCK 1  
FEIGNER SUBDIVISION  
FILE 14 MAP 636  
CITY OF WESTMINSTER  
REC NO. 2011000067850  
PARCEL B

CITY OF WESTMINSTER  
BK 4852 PG 403

CITY OF WESTMINSTER  
REC NO. 2011000067850  
PARCEL E

CITY OF WESTMINSTER  
BK 4866 PG 156

CITY OF WESTMINSTER  
REC NO. 2010000031068

GOODWILL ANNEXATION  
ORDINANCE 1873 A88-4  
FILE 16 MAP822

LINE	BEARING	DISTANCE
L1	S 00°47'33" W	30.00'
L2	S 89°47'54" W	64.36'
L3	S 00°04'54" E	50.04'
L4	N 00°04'35" W	50.03'
L5	N 00°38'42" E	4.47'
L6	S 89°47'54" W	104.12'
L7	N 00°38'42" E	8.40'

ANK W. HEITMAN  
C NO. 2011000082324

IRVING STREET

ENDED PLAT  
SE SUBDIVISION

1/4 COR  
SEC 5|SEC 6  
ALUM CAP  
PLS 16406

BASIS OF BEARINGS

W. 68TH AVE

P.O.B.

125.00'

C 1/4 SEC 5  
3.25" ALUM CAP  
PLS 26288

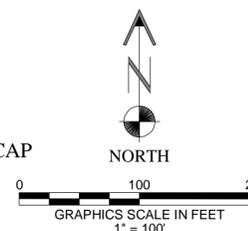
ADAMS COUNTY  
BK 4863 PG 493

CITY OF WESTMINSTER  
BK 4852 PG 412

FOUND  
3.25" ALUM CAP  
PLS 26288

C 1/4 SEC 5  
3.25" ALUM CAP  
PLS 26288

DETAIL



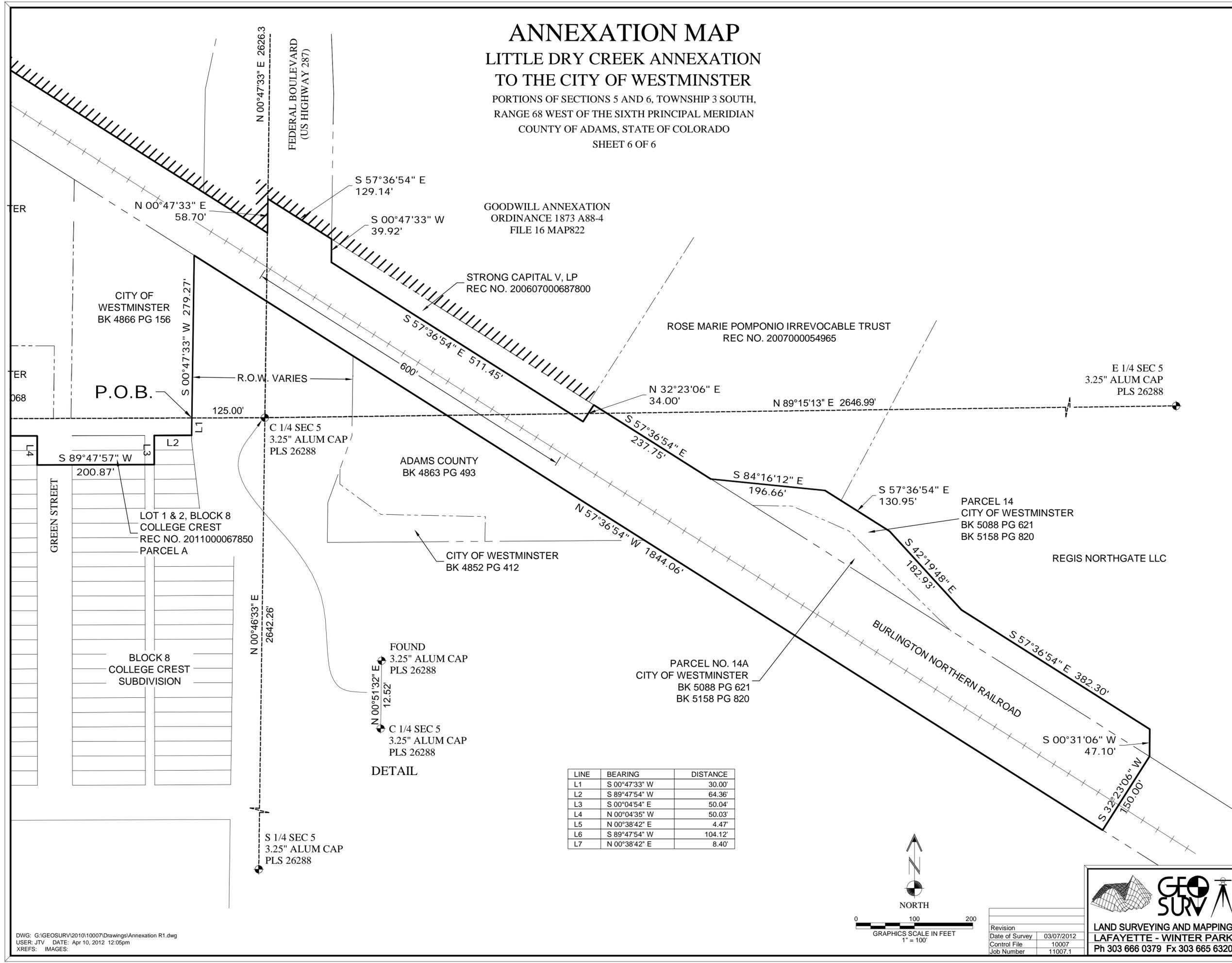
LAND SURVEYING AND MAPPING  
LAFAYETTE - WINTER PARK  
Ph 303 666 0379 Fx 303 665 6320

Revision	Date of Survey	Control File	Job Number
	03/07/2012	10007	11007.1

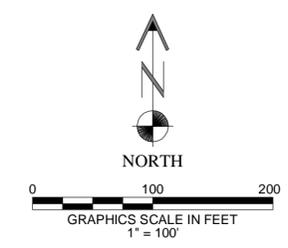
# ANNEXATION MAP

## LITTLE DRY CREEK ANNEXATION TO THE CITY OF WESTMINSTER

PORTIONS OF SECTIONS 5 AND 6, TOWNSHIP 3 SOUTH,  
RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 6 OF 6



LINE	BEARING	DISTANCE
L1	S 00°47'33" W	30.00'
L2	S 89°47'54" W	64.36'
L3	S 00°04'54" E	50.04'
L4	N 00°04'35" W	50.03'
L5	N 00°38'42" E	4.47'
L6	S 89°47'54" W	104.12'
L7	N 00°38'42" E	8.40'



Revision	
Date of Survey	03/07/2012
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**LAND SURVEYING AND MAPPING**  
LAFAYETTE - WINTER PARK  
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DWG: G:\GEO SURV\2010\10007\Drawings\Annexation R1.dwg  
USER: JTV DATE: Apr 10, 2012 12:05pm  
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RESOLUTION

RESOLUTION NO. **12**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

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**A RESOLUTION FINDING SUBSTANTIAL COMPLIANCE OF A PETITION FOR ANNEXATION FOR APPROXIMATELY 44.2 ACRES OF LAND IN THE WEST HALF OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6<sup>th</sup> P.M., ADAMS COUNTY, COLORADO, ALSO KNOWN AS THE LITTLE DRY CREEK PROPERTY.**

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition for the annexation of the land described on Exhibit A, attached hereto and incorporated herein by reference, to the City of Westminster; and

WHEREAS, the City Council has been presented evidence by the City's Staff that the petition and its accompanying maps are in substantial compliance with Subsection 31-12-107(1), C.R.S., as amended;

NOW, THEREFORE, be it resolved by City Council of the City of Westminster that:

1. City Council finds the said petition to be in substantial compliance with the requirements of Subsection 31-12-107(1), C.R.S..
2. City Council hereby establishes June 25, 2012, 7:00 P.M. at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by Subsection 31-12-108(1), C.R.S..
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with Subsection 31-12-108(2), C.R.S..

PASSED AND ADOPTED this 14th day of May, 2012.

ATTEST:

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Mayor

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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office

EXHIBIT A

DESCRIPTION OF LAND TO BE ANNEXED

A PORTION OF SECTION 5 AND A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 6; ALL IN TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING A PORTION OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY AND THE FOLLOWING PARCELS CONVEYED TO THE CITY OF WESTMINSTER AND THE WESTMINSTER HOUSING AUTHORITY:

NOTE:

1. THE BASIS OF BEARINGS IS THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 5, T3S, R68W 6TH P.M. AS MONUMENTED WITH AN ALUMINUM CAP PLS 16406 IN A MONUMENT BOX ON THE WEST AND AN ALUMINUM CAP PLS 26288 ON THE EAST WITH A BEARING OF N 89°47'54" E A DISTANCE OF 2635.75 FEET (CITY OF WESTMINSTER DATUM).

CITY OF WESTMINSTER PARCELS:

RECEPTION NUMBER 2011000067850;

BOOK 4996 PAGE 59;

RECEPTION NUMBERS 2008000000229 AND 2008000000231, LESS RECEPTION NUMBER 2011000082324;

RECEPTION NUMBER 2010000065696;

BOOK 4852 PAGE 403;

RECEPTION NUMBER 2010000031068;

BOOK 4866 PAGE 156;

BOOK 5088 PAGE 621 AND CORRECTED IN BOOK 5158 PAGE 820;

WESTMINSTER HOUSING AUTHORITY PARCELS:

RECEPTION NUMBER 20050422000421310

RECEPTION NUMBER 200411160011162080;

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 5, AN ALUMINUM CAP PLS 26288; THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 125.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, AS DESCRIBED IN BOOK 749 AT PAGE 342, AND THE POINT OF BEGINNING:

THENCE S 00°47'33" W, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 48, BLOCK 8 COLLEGE CREST SUBDIVISION, BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST 68TH AVENUE;

THENCE S 89°47'54" W, ALONG SAID NORTHERLY LINE OF LOT 48, BLOCK 8, A DISTANCE OF 64.36 FEET TO THE NORTHWEST CORNER OF SAID LOT 48, BLOCK 8;

THENCE S 00°04'54" E, ALONG THE WESTERLY LINE OF SAID LOT 48, BLOCK 8, A DISTANCE OF 50.04 FEET TO A POINT OF INTERSECTION WITH SAID WESTERLY LINE AND THE SOUTHERLY LINE OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL A, EXTENDED EASTERLY;

THENCE S 89°47'57" W, ALONG SAID SOUTHERLY LINE AND SAID SOUTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 200.87 FEET TO A POINT ON THE

EASTERLY LINE OF BLOCK 7 COLLEGE CREST SUBDIVISION, BEING THE WESTERLY RIGHT OF WAY LINE OF GREEN STREET;  
THENCE N 00°04'35" W, ALONG SAID EASTERLY LINE, A DISTANCE OF 50.03 FEET TO THE NORTHEAST CORNER OF LOT 48, BLOCK 7 COLLEGE CREST SUBDIVISION;  
THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID BLOCK 7, BLOCK 6 AND A PORTION OF BLOCK 5 COLLEGE CREST SUBDIVISION, A DISTANCE OF 745.33 FEET TO THE INTERSECTION OF SAID NORTHERLY LINE OF BLOCK 5 WITH THE EASTERLY LINE OF THE AMENDED PLAT DOOSE SUBDIVISION, RECORDED AT FILE 10 MAP 7, EXTENDED SOUTHERLY;  
THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 451.11 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL D;  
THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF SAID PARCEL D, A DISTANCE OF 160.33 FEET TO A POINT OF NON TANGENT CURVATURE ON THE TEMPORARY TURN AROUND AS SHOWN ON AMENDED PLAT DOOSE SUBDIVISION;  
THENCE ALONG A CURVE TO THE LEFT, ALONG SAID TEMPORARY TURN AROUND, A DISTANCE OF 118.38 FEET TO A POINT OF NON TANGENCY ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED AT 2011000082324, SAID CURVE HAVING A RADIUS OF 45.00 FEET, A DELTA ANGLE OF 150°43'28" AND A CHORD DISTANCE OF 87.08 FEET WHICH BEARS N 54°44'12" W;  
THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 4.47 FEET TO THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED AT 2011000082324;  
THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED AT 2011000082324, A DISTANCE OF 104.12 FEET TO THE EASTERLY LINE OF RESUBDIVISION OF LINDIE HEIGHTS SUBDIVISION, RECORDED IN PLAT BOOK 5 PAGE 31 (FILE 10 MAP 77);  
THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE AND THE EASTERLY LINE OF NASH SUBDIVISION, RECORDED AT FILE 17 MAP 341, A DISTANCE OF 233.06 FEET TO THE NORTHEAST CORNER OF SAID NASH SUBDIVISION;  
THENCE S 89°53'23" W, ALONG THE NORTHERLY LINE OF SAID NASH SUBDIVISION, A DISTANCE OF 581.98 FEET TO A POINT ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;  
THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 8.40 FEET TO THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;  
THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159 AND SAID NORTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 582.00 FEET TO A POINT ON THE WEST LINE OF SECTION 5;  
THENCE N 89°21'18" W A DISTANCE OF 40.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF LOWELL BOULEVARD BEING A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 596 A70-4;  
THENCE N 00°38'42" E, ALONG SAID ORDINANCE 596 A70-4, A DISTANCE OF 242.76 FEET TO A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 550 A68-1;

THENCE ALONG SAID ORDINANCE 550 A68-1, THE FOLLOWING FOUR (4) COURSES:

1. THENCE S 89°21'18" E A DISTANCE OF 10.00 FEET;
2. THENCE N 00°38'42" E A DISTANCE OF 326.16 FEET;
3. THENCE S 89°54'05" E A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST LINE OF SECTION 6;

4. THENCE N 89°05'58" E A DISTANCE OF 1084.14 FEET;  
THENCE S 57°36'54" E, CONTINUING ALONG SAID ORDINANCE 550 A68-1, ALONG  
ORDINANCE 710 A72-10 AND ALONG ORDINANCE 1873 A88-4, A DISTANCE OF  
1825.55 FEET;

THENCE CONTINUING ALONG ORDINANCE 1873 A88-4, THE FOLLOWING TWO (2)  
COURSES:

1. THENCE N 00°47'33" E A DISTANCE OF 58.70 FEET;
2. THENCE S 57°36'54" E A DISTANCE OF 129.14 FEET TO THE NORTHWEST  
CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 200607000687800;  
THENCE ALONG SAID RECEPTION NUMBER 200607000687800, THE FOLLOWING  
THREE (3) COURSES:

1. THENCE S 00°47'33" W A DISTANCE OF 39.92 FEET;
2. THENCE S 57°36'54" E A DISTANCE OF 511.45 FEET;
3. THENCE N 32°23'06" E A DISTANCE OF 34.00 FEET TO A POINT ON THE  
NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;  
THENCE S 57°36'54" E, ALONG SAID NORTHERLY RIGHT OF WAY LINE, A  
DISTANCE OF 237.75 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 14 AS  
DESCRIBED IN BOOK 5088 AT PAGE 621 AND CORRECTED IN BOOK 5158 AT PAGE  
820;

THENCE ALONG SAID PARCEL 14, THE FOLLOWING FIVE (5) COURSES:

1. THENCE S 84°16'12" E A DISTANCE OF 196.66 FEET;
2. THENCE S 57°36'54" E A DISTANCE OF 130.95 FEET;
3. THENCE S 42°19'48" E A DISTANCE OF 182.93 FEET;
4. THENCE S 57°36'54" E A DISTANCE OF 382.30 FEET;
5. THENCE S 00°31'06" W A DISTANCE OF 47.10 FEET TO A POINT ON THE  
NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;  
THENCE S 32°23'06" W A DISTANCE OF 150.00 FEET TO A POINT ON THE  
SOUTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;  
THENCE N 57°36'54" W ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A  
DISTANCE OF 1844.06 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL  
BOULEVARD, A.K.A. US HIGHWAY 287, PROJECT NO. F004-1(20) AS DESCRIBED IN  
BOOK 749 AT PAGE 342;  
THENCE S 00°47'33" W, ALONG SAID WESTERLY LINE, A DISTANCE OF 279.27 FEET  
TO THE POINT OF BEGINNING.

CONTAINING 45.839 ACRES MORE OR LESS.

EXCEPTING THEREFROM:

LOTS 1-9 NORTH MOUNTAIN VIEW SUBDIVISION, FILE 9 MAP 126, LESS THAT  
PORTION OF LOWELL BOULEVARD RIGHT OF WAY, RECEPTION NUMBERS  
C0747799 AND C0810426;  
CONTAINING 1.642 ACRES MORE OR LESS.

TOTAL ANNEXATION CONTAINING IN TOTAL 44.197 ACRES MORE OR LESS.



Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Resolution No. 13 re 2012 Private Activity Bond Allocation and Assignment to Westminster Housing Authority for Lowell Plaza

**Prepared By:** Signy Mikita, Community Development Program Planner

**Recommended City Council Action**

Adopt Resolution No. 13 authorizing the assignment of the City’s 2012 private activity bond allocation of \$5,056,803 to the Westminster Housing Authority for the qualified purposes set forth in the resolution, and authorize the Mayor to execute the necessary documents.

**Summary Statement**

- The City’s 2012 private activity bond (PAB) allocation is \$5,056,803. This allocation needs to be assigned or it will be kept by the State of Colorado for projects to be determined by the Colorado Department of Local Affairs (DOLA).
- Renaissance, LLLP, is proposing to develop a mixed use project in the southwest corner of 73rd Avenue and Lowell Boulevard that would include up to 49 affordable residential units and 7,700 square feet of commercial space, currently known as the Lowell Plaza redevelopment project. Renaissance is requesting the City’s full 2012 PAB allocation of \$5,056,803. Renaissance is also requesting up to an additional \$1 million of the 2011 PAB assigned to Westminster Commons be redirected to Lowell Plaza, as Westminster Commons has approximately \$2 million in excess PAB cap. The Westminster Housing Authority (WHA) can accept the assignment of the 2012 PAB and use it for Renaissance, LLLP’s project.
- No other entity has requested a portion of the City’s 2012 PAB allocation. In both 2011 and 2012, the Colorado Housing and Finance Authority (CHFA) notified the City that it did not need the City’s PAB for its affordable single-family mortgage program because it had an ample amount of PAB cap to issue.
- If the City’s PAB allocation is not used, assigned or carried forward by September 15, 2012, it will revert to the statewide balance.
- The attached Resolution has been reviewed and approved by the City Attorney’s Office and is ready for City Council’s formal action. This Resolution will assign the allocation to WHA. WHA will also need to take action to accept the assignment and carry it forward.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

## **Policy Issue**

Should the City assign the City's 2012 private activity bond allocation to the Westminster Housing Authority or allow the allocation to revert back to the statewide balance?

## **Alternative**

Take no action and allow the City's allocation to revert to the statewide balance, or make a different assignment. This option is not recommended as Renaissance, LLLP, needs the assignment in order to finance the construction of the project.

## **Background Information**

When cities intend to issue tax-exempt bonds to finance certain eligible "private activities" as allowed by the Internal Revenue Code, they can do so only to the extent they receive a portion of the federal PAB volume cap allocated to the State. Each year, the City of Westminster receives an allocation of PAB volume cap to use towards bond financing of certain eligible "private activities" as defined by federal law. The issuance of low-interest, tax-exempt bonds can save developers and the City from the higher costs of commercial financing that can provide a significant savings to the project. Qualified purposes of the bonds include:

- Qualified single-family mortgage revenue bonds, and mortgage credit certificates;
- Qualified manufacturing industrial development bonds;
- Qualified residential rental multi-family housing bonds;
- Student loans;
- Certain types of exempt facility bonds; and
- Qualified redevelopment bonds.

Under State law, any unused portion of the City's PAB allocation that has not been designated to DOLA for one of these qualified carryforward purposes is relinquished to the statewide balance. If the City (or its assignee) designates the PAB allocation for a carryforward purpose, then the City (or its assignee) may issue the bonds in 2012 or, by filing the required IRS Form no later than February 15, 2013, at any time in the three-year period ending December 15, 2015. To maintain flexibility and to consider competitive projects, it is important that the City act to either assign or carry forward this allocation.

In recent years, PAB has been allocated by the City Council for both single-family and multi-family residential purposes. During 2009-2011, the City assigned \$13 million in PAB to WHA for the rehabilitation of Westminster Commons, a 130-unit senior housing complex. City Staff has been working with Renaissance, LLLP, to redevelop the southwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard since 2011 as part of the overall South Westminster Revitalization Program. Renaissance, LLLP, has submitted plans to develop a mixed use project that would include up to 49 affordable residential units and 7,700 square feet of commercial space, currently known as the Lowell Plaza redevelopment project. Renaissance is requesting up to \$6.0 million in PAB capacity to finance the proposed project. Accordingly, Staff is recommending that the City's full 2012 PAB allocation of \$5,056,803 be assigned to the project. Any additional PAB capacity needed up to an additional \$1 million would come from any balance of existing PAB that was previously allocated to the Westminster Housing Authority should it be available. City Staff reviewed the development proposal with City Council on April 16, 2012. A formal agreement between Renaissance and Westminster Housing Authority is expected to be submitted for consideration by City Council on May 14, 2012.

Renaissance estimates that the total project cost will be \$11-12 million. The PAB would be used in conjunction with securing construction and permanent financing for the project. The residential portion of the project, which is qualified to use PAB, equates to approximately 88% of the total project costs.

The City Council assigned the 2011 PAB cap to WHA to use on the Westminster Commons project. Westminster Commons was assigned a total of \$13,012,730, but only needs \$11 million, leaving a balance of approximately \$2 million.

CHFA has not requested any PAB cap this year for either its single-family loan program or any affordable multi-family housing projects. CHFA has an ample amount of PAB cap to issue. CHFA has suggested that any unused PAB cap be transferred to DOLA for the statewide balance. Historically, CHFA has noted that if a multi-family rental project in Westminster requires PAB cap over the next year, CHFA would work to provide that cap to a developer in Westminster.

The City will be receiving notice of its 2013 PAB allocation in December 2012 and will have the opportunity to assist any new proposed projects in 2013.

The approval of the Private Activity Bond does not approve the project. City Council will be required to approve the Preliminary Development Plan and the Official Development Plan in the future.

This action supports the City Council goal of Vibrant Neighborhoods in One Livable Community by supporting the objective of providing a range of quality homes for all stages of life (type, price) throughout the City.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Resolution
- Assignment of Allocation

RESOLUTION

RESOLUTION NO. **13**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

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**A RESOLUTION CONCERNING THE ASSIGNMENT OF THE  
CITY'S PRIVATE ACTIVITY BOND ALLOCATION TO THE  
WESTMINSTER HOUSING AUTHORITY**

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Westminster, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling in the amount of \$5,056,803 (the "2012 Allocation"); and

WHEREAS, the Westminster Housing Authority (the "Authority") has requested that the City assign \$5,056,803 of its 2012 Allocation to the Authority pursuant to Section 24-32-1706 of the Allocation Act to be used to issue bonds to finance the construction of the residential rental multi-family housing project to be located in the City (the "Authority Project"); and

WHEREAS, the City desires to assign the 2012 Allocation to the Authority; and

WHEREAS, there has been presented to the City Council (the "Council") forms of an Assignment of Allocation to the Authority (the "Assignment").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO:

Section 1. The City hereby authorizes the assignment of \$5,056,803 of the 2012 Allocation to the Authority for use solely in connection with the financing of the Authority Project.

Section 2. The officers of the City shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution and the Assignment.

Section 3. The form, terms and provisions of the attached Assignment is hereby approved and the officers of the City are hereby authorized and directed to execute and deliver the Assignment, with such changes therein as are approved by the officers of the City executing the Assignment. The execution of the Assignment shall be conclusive evidence of the approval by the City of such documents in accordance with the terms hereof.

Section 4. 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 5. All action not inconsistent with the provisions of this Resolution heretofore taken by the Council and the officers of the City directed toward the assignment of the 2012 Allocation and the authorization of the Assignment hereby are ratified, approved and confirmed.

Section 6. This Resolution shall be in full force and effect upon its passage and adoption.

PASSED AND ADOPTED this 14<sup>th</sup> day of May, 2012.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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City Clerk

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City Attorney

**ASSIGNMENT OF ALLOCATION**

THIS ASSIGNMENT (the "Assignment") dated this 14th day of May, 2012, is between the City of Westminster, Colorado, a home rule municipality (the "Assignor"), and the Westminster Housing Authority, Colorado, a body corporate and politic (the "Assignee").

### **RECITALS**

A. The Assignee intends to finance a project consisting of the construction of a residential rental multi-family housing project to be located in the City of Westminster, Colorado (the "Project"). The Project will be designed to qualify as a "project" within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the "Act").

B. The Assignee intends to provide for the issuance of its Multi-family Housing Revenue Bonds in the maximum aggregate principal amount of \$5,056,803 (the "Proposed Bonds"), pursuant to the provisions of the Act for the purpose of financing the Project.

C. The Assignee, pursuant to a resolution adopted by the Board of Commissioners of the Assignee on May 14, 2012, declared its intention to take all steps necessary or advisable to effect the issuance of the Proposed Bonds for the financing of the Project.

D. The Assignee has requested that the Assignor assign to the Assignee \$5,056,803 of the Assignor's 2012 allocation under the bond ceiling for the State of Colorado and its issuing authorities (the "State Ceiling") computed under Section 146(d) of the Internal Revenue Code of 1986 (the "Code") as provided for the Assignor as a "designated local issuing authority" under part 17 of article 32 of title 24, Colorado Revised Statutes (the "Allocation Act"), for use in connection with the financing of the Project.

E. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, \$5,056,803 of the Assignor's 2012 allocation from the State Ceiling, which allocation the Assignor has committed and reserved for the Project.

### **ASSIGNMENT**

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee, the Assignor's 2012 allocation from the State Ceiling for private activity bonds in an amount equal to \$5,056,803 for the purpose of issuing the Proposed Bonds to finance the Project. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the "Statewide Balance" as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2012, or (b) Section 24-32-1706(3)(c), C.R.S., applies.
2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.
3. The Assignee hereby:
  - a. accepts the assignment of \$5,056,803 of the Assignor's allocation from the State Ceiling described above; and
  - b. agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such allocation.
4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute the debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF WESTMINSTER, COLORADO, as  
Assignor

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Mayor

[SEAL]

ATTEST:

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City Clerk

WESTMINSTER HOUSING AUTHORITY, as  
Assignee

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Chair

(SEAL)

ATTEST:

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Secretary



**Agenda Memorandum**

City Council Meeting  
May 14, 2012



**SUBJECT:** Councillor's Bill No. 10 re 2012 Community Development Block Grant Fund Appropriation

**Prepared By:** Signy Mikita, Community Development Program Planner

**Recommended City Council Action**

Pass Councillor's Bill No. 10 on first reading appropriating funds received from the United States Department of Housing and Urban Development, Community Development Block Grant program, in the amount of \$523,309.

**Summary Statement**

- City Council action is requested to pass the attached Councillor's Bill on first reading appropriating the City's 2012 Community Development Block Grant (CDBG) funds in the amount of \$523,309, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2012 CDBG allocation was designated to fund the 2012 CDBG projects, pursuant to City Council approval on November 28, 2011, including \$50,000 towards the Minor Home Repair Program, \$368,648 towards the Bradburn Street Realignment Project, and \$104,661 towards administration.
- CDBG funding has been decreasing for close to a decade, from \$696,000 in 2003 to \$506,907 in 2011. Although the 2012 CDBG budget was decreased by 11% at the federal level, the City received an increase of 3% due to an increase in poverty levels in the City of Westminster between 2000 to 2010. This is an increase of \$16,402 more than the 2011 grant.

**Expenditure Required:** \$ 523,309

**Source of Funds:** 2012 Community Development Block Grant Funds

**Policy Issue**

Should the 2012 CDBG funds in the amount of \$523,309 be appropriated to support 2012 CDBG eligible projects?

**Alternative**

Do not appropriate the 2012 CDBG funds in the amount of \$523,309. This alternative is not recommended because it will assist in funding much needed improvements in south Westminster.

**Background Information**

The 2012 CDBG budget and projects were developed from input provided by Westminster residents and City Staff. Public notices and community meetings were used to solicit community input on the development of the 2012 CDBG Action Plan. CDBG funds are used for community development projects that primarily benefit the City’s low- to moderate-income populations.

When City Council approved the 2012 projects on November 28, 2011, it was expected that the City’s grant would be between \$430,000 and \$530,000. City Council allowed for the final project budgets to be adjusted once the City was provided its official allocation. The projects approved by City Council for 2012 and corresponding allocations are listed below based on the final HUD allocation.

<b>Project</b>	<b>Estimated</b>	<b>Actual</b>
Program Administration (20% - salaries & program costs)	\$86,000-\$106,000	\$104,661
Emergency & Minor Home Repair Program	\$50,000	\$50,000
Bradburn Boulevard Realignment	\$294,000-\$374,000	\$368,648
<b>TOTAL</b>	<b>\$430,000-\$530,000</b>	<b>\$523,309</b>

**2012 CDBG Program Administration**

Federal regulations allow grantees to utilize up to 20% of the CDBG funding for administration and planning expenses. HUD requires the City to provide a number of services that require a significant amount of staff time. Those duties include submission of the five-year Consolidated Plan, preparation of the annual action and performance reports, hosting citizen participation activities and community meetings, monitoring minority business contract reports, conducting environmental reviews, compliance with the Davis-Bacon Wage Act, national objective and eligibility review, and contracting and procurement regulatory procedures. This program administration portion of the grant may also be used for consulting, planning and miscellaneous costs, such as computers used by CDBG staff.

**Minor Home Repair Program**

The City Council directed Staff to continue the newly created program to assist low-income homeowners with minor home repair needs. Often these requests are not covered by the HOME program administered by Adams County. Also, home rehabilitation projects funded by HOME require the entire home to be improved to meet building code requirements. Homeowners are often in need of a repair and cannot wait for a major rehabilitation project to be conducted by the County.

In partnership with Brothers Redevelopment, Inc. (BRI), the City began the Minor Home Repair Program in June of 2011 using \$50,000 in 2010 CDBG funds. The \$50,000 is projected to provide minor repairs to 9-10 homeowners per year. BRI is on track to complete 10 homes by June of this year. City Council has continued to approve a similar level of funding to the program for both 2011 and 2012. There is ample demand for this service by homeowners who are struggling to maintain their homes on fixed or reduced incomes. Recipients of these small grants (not to exceed \$5,000) have incomes at or below 80% of the area median income (AMI). A family of four who earns \$63,450 in 2012 is at the 80% AMI income level.

**Bradburn Boulevard Realignment****\$368,648**

The Bradburn Boulevard Realignment project will realign Bradburn Boulevard north of 72<sup>nd</sup> Avenue so that it intersects 72<sup>nd</sup> Avenue at the traffic signal at Raleigh Street. This accomplishes several goals, including increasing traffic safety by moving Bradburn Boulevard to a signalized intersection and away from a hill that has limited sight distance, facilitating better access to the new Westminster High School, and providing improved connectivity between neighborhoods north and south of 72<sup>nd</sup> Avenue. The City has allocated CDBG funds over the last several years for the purpose of implementing the realignment project. All but \$519,575 of CDBG funds allocated to the project to date (including the 2012 allocation) have been expended on preliminary design work and land acquisition. The \$519,575 balance is currently allocated towards the actual construction of the realigned Bradburn Boulevard, which originally was to be built concurrently with the reconstruction of the Little Dry Creek Bridge at 72<sup>nd</sup> Avenue and Raleigh Street. The replacement of the Little Dry Creek Bridge project will proceed in the spring of 2013 given the City's receipt of a federally funded grant requiring the project to proceed more immediately. However, the realignment and construction of Bradburn Boulevard itself will be delayed for a few years pending the identification and allocation of other City funds to supplement any CDBG allocations.

HUD regulations require that the City expend the CDBG funds in a timely manner whereby the City cannot retain more than one and a half (1.5) times its annual allocation. Given local funding for the Bradburn realignment project other than CDBG is not anticipated for several years, the current CDBG balance of \$519,575 may need to be reassigned to another eligible project so as to keep the City in compliance with HUD's expenditure requirement. As a means of more quickly spending down this balance, Staff has discussed with City Council using up to \$487,000 of this balance to be reassigned to the Lowell Plaza mixed use redevelopment project at 73<sup>rd</sup> Avenue and Lowell Boulevard. In exchange for the allocation, the developer of Lowell Plaza would provide 3,250 square feet of ground floor commercial space to the City as community space that could accommodate the community theater. These funds will remain assigned to the Bradburn Boulevard realignment project until such time as Staff is confident that the Lowell Plaza project would proceed.

This appropriation will amend CDBG Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Block Grant-CDBG	7600.40610.0025	\$0	<u>\$523,309</u>	\$523,309
Total Change to Revenues			<u>\$523,309</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
CDBG Block Grant	80576030722.80400.8888	\$135,526	<u>\$523,309</u>	\$658,835
Total Change to Expenses			<u>\$523,309</u>	

Respectfully submitted,

J. Brent McFall  
 City Manager  
 Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **10**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE INCREASING THE 2012 BUDGET OF THE COMMUNITY  
DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING A SUPPLEMENTAL  
APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$523,309. This appropriation is the amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2012.

Section 2. The \$523,309 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 G, dated May 14, 2012 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$523,309</u>
Total	<u>\$523,309</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. 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 14<sup>th</sup> day of May, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11<sup>th</sup> day of June, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**Agenda Memorandum**

City Council Meeting  
May 14, 2012



**SUBJECT:** Councillor's Bill No. 11 re 2011 Final Budget Supplemental Appropriation

**Prepared By:** Karen Barlow, Accountant

**Recommended City Council Action**

Pass Councillor's Bill No. 11 as an emergency ordinance, providing for a supplemental appropriation of funds to the 2011 budget of the General, Fleet, Sales and Use Tax, Parks Open Space and Trails, and General Capital Improvement Funds.

**Summary Statement**

- At the end of each quarter, Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the Final 2011 supplemental appropriation.
- General Fund amendments:
  - \$170,544 Permit & Conference Center Fees
- Fleet Fund amendments:
  - \$26,300 Transfers
- Sales and Use Tax Fund amendments:
  - \$3,176,512 Sales & Use Taxes
- Parks, Open Space, and Trails Fund amendments:
  - \$1,760 Transfers
  - \$6,206 Sales & Use Taxes
- General Capital Improvement Fund amendments:
  - \$1,760 Transfers
  - \$267,120 Accommodations Taxes
- This bill is proposed as an emergency ordinance due to timing requirements related to the amended May Council meeting schedule and the 2011 Comprehensive Annual Financial Report acceptance agenda planned for the June 11<sup>th</sup> City Council meeting.

**Expenditure Required:** \$3,650,202

**Source of Funds:** The funding sources for these budgetary adjustments include transfers, sales & use taxes, accommodation taxes and fees.

**Policy Issue**

Does City Council support amending the appropriations for the 2011 budget of the General, Fleet, Sales and Use Tax, Parks Open Space and Trails, and General Capital Improvement Funds as outlined?

**Alternative**

The alternative would be not to amend the 2011 budget appropriations for the General, Fleet, Sales and Use Tax, Parks Open Space and Trails, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget or planned projects in anticipation of appropriation of these additional funds.

**Background Information**

The attached Councillor's Bill is a routine action addressing the need to adjust revenue and expenditure appropriations as a result of activities or events that were not anticipated during the normal budget process.

As an important element of economic development, the City sometimes utilizes Economic Development Agreements (EDAs) and Intergovernmental Agreements (IGAs) to attract and retain high quality development to provide employment opportunities and increased revenue for City service provisions. A portion of the new revenue generated from projects is utilized to fund these agreements. When issued, payments related to these agreements are recorded as a reduction to the appropriate revenue account, thereby reflecting only the net new revenue received on the City's financial statements. The Government Accounting Standards Board (GASB) requires the new revenues to be fully recorded as received, and the applicable rebate of revenues to be recorded as an expense. This housekeeping appropriation makes the appropriate changes to the City's budget to reflect this requirement as follows: \$3,176,512 in the Sales and Use Tax Fund to record the IGA with the City of Thornton for the North I-25 corridor and various other EDAs involving sales and use taxes; \$267,120 in the General Capital Improvement Fund (GCIF) to record various EDAs involving the Accommodations Tax; \$170,544 in the General Fund to record various EDAs involving building permit and conference center fees; and, \$6,206 in the Parks, Open Space, and Trails Fund (POST) for various EDAs involving sales and use taxes; for a total increase of \$3,620,382 to City revenues and expenses.

An annual physical inventory is performed by the Fleet Division. The inventory conducted for year-end resulted in an inventory adjustment in the accounting system due to a decrease in inventory levels. This budget amendment of \$26,300 will transfer savings realized in the General Services Department's Building Operations and Maintenance Division budget of the General Fund to the Fleet Fund to cover this additional inventory expense.

At the June 25, 2007, Council Meeting, Council approved a resolution permitting reimbursement to the City of soft and hard costs incurred for capital project and land purchases out of the bond proceeds from the POST Revenue Bonds issued in December 2007. Staff originally requested appropriation of \$2,600,000 for Open Space Land Purchases and an inter-fund transfer to the GCIF for the following projects: Big Dry Creek Park \$700,000, Sports Center \$500,000, City Park Aquatics Enhancements \$350,000, and City Centre Park \$125,000. As of December 31, 2011, it was determined that unspent proceeds in the amount of \$1,760 for City Centre Park in the GCIF were not needed to fund GCIF projects and could be transferred to fund the associated POST 2007D project in the POST fund.

These appropriations will amend General Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Bldg Permit Com ADCO	1000.40185.0010	\$300,000	\$26,346	\$326,346
Bldg Permit Com JEFFCO	1000.40185.0020	225,000	7,183	232,183
Bldg Permit Res JEFFCO	1000.40190.0020	200,000	58,853	258,853
Gen Fee Conf Ctr-EDA/IGA	1000.41310.0075	0	<u>78,162</u>	78,162
Total Change to Revenues			<u>\$170,544</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contract Svcs-EDA/IGA	10010900.67800.0075	\$0	\$170,544	\$170,544
Transfers Fleet	10010900.79800.0300	100,000	26,300	126,300
Electricity & Gas	10012390.67200.0000	294,340	<u>(26,300)</u>	268,040
Total Change to Expenses			<u>\$170,544</u>	

These appropriations will amend Fleet Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF General Fund	3000.45000.0100	\$100,000	<u>\$26,300</u>	\$126,300
Total Change to Revenues			<u>\$26,300</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Salaries Overtime	30012460.60400.0000	\$36,000	\$(1,260)	\$34,740
Equipment Rental	30012460.66000.0000	61,997	(5,200)	56,797
Parts	30012460.73600.0000	258,683	<u>32,760</u>	291,443
Total Change to Expenses			<u>\$26,300</u>	

These appropriations will amend Sales and Use Tax Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
ST Returns-EDA/IGA	5300.40070.0075	\$0	\$2,999,070	\$2,999,070
UT Returns-EDA/IGA	5300.40095.0075	0	28,394	28,394
UT Building-EDA/IGA	5300.40100.0075	0	<u>149,048</u>	149,048
Total Change to Revenues			<u>\$3,176,512</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contract Svcs-EDA/IGA	53010900.67800.0075	\$0	<u>\$3,176,512</u>	\$3,176,512
Total Change to Expenses			<u>\$3,176,512</u>	

These appropriations will amend Parks, Open Space, and Trails Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
UT Building-EDA/IGA	5400.40100.0075	\$0	\$6,206	\$6,206
TRF Gen Capital Improve	5400.45000.0750	405,000	<u>1,760</u>	406,760
Total Change to Revenues			<u>\$7,966</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contract Svcs-EDA/IGA	54010900.67800.0075	\$0	\$6,206	\$6,206
2007D Post Bond	80754010798.80400.8888	0	<u>1,760</u>	1,760
Total Change to Expenses			<u>\$7,966</u>	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover CIP	7500.40025.0000	\$0	\$1,760	\$1,760
Accom Tax-EDA/IGA	7501.40055.0075	0	<u>267,120</u>	267,120
Total Change to Revenues			<u>\$268,880</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contract Svcs-EDA/IGA	75010900.67800.0075	\$0	\$267,120	\$267,120
Transfers Open Space	75010900.79800.0540	405,000	<u>1,760</u>	406,760
Total Change to Expenses			<u>\$268,880</u>	

These adjustments will bring the City's accounting records up-to-date to reflect the various detailed transactions.

The proposed council action supports the City Council's strategic goals of Financially Sustainable City Government Providing Exceptional Services; Safe and Secure Community; Strong, Balanced Local Economy; Vibrant Neighborhoods in One Livable Community; and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **11**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL FOR AN EMERGENCY ORDINANCE  
AMENDING THE 2011 BUDGETS OF THE GENERAL, FLEET, SALES AND USE TAX,  
PARKS OPEN SPACE AND TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS  
AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2011 ESTIMATED  
REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the General, Fleet, Sales and Use Tax, Parks Open Space and Trails, and General Capital Improvement Funds initially appropriated by Ordinance No. 3550 is hereby increased in aggregate by \$3,650,202. This appropriation is due to the receipt of funds from transfers and sales & use taxes.

Section 2. The \$3,650,202 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item # 10 H dated May 14, 2012 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$170,544
Fleet Fund	26,300
Sales and Use Tax Fund	3,176,512
Parks, Open Space, and Trails Fund	7,966
General Capital Improvement Fund	<u>268,880</u>
Total	<u>\$3,650,202</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. As a result of the intervening Memorial Day holiday and amended sequence of City Council meetings during the month of May, it is hereby declared that an emergency exists and that this ordinance for yearend amendments to the 2011 budget is immediately necessary to preserve the financial well-being of the City through timely acceptance of the 2011 Comprehensive Annual Financial Report at the June 11, 2012, City Council meeting. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on May 14, 2012, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 14<sup>th</sup> day of May, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**Agenda Memorandum**

City Council Meeting  
May 14, 2012



**SUBJECT:** Councillor's Bill No. 12 re 2012 1<sup>st</sup> Quarter Budget Supplemental Appropriation

**Prepared By:** Karen Barlow, Accountant

**Recommended City Council Action**

Pass Councillor's Bill No. 12 on first reading, providing for a supplemental appropriation of funds to the 2012 budget of the General, Water, and General Capital Improvement Funds.

**Summary Statement**

- At the end of each quarter, Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- General Fund amendments:
  - \$846 Reimbursements
  - \$1,791 Grants
- Water Fund amendments:
  - \$39,896 Rebates
- General Capital Improvement Fund amendments:
  - \$30,076 Cash-in-Lieu

**Expenditure Required:** \$72,609

**Source of Funds:** The funding sources for these budgetary adjustments include reimbursements, grants, rebates, and cash-in-lieu.

**Policy Issue**

Does City Council support amending the appropriations for the 2012 budget of the General, Water, and General Capital Improvement Funds as outlined?

**Alternative**

The alternative would be not to amend the 2012 budget appropriations for the General, Water, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget or planned projects in anticipation of appropriation of these additional funds.

**Background Information**

The attached Councillor’s Bill is a routine action addressing the need to adjust revenue and expenditure appropriations as a result of activities or events that were not anticipated during the normal budget process.

The Police Department received \$1,791 from the State of Colorado Department of Transportation for their participation in the 2012 High Visibility Impaired Driving Enforcement (HVIDE) campaign. The grant reimburses overtime incurred by enforcement officers while working the Super Bowl enforcement campaign. The funds are being appropriated to the department’s overtime account.

The Police Department received \$171 from the Jefferson County Emergency Communications Authority Board for the Association of Public Safety Communications Officials (APCO) International CPR updates for the Communications Center that were purchased in February 2012. The funds are being appropriated to the department’s training and reference materials account.

City Council approved the Semper Wastewater Treatment Facility (SWTF) High Service Pump Station (HSPS) Variable Frequency Drive Addition project in 2010 to improve the electrical and pump system at the City’s primary potable water pumping station. The electrical improvements were submitted to Xcel Energy due to their ability to manage electrical demands and qualified for a rebate of \$39,896 from Xcel. These funds are being appropriated to the capital project account SWTF HSPS Variable Frequency Drive Addition and will be used for additional utility system electrical improvements.

The City Attorney’s Office received \$675 from applicants to pay for Ken Fellman’s fees for legal services related to the review of telecommunication site lease applications. These funds are being appropriated to the department’s professional services account.

The Community Development Department received \$30,076 from Trimble Navigation Limited for cash in lieu of public art at their new office building to be constructed in The Westmoor Technology Park. These funds are being appropriated to the capital project account New Art Participation.

These appropriations will amend General Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	1000.40620.0000	\$0	\$1,791	\$1,791
Cell Tower App Review Fee	1000.41455.0000	0	675	675
Reimbursements	1000.43080.0000	55,000	171	55,171
Total Change to Revenues			<u>\$2,637</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Prof Services	10003120.65100.0000	\$10,978	\$675	\$11,653
Train & Ref Mtrls-Comm Section	10020300.71400.0345	325	171	496
Salaries OT-Traffic	10020500.60400.0348	55,000	<u>1,791</u>	56,791
Total Change to Expenses			<u>\$2,637</u>	

These appropriations will amend Water Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
General	2000.43060.0000	\$300,000	<u>\$39,896</u>	\$339,896
Total Change to Revenues			<u>\$39,896</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
SWTF HSPS Var Freq Dr Add	81120035867.80400.8888	\$(4,000)	<u>\$39,896</u>	\$35,896
Total Change to Expenses			<u>\$39,896</u>	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash in lieu-Fut Cap Proj	7500.40210.0751	\$40,000	<u>\$30,076</u>	\$70,076
Total Change to Revenues			<u>\$30,076</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
New Art Participation	80575030426.80400.8888	\$41,870	\$30,076	\$71,946
Total Change to Expenses			<u>\$30,076</u>	

These adjustments will bring the City’s accounting records up-to-date to reflect the various detailed transactions.

The proposed action supports the City Council’s strategic goals of Financially Sustainable City Government Providing Exceptional Services; Safe and Secure Community; Strong, Balanced Local Economy; Vibrant Neighborhoods in One Livable Community; and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **12**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN ORDINANCE AMENDING THE 2012 BUDGETS OF THE GENERAL, WATER, AND  
GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL  
APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General, Water, and General Capital Improvement Funds initially appropriated by Ordinance No. 3550 is hereby increased in aggregate by \$72,609. This appropriation is due to the receipt of funds from reimbursements, grants, rebates, and cash-in-lieu.

Section 2. The \$72,609 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item # 10 I dated May 14, 2012 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$2,637
Water Fund	39,896
General Capital Improvement Fund	<u>30,076</u>
Total	<u>\$72,609</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. 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 14<sup>th</sup> day of May, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 11<sup>th</sup> day of June, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**Agenda Memorandum**

City Council Meeting  
May 14, 2012



**SUBJECT:** Councillor's Bill No. 13 re Expanding the Time for Making a Jury Demand in Municipal Court

**Prepared By:** Jeffrey Betz, Assistant City Attorney  
Carol Barnhardt, Court Administrator

**Recommended City Council Action**

Pass Councillor's Bill No. 13 to expand the time for making a jury demand in Municipal Court from 20 days to 21 days, by adopting the recent changes to Rule 223 of the Colorado Municipal Court Rules of Procedure concerning jury demands in municipal courts.

**Summary Statement**

- The Colorado Supreme Court Session 2011 adopted a number of time limit changes to the State's rules of criminal procedures and the municipal court rules. The changes concerning the time in which to request a jury demand in municipal court can be found in the amendments to Rule 223 of the Colorado Municipal Court Rules of Procedure (C.M.C.R.) that will take effect July 1, 2012.
- As a result, it is necessary to conform the City's Municipal Code to the recent change in municipal court rules.
- The change consists of adopting by reference those amendments to Rule 223 C.M.C.R. that govern the time period a defendant charged with a criminal violation of a municipal code or ordinance provision can demand a trial by jury.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City conform its Municipal Code to recent Supreme Court rule changes regarding the time limit to make a jury demand effective July 1, 2012?

**Alternative**

The City could elect to not adopt the proposed ordinance, which would make the Municipal Code inconsistent with state law concerning the time by which a defendant may make a demand for a trial by jury. This is not recommended since our Municipal Court follows state law and/or municipal court rules when it comes to basic rules of criminal procedure in our Municipal Court.

**Background Information**

In 2011, the Colorado Supreme Court adopted a number of rule changes making a number of amendments to the State's criminal procedures rules. The changes that govern the time period for making a jury demand in municipal courts are found in Rule 223 C.M.C.R. take effect July 1, 2012. The only change requiring attention by the City is to adopt by reference the amendments to Rule 223 C.M.C.R. that govern the time period a defendant charged with a criminal violation of a municipal code or ordinance provision can demand a trial by jury. The proposed change has been reviewed by Presiding Judge Stipech and Associate Judge Basso, as well as our Court Administrator, Carol Barnhardt, who all agree that this is an appropriate and necessary amendment to the City Code.

This action supports the City Council goal of Safe and Secure Community.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **13**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE  
CONCERNING TIME FOR JURY DEMAND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-22-10, W.M.C., is hereby AMENDED to read as follows:

**1-22-10: JURY DEMAND:** Any defendant charged with a criminal violation of a code or ordinance provision shall have the right to a trial by jury if, within the time required by Rule 223 of the Colorado Municipal Court Rules of Procedure, as may be amended from time to time, ~~twenty (20) days after arraignment or entry of a plea,~~ such defendant files with the court a written jury demand and tenders to the court a jury fee of \$25, unless the fee is waived by the court because of the indigence of a defendant.

Section 2. To coincide with state law This ordinance shall take effect upon its passage after second reading and taking effect July 1, 2012.

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 14<sup>th</sup> day of May, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney's Office



## Agenda Item 10 K

### Agenda Memorandum

City Council Meeting  
May 14, 2012



**SUBJECT:** Councillor's Bill No. 14 re Supplement to the Synchroness, Inc. Business Assistance Agreement

**Prepared By:** Ryan Johnson, Economic Development Specialist

### Recommended City Council Action

Pass Councillor's Bill No. 14 on first reading authorizing the City Manager to execute and implement the 2012 Supplemental Business Assistance Agreement for Synchroness, Inc.

### Summary Statement

- Synchroness, Inc., is an existing business located in the Walnut Creek Business Center that is expanding.
- The company is purchasing 6,000 square feet to add on to the 11,300 square feet they already own.
- Employment is expected to grow from 56 to 100 by 2017, with average salaries of \$85,000.
- Assistance is based on the City's desire to fill existing office space and to encourage growth of existing high tech employers.
- This 2012 Supplemental Business Assistance Agreement (BAP) totals \$14,500, which includes \$1,450 in permit fee rebates, \$1,350 in construction use tax rebates and \$11,700 in equipment use/sales tax rebates.
- Should Synchroness, Inc., relocate outside of Westminster within 5 years of this Amended Business Assistance Package, assistance would have to be paid back to the City by the company.
- This agreement will supplement the BAP approved by Council in April 2004 and supplemented in June 2007.

**Expenditure Required:** Approximately \$14,500 (Sales & Use Tax and Fee Rebates)

**Source of Funds:** The 2012 Supplemental Business Assistance Package with Synchroness, Inc., will be funded through revenue received from permit fees, construction use tax, and sales and use tax on furniture, fixtures, and equipment at move-in.

**Policy Issue**

Should the City provide supplemental assistance to Synchroness, Inc., based on the retention and expansion of the Company in the City and the resulting addition of 44 high paying technical jobs over the next three years?

**Alternatives**

Do Nothing: One alternative to offering the Supplemental 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 value of retaining quality businesses would not be supported.

Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended supplemental assistance is considered modest and represents 1.51% of their total proposed investment.

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.

**Background Information**

Synchroness, Inc., is a product development company that has been headquartered in Westminster since 1998. They work with businesses worldwide to assist in developing products ranging from aerospace design, medical device design, aircraft modification, sports car design, electronic set ups and even baby changing stations.

At the current time, Synchroness, Inc., has 56 employees and projects that they will have up to 100 employees within 3 years. Synchroness, Inc., has continued to experience positive sales and growth and has a need to acquire 6,000 s.f. of additional office space. This expansion will increase their headquarters from 11,300 s.f. to 17,300 s.f. This acquisition would be a purchase of condominium suites contiguous to their existing space.

Staff proposes that the existing 2004 BAP and the 2007 Supplemental Agreement be additionally supplemented to assist with this expansion. The 2007 Supplemental Agreement is currently set to expire in June of 2013 or whenever the use tax rebates have been exhausted. Based on recent use tax receipts, it is projected that the approved use tax rebates will last through the second quarter of 2012. The proposed 2012 supplement will begin in the third quarter of 2012 and continue for the next five years. The purpose of the supplement to the BAP is to facilitate the 6,000 s.f. expansion occurring now.

Synchroness, Inc., was recognized in 2011 by the State of Colorado Office of Economic Development and International Trade as a 2011 Colorado Company to Watch. This recognition is awarded to a small percentage of over 500 companies that get nominated yearly. This award is in recognition of the growth potential that Synchroness, Inc., has demonstrated as a business that is headquartered in Colorado with fewer than 100 employees.

**Proposed Assistance**

To accommodate the new expansion and company growth, Staff recommends a Supplemental Assistance Agreement to provide the following assistance:

	<b><u>Approximate Value</u></b>
<u>Building Permit Fee Rebate</u> 50% of the building related fees (excluding water and sewer tap fees) will be rebated (\$2,900 x 50% = \$1,450)	\$1,450
<u>Construction Use Tax Rebate</u> 50% of the Use Tax on construction materials for this project will beRebated (Estimated Use Tax \$2,700 x 50% = \$1,350), excludes the City's .25% Open Space Tax and .6% Public Safety Tax.	\$1,350
<u>Use Tax on Furniture and Fixtures Rebate</u> Over the next 60 months (five years) starting in July 2012, the City will rebate 50% of the General Sales & Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased for Synchroness, Inc.'s Westminster facility (\$30,000 x 3% = \$900 x 50% = \$450 upon move-in, plus \$150,000 x 3% = \$4,500 per year use tax x 50% x 5 years = \$11,250.)	\$11,700
<b>Total Proposed Assistance Package</b>	<b>\$14,500</b>

The rebate will only be paid from tax dollars generated by Synchroness's construction and equipping of its new office space.

This assistance package is based upon the City's goals to retain existing high technology businesses, as well as to fill existing space. Synchroness, Inc., is an exciting, growing business. It is the type of business the City desires to retain and grow.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

- Ordinance with Exhibit A Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **14**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

---

**A BILL  
FOR AN ORDINANCE AUTHORIZING THE 2012 SUPPLEMENT TO THE BUSINESS  
ASSISTANCE PACKAGE WITH SYNCRONESS, INC. TO AID IN THEIR EXPANSION IN  
WALNUT CREEK BUSINESS CENTER**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services 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 high quality development to locate in the City; and

WHEREAS, Syncroness, Inc., plans to acquire an additional 6,000 square feet in Walnut Creek Business Center in Westminster, and

WHEREAS, Council approved an assistance package for Syncroness, Inc., in April 2004 and June 2007; and

WHEREAS, the proposed 2012 Supplemental Business Agreement to that Assistance Agreement between the City and Syncroness, Inc., 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 the 2012 Supplemental Business Assistance Agreement with Syncroness, Inc., 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 14th day of May 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11<sup>th</sup> day of June, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office

Exhibit A

**2012 SUPPLEMENTAL BUSINESS ASSISTANCE AGREEMENT FOR  
SYNCRONESS, INC.**

THIS 2012 SUPPLEMENTAL AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the CITY OF WESTMINSTER (the "City"), and Synchroness, Inc. (the "Company")

WHEREAS, the City wishes to provide additional assistance to Synchroness, Inc. to aid in the retention and expansion of this company in the City; and

WHEREAS, Synchroness, Inc. plans to purchase and furnish an additional 6,000 square feet of office space in Walnut Creek Business Center, thus providing primary job retention and growth within the City (the "Expansion"); and

WHEREAS, the City and Synchroness, Inc. are parties to a previous Business Assistance Package agreement dated April 26, 2004, which was supplemented in June 11, 2007, which they now wish to supplement with this agreement in consideration of the Expansion; and

WHEREAS, City Council finds the execution of this 2012 Supplemental Agreement will serve to provide 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 Synchroness, Inc. agree to modify the April 26, 2004 Business Assistance Agreement and the June 11, 2007 Supplemental Agreement to add the following sections:

1. Building Permit Fee Rebates For 2012 Expansion. The City shall rebate to the company 50% of the building permit fees that are otherwise required under W.M.C. Section 11-10-3 (E) for the build out of the company's new office space in Walnut Creek Business Center. This rebate excludes water and sewer tap fees, collected from Synchroness, Inc. in connection with the Expansion. The permit fee rebate for the Expansion will be approximately \$1,450.

2. 2012 Use Tax Rebate- Construction. The City shall rebate to the company 50% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on the construction materials, collected from Synchroness, Inc. related to the Expansion that are otherwise required under W.M.C. sections 4-2-9 and 4-2-3. The rebate will be approximately \$1,350.

3. Supplemental Sales and Use Tax Rebate- Furniture and Fixtures. For the period beginning July 1, 2012 and for sixty (60) months thereafter the City will rebate 50% 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. This rebate will be approximately \$11,700.

4. Payments of Rebates. The rebates will be paid to Synchroness, Inc. by the City in quarterly installments from revenue actually collected and received by the City from Synchroness, Inc. in connection with the Expansion. Payments of each quarterly installment shall be made within thirty (30) days of the calendar quarter end and will be submitted electronically. All payments by the City shall be made electronically to the Company's designated financial institution or other account.

5. Entire Agreement. This Supplemental Agreement along with the 2004 Business Assistance Package and the June 11, 2007 Supplemental Business Assistance Package Agreement shall constitute the entire agreement between the City and Synchroness, Inc.

6. Termination. This 2012 Supplemental Agreement shall terminate and become void and of no force or effect upon the City if Synchroness, Inc. has not moved into the Expansion by March 1, 2013 or should Synchroness, Inc. not comply with the City regulations or code.

7. Business Termination. In the event Synchroness, Inc. ceases business operations within the City within five (5) years after the commencement date of this agreement, then Synchroness, Inc. shall pay to the City the total amount of fees and taxes that were due and payable by Synchroness, Inc. to the City for the Expansion but were rebated by the City, pursuant to this Supplemental Agreement.

8. Subordination. The City's obligations pursuant to this Supplemental 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 Supplemental 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 Supplemental 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 Supplemental 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 X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

10. Governing Law: Venue. This Supplemental Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Supplemental 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 Supplemental Agreement shall be in the District Court for Jefferson County, Colorado.

11. Intent of Parties. It is the intent of the parties that this 2012 Supplemental Agreement, and the June 11, 2007 Supplemental Business Assistance Package Agreement and the 2004 Business Assistance Agreement be independently construed and enforced according to their respective provisions. It is the further intent of the parties that this 2012 Supplemental Agreement shall not be deemed or construed as replacing the June 11, 2007 Agreement or the 2004 Business Assistance Agreement.

SYNCRONESS, INC.  
A Colorado corporation

CITY OF WESTMINSTER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Linda Yeager  
City Clerk

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
City Attorney's Office

Adopted by Ordinance No. \_\_\_\_

# **AGENDA**

## **WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING**

**MONDAY, May 14, 2012**

**AT 7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (December 19, 2011)
- 3. Purpose of Special WHA Meeting is to**
  - A. Authorize a development agreement with Renaissance I, LLLP for the Lowell Plaza Project
  - B. Adopt Resolution No. 46 accepting the assignment of \$5,056,803 of Private Activity Bond Allocation from the City of Westminster
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY  
MONDAY, DECEMBER 19, 2011 AT 7:10 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 Carla Koeltzow, Acting Secretary.

MINUTES OF PRECEDING MEETING

Board Member Kaiser moved, seconded by Board Member Major, to approve the minutes of the meeting of August 22, 2011, as written. The motion carried by a 5:1 vote with Board Member Atchison abstaining, stating he was not a member of the Authority at that time.

RESOLUTION NO. 44 RE THE 2012 WHA AND WESTMINSTER COMMONS BUDGETS

Board Member Atchison moved, seconded by Board Member Kaiser, to adopt Resolution No. 44 approving the 2012 Westminster Housing Authority Budget and the 2012 Westminster Commons Senior Housing Project Budget. On roll call vote the motion passed unanimously.

RESOLUTION NO. 45 RE THE SWAG LEASE FOR THE RODEO MARKET AND VSC PROPERTIES

Vice Chairperson Winter moved, seconded by Board Member Major, to adopt Resolution No. 45 authorizing the Executive Director to execute a one-year lease for the South Westminister Arts Group for the use of properties located at 3915 West 73<sup>rd</sup> Avenue, 3630 W. 73<sup>rd</sup> Avenue, and 7287 Lowell Boulevard. On roll call vote the motion passed unanimously.

ADJOURNMENT:

There being no further business to conduct, it was moved by Briggs, seconded by Atchison, to adjourn. The motion carried and the meeting adjourned at 7:12 p.m.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Acting Secretary

# WHA Agenda Item 3 A

## Agenda Memorandum

Westminster Housing Authority Meeting  
May 14, 2012



**SUBJECT:** Development Agreement with Renaissance I, LLLP re Lowell Plaza Project

**Prepared By:** Tony Chacon, Senior Projects Coordinator

### Recommended Board Action

Authorize the Executive Director to enter into a development agreement with Renaissance I, LLLP, in substantially the same form as the attached agreement.

### Summary Statement

- Renaissance I, LLLP, (Developer) is proposing to construct a 3-story mixed use project along the west side of Lowell Boulevard immediately south of 73<sup>rd</sup> Avenue that would include about 7,700 square foot of commercial space at ground level and about 48 apartments above.
- All of the apartments will be affordable to households earning 60% or less of Area Median Income (AMI). At least half the units will rent at or below 50% AMI and 5% will be restricted at 30% AMI.
- About 3,250 square feet of the commercial space would be made available for use as a community theater and the balance would be leased to small businesses.
- The estimated cost of the project is \$11,233,709 of which about \$1.5 million is the estimated cost for land acquisition, environmental remediation, and demolition and removal of existing structures.
- The Developer has secured verbal development funding commitments totaling \$8,896,209 from sources other than the City and the Westminster Housing Authority (WHA).
- The Developer is requesting up to \$8,437,500 in funding and borrowing capacity from the City of Westminster, which will give consideration to the request as part of the development agreement on May 14, 2012.
- The agreement calls for the WHA to contribute its properties at 7287 Lowell Boulevard and 3630 West 73rd Avenue to the project at no cost to the developer, which will facilitate the construction of about 48 affordable housing units.
- The WHA would retain a minor ownership in the project for a period of 15 years.
- The Developer anticipates proceeding with construction on the project in October/November 2012.
- The WHA action tonight is to authorize the land contribution noted.

**Expenditure Required:** \$356,000 (estimated value of properties)

**Source of Funds:** Contribution of property

**Policy Issue**

Should the Westminster Housing Authority contribute its land with no financial compensation to assist a private developer in constructing about 48 affordable housing units in the South Westminster revitalization area?

**Alternative**

The WHA could choose not to provide the requested assistance or seek other users for the properties. Staff recommends that these alternatives not be pursued. Without the land contribution, the project will require an additional infusion of money from the City, which does not have funding available. A failure to close such a funding gap would result in the project losing over \$3.0 million in equity funds to be provided by organizations other than the WHA or the City.

**Background Information**

A prospective development team (Developer) comprised of Everwood Company, a for-profit developer out of Minneapolis, Minnesota, and Community Resources and Housing Development Corporation (CRHDC), a non-profit affordable housing provider based in Westminster, Colorado, is proposing to construct a vertical mixed use project along the west side of Lowell Boulevard, immediately south of 73<sup>rd</sup> Avenue. The project proposes the demolition of four one-story structures and one two-story structure built in the 1950's, each of which is in severe decline and disrepair. The locally landmarked (historic) two-story Penguin Building would remain in place with the new development occurring on both the north and south sides of the building. The development would comprise about 7,700 square feet of ground floor commercial space along with about 45 apartments on two levels above the commercial space and along 73<sup>rd</sup> Avenue and Lowell Boulevard. In addition to the commercial space, there are three proposed live/work units proposed fronting Lowell Boulevard on the ground floor. The new buildings would be three levels in height. The new buildings would be built to the edge of the public sidewalk along Lowell Boulevard. The plan further contemplates converting the existing parking lot in front of the Penguin Building into a public plaza. Parking for both the new development and the Penguin Building would be provided on the back side of the development accessed by the city-owned alley.

The redevelopment project incorporates six parcels of land encompassing 48,000 square feet or 1.1 acres of land. Five buildings built in the 1950's currently occupy the properties and are in severe decline and disrepair. The WHA owns two of the six parcels, comprising approximately 14,375 square feet (0.33 acres) needed for the project. Three of the parcels are owned by private parties and an existing parking lot is owned by the City. The cost to acquire and prepare the land for development has a collective cost of about \$1.3 to \$1.5 million. This high cost is based upon the properties having buildings that have value. The land contribution from the WHA is intended to assist in offsetting this excessive land cost. The Developer has already secured the three privately owned parcels under contract.

Residential Component

The Developer is proposing to construct about 48 apartment units all of which will be made available to households earning 60% or less of Area Median Income (AMI) as established by HUD for the Denver Metropolitan Area (DMA). At 60% of AMI, rents would range from about \$710 for a one-bedroom unit to \$1,153 for a three bedroom unit. Pursuant to Colorado Division of Housing requirements, at least 50 % of the units must be made available to households earning less than 50% AMI and 5% of the total units (3 units based on a total of 48) be restricted to households earning 30% or less of AMI.

Following are the estimated 2012 rents for the project based on HUD allowances.

<b>Type of Unit</b>	<b>Estimated Rents @ 60% AMI</b>	<b>Estimate Rents @50% AMI</b>	<b>Estimated Rents @30% AMI</b>
1 Bedroom:	\$ 710	\$677	\$379
2 Bedroom:	\$ 880	\$817	\$461
3 Bedroom:	\$1,153	\$947	--

As an affordable housing project, HUD also stipulates the maximum household incomes that are eligible to rent any of the units. The following chart shows the current maximum income ranges for households by household size.

<b>Family Size</b>	<b>30% AMI</b>	<b>50% AMI</b>	<b>60% AMI</b>
1	\$15,950	\$26,600	\$31,900
2	\$18,200	\$30,400	\$36,400
3	\$20,500	\$34,200	\$41,000
4	\$22,750	\$37,950	\$45,500

Commercial Component

The Developer is proposing to construct about 7,700 square feet of commercial space at ground level. It is estimated that the base rent to prospective tenants would initially be in the range of \$10 per square foot compared to rents of new commercial space in newer parts of Westminster of \$20 to \$30 per square foot. In addition to the base rent, tenants would pay a Common Area Maintenance (CAM) fee of about \$4 per square foot per year to cover costs associated with the maintenance of the commercial space, property taxes, parking lot and landscaping. These lower rent rates would be more attractive to smaller, independently owned businesses.

Project Cost and Funding

The Developer has estimated the cost to construct the project at \$11,233,709 of which about \$8.8 million has been secured from sources other than the City and the WHA. Based on rent revenue projections, the Developer will be able to carry a permanent mortgage of about \$3.0 million, which represents about 27% of the project cost. As an affordable housing project, the Developer also expects to generate about \$2.4 million in equity funding through the sale of federal Low Income Housing Tax Credits. In addition, the Developer has secured a total of \$1,000,000 in federal HOME fund commitments from Adams County and the Colorado Division of Housing. CRHDC has also committed \$2.0 million in federal funds currently in their possession and is working to obtain a \$500,000 grant from NeighborWorks, a national affordable housing funding provider.

The City of Westminster is being asked to contribute up to \$8,437,500 in funding and borrowing capacity. If the City approves the agreement, the City would provide cash contributions of \$487,500 in Community Development Block Grant (CDBG) funds and \$200,000 in HOME funds, both of which are federal grant proceeds that must be used to benefit low to moderate income areas or provide affordable housing. The agreement further requires the City to incur the cost of undergrounding the overhead utilities in the City-owned alley (estimated at \$100,000) using the dedicated City and Xcel undergrounding funds. The City would also provide a U.S. Department of Housing and Urban Development (HUD) Section 108 loan of \$1.5 million. Other City considerations include the waiver or rebate of development-related fees and use tax, estimated at \$150,000 and an assignment of up to \$6.0 million of available Private Activity Bond (PAB) capacity. The City would also contribute a parcel of land now utilized as a parking lot towards the project at no cost. The Westminster City Council is due to give consideration to the development agreement on May 14, 2012.

Two provisions in the development agreement affect the WHA. First, the WHA would contribute the properties at 7287 Lowell Boulevard and 3630 West 73rd Avenue (collectively known as the Vehicle Service Center) to the project. It is estimated that the WHA properties have a collective value of about \$356,000 based on the buildings on the property having some reuse value. There is question as to the real value of these buildings given their age, condition and possible environmental concerns. Land value only is estimated at about \$50,000 to \$75,000. It is proposed that the WHA would sell the property to the City of Westminster at an appraised value up to \$356,000. The WHA would then donate the proceeds to the Westminster Economic Development Authority (WEDA) to assist in reducing the South Westminster Urban Renewal Area debt. Accordingly, WHA would not retain any of the sale proceeds, thereby essentially donating the land towards the project at no cost.

Per the agreement, the WHA would also agree to take a minority ownership of less than 1% in the project for a period of 15 years upon request by the Developer. This arrangement will make the project exempt from property taxes, which in turn creates the cash flow necessary to make debt payments on the HUD Section 108 loan. The project will not produce sufficient revenues to pay off the HUD Section 108 loan without the tax exemption.

Approval of the redevelopment agreement supports the mission of the Westminster Housing Authority to provide and support affordable housing within the City of Westminster, and further promotes the Strategic Plan Goals and Objectives of the City of Westminster including:

Goal: Strong, Balanced Local Economy

- Maintaining and expanding a healthy retail base, increasing sales tax receipts;
- Develop business-oriented mixed use development;
- Retain and expand current businesses; and,
- Develop a reputation as a great place for small and/or local businesses.

Goal: Vibrant Neighborhoods In One Livable Community

- Maintain and improve neighborhood infrastructure and housing;
- Develop Westminster as a cultural art community; and,
- Have a range of quality homes for all stages of life (type, price) throughout the City.

The project will further contribute towards the continued reinvestment made by the WHA in the south Westminster area, particularly those new housing investments made along Lowell Boulevard and Meade Street. The project will provide one more visual feature that will lead to further interest in investment and redevelopment activity in the area.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment - Draft Development Agreement with Exhibits A-E

**DRAFT**

**A DEVELOPMENT AGREEMENT**

**Between**

**The City of Westminster and the Westminster Housing Authority**

**And**

**RENAISSANCE I, LLLP**

Related to the

**The RENAISSANCE ON LOWELL  
REDEVELOPMENT PROJECT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WESTMINSTER (City), the WESTMINSTER HOUSING AUTHORITY (WHA) and RENAISSANCE I, LLP (Developer).

WHEREAS, the City has indicated its desire to redevelop the Redevelopment Parcel, as defined below, in the immediate vicinity of Lowell Boulevard and 73<sup>rd</sup> Avenue, including property in the 7200 block of Lowell Boulevard, consisting of the following addresses:

- 7235 Lowell Boulevard;
- 7247 Lowell Boulevard;
- 7253 Lowell Boulevard;
- 7277 Lowell Boulevard;
- 7287 Lowell Boulevard;
- 3630 W. 73<sup>rd</sup> Avenue;

and,

WHEREAS, the Developer has submitted a proposal to redevelop the Redevelopment Parcel in accordance with the South Westminster Urban Renewal Plan; and,

WHEREAS, the Developer has obtained options to purchase those properties in the Redevelopment Parcel not owned by WHA or the City; and,

WHEREAS, the Developer is required to prepare a Preliminary Development Plan (PDP) and Official Development Plan (ODP) for City staff review and City Council approval in accordance with standard development review procedures established by the Westminster City Council; and,

WHEREAS, the City, the WHA and the Developer wish to set forth the terms upon which the Developer shall proceed in preparing the required plan submittals and establishing the Parties' respective financial obligations.

NOW, THEREFORE, in consideration of the above premises, covenants, promises, and agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS: The following words shall have the following meanings in this Agreement unless the context clearly indicates otherwise;

ACQUISITION PARCELS means the properties or parcels of land required to complete the Project, more specifically identified as:

- 7235 Lowell Boulevard;
- 7247 Lowell Boulevard;
- 7253 Lowell Boulevard;

- 7277 Lowell Boulevard;
- 7287 Lowell Boulevard; and,
- 3630 W. 73<sup>rd</sup> Avenue.

DEFAULT means those occurrences or events specified and defined in Section 9 of this Agreement.

ENVIRONMENTAL LAWS means (i) The Clean Air Act, as amended, 42 U.S.C. Sections 7401-7642; (ii) the Clean Water Act, as amended, 33 U.S.C. Sections 1251-1387; (iii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Sections 6901-6991K; (iv) the Toxic Substance Control Act, as amended, 15 U.S.C. Sections 2601-2671; (v) the Safe Drinking Water Control Act, as amended, 42 U.S.C. Sections 300f-300i-26; (vi) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended; (vii) the Occupational Safety and Health Act of 1970, as amended, 19 U.S.C. Section 651, et. seq.; (viii) the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended; and (ix) any other federal, state, or local law, regulation, rule, or ordinance pertaining to public health or employee health and safety.

FEES shall mean: the required development and building-related fees and taxes applicable to the Project, including but not limited to:

- a. Planning and Engineering Processing Fees, as applicable and more specifically detailed in Exhibit B;
- b. Building Permit Fees, as applicable and reflected in Exhibit C;
- c. Construction-related Use Tax;
- d. School Land Dedication Fee;
- e. Park Improvement Fee; and,
- f. Park Land Dedication Fee

FORCE MAJEURE means damages or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather condition such as, by way of illustration and not limitation, snow storms which prevent outdoor work from being accomplished, severe rain storms, severe hail storms, or below freezing temperatures of abnormal degree or for an abnormal duration, or tornadoes, earthquakes, floods, or other events or conditions beyond the reasonable control of the party affected, which shall not include the party's inability to pay its debts, which in fact prevents the party from discharging its respective obligations hereunder.

HAZARDOUS MATERIALS means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable Environmental Laws, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended.

OFF SITE IMPROVEMENTS shall mean any improvements not located within the ownership boundaries of the Redevelopment Parcel as described in Exhibit A, excepting those improvements necessary to provide access and utility service to the Redevelopment Parcel which shall be construed to be part of the Redevelopment Parcel improvements.

PARTIES shall refer to the collective entities of the City, WHA, and the Developer;

PROJECT shall mean the redevelopment of the Redevelopment Parcel as described in Exhibit A, pursuant to a City-approved Official Development Plan, and including the historic Penguin Building located at 7267 Lowell Blvd.;

REDEVELOPMENT PARCEL shall mean the parcel as legally described and shown in Exhibit A attached hereto.

SECTION 108 LOAN shall refer to a source of funds made available to the City of Westminster by the U.S. Department of Housing and Urban Development, with which to provide loans to eligible development projects;

2. LAND ACQUISITION, SITE PREPARATION AND OWNERSHIP

2.1 The Developer shall assign its rights, under any existing option agreements, to purchase the Acquisition Parcels upon the City's receipt of Section 108 loan proceeds from HUD.

2.2 The City shall be responsible for closing on the purchase of the Acquisition Parcels, providing the cost to purchase said properties shall not exceed One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00). The City shall be responsible for conducting any property appraisals, if necessary, to acquire said properties.

2.3 The City shall close on the Acquisition Parcels no later than August 15, 2012. The City agrees that upon acquisition, it shall not convey the Acquisition Parcels to any person other than the Developer prior to the termination of this Agreement.

2.4 The City and Developer shall enter into a purchase agreement, substantially in the form attached hereto as Exhibit D, for the sale of the Acquisition Parcels at 7235, 7247, 7253, 7277, and 7287 Lowell Boulevard and 3630 W. 73<sup>rd</sup> Avenue, and, pursuant thereto, convey said property to the Developer upon receiving written confirmation of final construction financing for the Project and upon receiving final development and building permit approvals for the Project, but no sooner than 30 days prior to commencement of construction. The Developer shall provide written documentation to the City providing evidence of funding and approvals.

2.5 The City shall retain a lien on the Redevelopment Parcel, subordinate to construction and permanent financing, until such time as the HUD Section 108 Loan, as provided for in Subsection 5.1, is fully repaid.

2.6 The City shall convey the City-owned property at 7235 Lowell Boulevard to Developer at no cost, no later than August 31, 2012, upon the Developer meeting all of the conditions as required in Section 2.4 above.

2.7 The City shall deliver the all parcels, pursuant to Subsections 2.4 and 2.6 above, in a development-ready state and cleared of all hazardous material liability in accordance with the State of Colorado Department of Health and Environment Voluntary Cleanup Program.

a. Prior to the purchase of the Acquisition Parcels, the City shall conduct an environmental assessment of the soil, water and buildings and, as needed, coordinate with appropriate departments and divisions of the State of Colorado relative to any potential remediation activity and shall pay any associated costs. The City agrees to provide the Developer and the Developer agrees to provide the City, a copy of any environmental reports provided by the State to them, no later than 30 days prior to the conveyance of the parcels described in Subsections 2.4 and 2.6 above. Any environmental report commissioned by the Parties or either of them shall be addressed jointly to the City and the Developer and shall be provided by the environmental consultant jointly to each of the City and the Developer. The City agrees to cooperate with the Developer to cause the environmental consultant to provide reliance letters to such persons as may be reasonably requested by Developer in connection with its development of the Project.

b. In the event the cost of remediation exceeds the difference between the \$1,500,000 set aside for acquisition and the actual cost of acquisition, and/or any on-going annual costs related to remediation or monitoring are required, the Developer and City shall reevaluate the financial viability of the Project and mutually determine whether or not to proceed prior to closing on the properties to be purchased.

c. In the event contamination is identified, the City agrees to pursue a grant from the Colorado Brownfield's Revolving Loan Fund to be applied towards environmental remediation and demolition of the Redevelopment Parcel as applicable; provided, that if funds received from the Colorado Brownfield's Revolving Loan Fund are made available for improvements to the Redevelopment Parcel, the Developer shall have no responsibility for the repayment of any funds derived from the Colorado Brownfield's Revolving Loan Fund. The funds derived from the Colorado Brownfield's Revolving Loan Fund shall be used by the City solely for eligible environmental remediation and demolition of existing structures on the Redevelopment Parcel.

d. In the event it is determined that remediation is required, the City will work with the State of Colorado Department of Health and Environment to attain a letter of "No Further Action" prior to conveying the parcels described in Subsections 2.4 and 2.6 above to the Developer.

2.8 The City shall be responsible for, and incur the cost of, relocating businesses and residents in accordance with Federal Uniform Relocation Act.

2.9 The Westminster Housing Authority will be admitted as a special limited partner in the Project, as provided for in Section 12.21, below, for a period of 15 years from the date of receiving a Certificate of Occupancy (CO) from the City or until such time as the Section 108 Loan is fully repaid to the United States Department of Housing and Urban Development.

2.10 The Developer shall enter into a 15-year lease for 3,250 square feet of unfinished ground floor commercial space, in a form attached hereto as Exhibit E, to the City or organization designated by the City for the purpose of providing space for a community theater. The City shall pre-pay the rental pursuant to the lease for such space in the amount of Four Hundred Eighty-Seven Thousand Five Hundred Dollars (\$487,500). Upon expiration of the lease, the Developer shall convey ownership of the space to the City at no additional cost.

### 3. PREPARATION OF DEVELOPMENT PLANS AND LAND USE CONSIDERATIONS

3.1 The Developer agrees to proceed with, and incur associated costs relative to, the preparation of plans necessary to fulfill the submittal requirements of the City of Westminster relative to submittal of a Comprehensive Land Use Plan Amendment, a Preliminary Development Plan, an Official Development Plan, and Subdivision Plat.

3.2 The Developer shall adhere to a plan processing and review timeline as determined and agreed to by the City's Planning Division. The City agrees to work with the Developer to ensure the project is completed in the most efficient time frame.

3.3 In the event the Developer terminates the project as a result of its own choice or action, the City and the WHA shall not be required to reimburse the Developer for any of Developer's costs incurred up to such date.

3.4 In the event the Developer is unable to meet the City's development requirements and, thus, is unable to receive an official development plan approval for the Project, this agreement is terminated without further action required of any of the parties.

3.5 The Developer shall cooperate with the City in the incorporation of the public plaza, described in 4.1, below, into Developer's plans for the Redevelopment Parcel, and shall cooperate with the adjacent owner of the Penguin Building in those respects in which Developer's plans affect that property.

#### 4. PUBLIC IMPROVEMENTS

4.1 The City shall assume responsibility for securing the land and constructing a public plaza in front of the "Penguin" building at 7267 Lowell Boulevard to be designed by and paid for by the City with its own funds (and without regard to any use of Section 108 Loan, as defined in Section 5.1 below, or other restrictions under Section 5 with respect to Section 108 Loan funds). All agreements, including without limitation any development agreement, architectural agreement, construction agreement, use agreement, plans and specifications, relating to the design and construction of the public plaza in front of the Penguin building shall be subject to approval of the Developer and the concurrence of the City.

4.2 Except as provided for in Section 6.5, the Developer shall be responsible for off site improvements (including, but not limited to, streetscape, water/sanitary/drainage, and undergrounding of overhead utilities) immediately adjacent to the development site and any utility connections to the nearest utility facility which are determined to be necessary and mutually acceptable to the Developer and the City.

#### 5. FINANCING

5.1 The City shall commit One Million Five Hundred Thousand and 00/100 (\$1,500,000.00) of its Section 108 Loan Fund to the Project (Section 108 Loan), as follows:

a. The City shall apply the Section 108 Loan funds to land acquisition, site preparation, demolition, environmental remediation and project soft costs (i.e. planning, engineering, assessments, etc.); provided, however, that any draw under this Section 5.1.a. shall not be authorized unless accompanied by the written approval of the Developer. After the City conveys the Redevelopment Parcel to the Developer pursuant to Section 2, any amounts of the Section 108 Loan that have not been spent for Project purposes may be drawn by the Developer and used for the Project for Section 108 "eligible activities".

b. The Developer shall accept an assignment of the obligations of the Section 108 Loan from the City at such time as the Redevelopment Parcel is conveyed to the Developer.

c. The loan amount shall be incorporated as part of the Project cost and shall be repaid fully, including principal and interest, by the Developer in accordance with terms and conditions to be stipulated in the loan agreement documents. The loan shall be made available to the Developer at 3% interest, on a non-amortizing basis, and payable solely from available cash flow from the Project, and shall be due in full on or before December 31, 2027. The promissory note shall provide that interest shall be required to be payable monthly.

5.2 The City shall apply for a contribution of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) of HOME funds from Adams County to the Project, in the form of a grant, as match towards a similar grant from the State of Colorado Division of Housing. The Developer shall be responsible for securing such HOME funding from the State of Colorado Division of Housing.

5.3 The City shall provide an assignment of its then current Private Activity Bond (PAB) allocation of up to Six Million and 00/100 Dollars (\$6,000,000.00) if available upon request of the Developer. The City agrees that it shall impose no initial or annual issuer fees as consideration for issuance of said bonds.

5.4 The City will assume responsibility for ensuring improvements are completed to the property at 7267 Lowell Boulevard, known as the Penguin Building, in a manner supportive of and complimentary to the Project. Any exterior improvements to the Penguin Building shall require the written consent of the Developer unless otherwise consented to by the Developer as part of the ODP. Any costs of improvements to the Penguin Building shall be the sole responsibility of the City and shall not be payable from the Section 108 Loan funds. The Parties acknowledge that the ODP may contain certain reasonable restrictions on the use of the plaza in front of the Penguin Building to insure compatibility between the use of the plaza and the uses and operating characteristics of the Project. Additionally, the following provisions shall apply:

a. The City shall incur the cost, as solely determined by the City, of constructing a public plaza in front of the Penguin Building at 7267 Lowell Boulevard.

b. The City shall assist the owner of 7267 Lowell Boulevard to make improvements to the exterior façade of the building by no later than 30 days prior to completion of the Project. Any costs of improvements to 7267 Lowell Boulevard shall be the sole responsibility of the City and shall not be payable from the Section 108 Loan;

c. Prior to the delivery of the Acquisition Parcels pursuant to 2.7, above, the Developer and the City shall formalize an agreement relative to the future maintenance of the plaza.

5.5 The City shall waive or otherwise reimburse the Developer for payment of development-related fees and use tax, excepting that portion of the sales and use tax dedicated to the City's Open Space Program and Public Safety, as follows:

- a. Planning and engineering processing fees;
- b. Building permit fees related to demolition and construction activity;
- c. School Land Dedication Fee;
- d. Use tax as it relates to the cost of construction, including tenant finish and initial installation of business fixtures; or,
- e. Park Development Fee.

5.6 The City shall waive the Park Land Dedication (PLD) requirement given the Project's proximity to other existing and planned public parks and open space.

5.7 The City shall allocate the value of any available water and sewer tap credits from the Redevelopment Parcel towards the Project which shall be used in conjunction with the approved development plans.

5.8 The City shall contribute an additional \$200,000 allocation of its HOME funds towards construction related expenses on the Project incurred by the Developer.

## 6. UTILITIES

6.1 The City shall provide full water and sewer service to the Project.

6.2 The Developer shall be responsible for incurring the costs to upgrade water and sewer service deemed by the City as absolutely necessary to service the Project adequately.

a. The City will work with the Developer to develop options and solutions that minimize the cost of utility upgrades.

b. The Developer shall be eligible for “cost recovery” for any capacity and delivery enhancements providing a benefit to a broader range of properties and the community in general.

6.3 The City agrees to waive the requirement for the Project to participate in the City’s Growth Management Residential Competition to receive a tap allocation, and shall ensure that taps necessary to complete the Project are made available when needed, so long as all other obligations of the Developer pursuant to this agreement and future agreements with the City and WHA are met.

6.4 The Developer agrees to pay the full cost for City water and sewer taps based on a Rate Schedule in effect at the time the first building permit is requested.

a. The City shall defer payment for water and sewer taps under City control until such time as the Developer applies for a Certificate of Occupancy from the City.

b. The Developer shall be required to pay the Metro Denver Wastewater portion of the sewer tap fee at the time of building permit issuance.

6.5 If funds are available in the City utility undergrounding fund and/or the Xcel Energy 1% set-aside fund, the City shall be responsible for the undergrounding of all overhead utilities located on and adjacent to the Redevelopment Parcel.

## 7. REPRESENTATIONS AND WARRANTIES.

### 7.1 REPRESENTATIONS AND WARRANTIES BY THE DEVELOPER.

The Developer represents and warrants to the City that:

a. The Developer is duly organized, validly existing and in good standing and authorized to operate in the State of Colorado; has the legal capacity to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto; the execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement and such documents and that such performance and observance are valid and binding upon the Developer. The execution and delivery of this Agreement, the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulations applicable to the Developer or the Developer’s governing documents; (ii) result in the breach of any of the terms or provisions of, or constitute a default under, any agreement or other instrument to which the Developer is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the Developer.

b. The Developer knows of no action, suit, proceeding or governmental investigation that is threatened or pending contesting the powers of the City, WHA, the Developer or any of its principals with respect to the Project or this Agreement that has not been disclosed in this Agreement.

c. The Developer has the necessary financial and legal ability to perform this Agreement and to construct the Improvements.

### 7.2 REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents and warrants to Developer that:

a. The City is a home-rule governmental subdivision of the State of Colorado and has the power to enter into and has taken all actions required to date to authorize this Agreement and to carry out its obligations hereunder.

b. The activities of the City in the Project area are undertaken for the purpose of eliminating and preventing the development or spread of blight, revitalizing the physical and economic structure of the community, and providing housing to an underserved population.

c. The City knows of no litigation, threatened litigation, proceeding, initiative, referendum or investigation or threat or any of the same contesting the powers of the City or its officials with respect to the Project or this Agreement that has not been disclosed in this Agreement.

d. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the City or to the City's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligations of the City.

e. The City and WHA are political subdivisions of the State of Colorado and are exempt from the payment of property taxes levied pursuant to §3, Article X of the Colorado Constitution.

## 8. INSURANCE; INDEMNIFICATION

### 8.1 INSURANCE.

a. At all times while the Developer is engaged in the Project, the Developer will provide the City with proof of payment of premiums and certificates of insurance showing that the Developer is carrying, or is causing its prime contractor to carry, the builder's risk, comprehensive general liability and worker's compensation insurance policies in amounts and coverages reasonably satisfactory to the City. Such proof of payment and certificates of insurance shall be provided to Tony Chacon, or his successor in the City's Department of Community Development. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least 30 days advance written notice to the City in the event of cancellation or change in coverage and shall name the City as an additional insured specifying that the insurance shall be treated as primary insurance.

b. At all times while the City is engaged in the Project, the City will provide the Developer with proof of payment of premiums and certificates of insurance showing that the City is carrying, or is causing its prime contractor to carry, the builder's risk, comprehensive general liability and worker's compensation insurance policies in amounts and coverages reasonably satisfactory to the Developer. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least 30 days advance written notice to the Developer in the event of cancellation or change in coverage and shall name the Developer as an additional insured specifying that the insurance shall be treated as primary insurance.

8.2 INDEMNIFICATION. The Developer shall defend, indemnify, assume all responsibility for and hold the City and its elected officials, consultants, officers and employees and the WHA harmless (including, without limitation, attorneys' fees and costs) from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the Developer's activities, and not caused by the City's or WHA's activities, under this Agreement or while making tests or surveys on the Project area, whether such activities are undertaken by the Developer or

anyone directly or indirectly employed by or under contract to the Developer and whether such damage shall accrue or be discovered before or after completion or termination of this Agreement.

## 9. EVENTS OF DEFAULT AND REMEDIES

9.1 DEFAULT BY THE DEVELOPER. Default by the Developer shall mean one or more of the following events:

a. The Developer abandons construction of the Project. Abandonment of construction occurs if construction activities on a Site cease for a period of thirty (30) consecutive days at any time after issuance of building permits for that Site; provided however, that a temporary cessation of construction activities resulting from Force Majeure shall not be deemed to be abandonment for the duration of such Force Majeure.

b. The Developer fails to pay promptly any uncontested cost or expense required to be paid by the Developer under the terms of this Agreement. Developer may contest any cost or expense so long as adequate security is provided to the City.

c. The Developer transfers or assigns its interest in this Agreement or in any Site or the Improvements, or any interest in the Developer is transferred or assigned, without the written consent of the City.

d. The Developer commences a voluntary bankruptcy case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or is the subject of any involuntary case of such nature not dismissed within ninety (90) days after such is filed, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) of the Developer or of any substantial part of its property, or the Developer makes any general assignment for the benefit of creditors or generally fails to pay its debts as they become due or takes any action in furtherance of such action.

e. The Developer fails to substantially observe or perform any covenant, obligation or agreement of the Developer as provided in this Agreement.

9.2 DEFAULT BY THE CITY. Default by the City means the failure of the City to substantially observe or perform any covenant, obligation or agreement required under this Agreement.

9.3 NOTICE OF DEFAULT. No Default under paragraph 9.1 or paragraph 9.2 shall constitute an event of Default until actual notice of such Default shall be given by the non-defaulting party in accordance with paragraph 13.9 to the defaulting party and the defaulting party shall have had thirty (30) days after the receipt of such notice to correct said Default or cause said Default to be corrected, and shall not have corrected said Default or caused said Default to be corrected within the applicable period. If said Default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted within the applicable period and diligently pursued until the Default is corrected and is completed no later than ninety (90) days after receipt of notice. No party, nor any successor in interest or permitted assigns, shall be considered in breach of, or in default of, its obligations under this Agreement in the event of any delay caused by Force Majeure.

## 9.4 REMEDIES IN THE EVENT OF DEFAULT

a. REMEDIES OF THE CITY. In the event of default by the Developer, the City may do any or all of the following:

(1) Seek any available remedy at law, including damages, but under no circumstances shall the Developer be liable for consequential or punitive damages.

(2) Seek enforcement of any of the Developer's obligations hereunder by any equitable remedy, including specific performance or injunction.

(3) Suspend performance hereunder.

(4) Elect to terminate this Agreement.

(5) Exercise the Option to Purchase provided for in section 10, below.

b. REMEDIES OF DEVELOPER. In the event of default by the City, the Developer may do any or all of the following:

(1) Seek any available remedy at law, but under no circumstances shall City be liable for consequential or punitive damages.

(2) Seek enforcement of any of the City's obligations hereunder by any equitable remedy, including specific performance or injunction.

(3) Suspend performance or elect to terminate this Agreement.

10. SUBORDINATION. The City agrees to subordinate its interests in this Agreement to any lender of the Developer for purposes of development of the Project upon request of the Developer. In addition to any other remedies provided in paragraph 9.4, upon Default by the Developer which is not cured under paragraph 9.4, the City shall have an option to repurchase any Sites that have not been completed and any improvements constructed or under construction and to receive an assignment of any leases for any of the improvements or Sites, subject to any encumbrances incurred by the Developer and approved by the City. In the event the City exercises its option to purchase a Site and any improvements or leases by written notice in accordance with paragraph 11, Developer shall deliver to the City within fifteen days of receipt of the notice a deed reconveying the Redevelopment Parcel(s) to the City and all necessary documents assigning Developer's interest in any leases or contracts for the Improvements.

11. RESALE OF REDEVELOPMENT PARCELS. After conveyance of the Redevelopment Parcel(s) and assignment of any leases to the City pursuant to paragraph 10, the City will use its best efforts to resell the Redevelopment Parcel in accordance with applicable law to a qualified and responsible party or parties who will assume the obligation of completing the Project in accordance with the approved development plans. The proceeds of such resale shall be applied first to repay any outstanding private-lending encumbrances secured by the Redevelopment Parcel, then to repay the City for all amounts expended pursuant to this Agreement, and then to pay costs of the City incurred by the Default, by the exercise of the option to purchase pursuant to paragraph 10, and by the resale of the Redevelopment Parcel. Any sums remaining following reimbursement as noted shall then be paid to the Developer.

12. RESTRICTIONS ON ASSIGNMENT AND TRANSFER.

12.1 NO SALE OR TRANSFER WITHOUT CONSENT. Prior to the issuance of certificates of occupancy, the Developer shall not close on any total or partial sale or transfer in any form of the Agreement, the Redevelopment Parcels, or any part thereof or any interest therein, without the prior written approval of the City, which approval shall not be reasonably withheld. Notwithstanding any other provision of this Agreement, the City acknowledges that the Developer may assign its interests in this Agreement to an affiliated entity for the purpose of constructing and operating the Project. The City will

consent to such assignment upon submission by Developer of all documents related to the assignment and approval by the City indicating that all conditions of this Agreement have been satisfied.

12.2 CONDITIONS TO THE CITY'S CONSENT. The City may require as a condition to its approval any or all of the following:

a. Any transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary to fulfill the obligations of the Developer under the Agreement.

b. Any transferee, by instrument satisfactory to the City, shall assume all of the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject or such different obligations approved by the City. The fact that any such transferee or successor has not assumed such obligations or so agreed shall not relieve such transferee or successor from such obligations, conditions or restrictions, or limit any rights or remedies of the City with respect to the Redevelopment Parcels. No transfer of ownership of all or any part of the Redevelopment Parcel or any interest therein, however occurring and whether voluntary or involuntary, shall limit City's rights, remedies or controls provided in this Agreement.

c. The Developer shall submit to the City for review all instruments and other legal documents involved in effecting transfer, and, if approved by the City, its approval shall be indicated to the Developer in writing.

d. The Developer and its transferee shall comply with such other reasonable conditions as the City may reasonably require to safeguard the purposes of the revitalization efforts and the South Westminster Urban Renewal Plan.

12.3 NO TRANSFER WITHOUT CONSENT. In the absence of specific written agreement by the City, no transfer of the Redevelopment Parcel prior to the completion of the Project shall relieve the Developer or any party bound by the Agreement or otherwise, from any of its obligations.

### 13. MISCELLANEOUS

13.1 CONTROLLING LAW AND VENUE. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Venue for any action arising under this Agreement or any amendment or renewal thereof shall be in the District Court of Adams County, Colorado.

13.2 ATTORNEYS' FEES. In any proceeding brought to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to an award of reasonable attorneys' fees, actual court costs and other expenses incurred.

13.3 TITLES OF SECTIONS. Any titles of the several part sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

13.4 CONFLICTS OF INTEREST. None of the following shall have any interest, direct or indirect, in this Agreement: any member of the governing body of the City; an employee of the City who exercises responsibility concerning the project or any agreement implementing the South Westminster Urban Renewal Plan, or an individual or firm providing consulting or legal services in connection with the project. None of the above persons or entities shall participate in any decision relating to this Agreement that effects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

13.5 TIME OF THE ESSENCE. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

13.6 SEVERABILITY. If any court determines that any provision hereof is unenforceable, it is the intention of the Parties that this Agreement shall not thereby be terminated but that the court reform this Agreement to the extent required to make it valid and enforceable, to the extent such reformation may be accomplished without materially and adversely affecting intended benefits and burdens of the Parties under this Agreement.

13.7 GOOD FAITH OF THE PARTIES; CONSENT OR APPROVAL. In performance of this Agreement or in considering requests for an extension of time, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Agreement. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. The Developer agrees and acknowledges that in each instance in this Agreement or elsewhere where City is required or has the right to review or give its approval or consent, no such review, approval or consent shall imply or be deemed to constitute an opinion by the City, nor impose upon the City, any responsibility for the design or construction of building elements, including but not limited to the structural integrity or life/safety requirement or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the environmental laws. All reviews, approval, and consent by City under the terms of this Agreement are for the sole and exclusive benefit of the Developer and no other person or party shall have the right to rely thereon.

13.8 SURVIVAL. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement. The representations, warranties and indemnities made by the parties to this Agreement and the covenants and agreements to be performed or complied with by the respective parties under this Agreement before Closing shall be deemed to be continuing and shall survive the Closing. Nothing in this Section shall affect the obligations and indemnities of the parties with respect to covenants and agreements contained in this Agreement that are permitted or are required to be performed in whole or in part after the Closing.

13.9 NOTICES. A notice, demand, or other communication under this Agreement by any party to the other shall be in writing and shall be sufficiently given, delivered in person, by prepaid overnight express mail or express courier, electronic mail or if it is dispatched in writing by registered or certified mail, postage prepaid, return receipt requested:

City of Westminster, WHA and WEDA  
4800 West 92nd Avenue  
Westminster, Colorado 80031  
Attention: J. Brent McFall, City Manager  
Telephone: (303) 658-2400  
Fax: (303) 706-3921  
Email: [bmcfall@cityofwestminster.us](mailto:bmcfall@cityofwestminster.us)

Renaissance I, LLP  
3550 Labore Road, Suite 10  
Saint Paul, Minnesota 55110  
Attention: Ryan Sailer  
Telephone: (612) 508-4627  
Email: [ryan@everwoodcompany.com](mailto:ryan@everwoodcompany.com)

With a copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota, 55402  
Attention: Jon L. Peterson, Esq.  
Telephone: (612) 604-6736  
Email: [jpeterson@winthrop.com](mailto:jpeterson@winthrop.com)

13.10 COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one in the same instrument.

13.11 INCORPORATION OF EXHIBITS. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

13.12 NO THIRD PARTY BENEFICIARIES. No third party beneficiary rights are intended or created in favor of any person not a party to this Agreement.

13.13 ENTIRE AGREEMENT; AMENDMENTS. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and replaces in their entirety any agreements, understandings, warranties, or representations between the parties. This Agreement shall not be amended except by written instrument. Each amendment, which is in writing and signed and delivered by the parties, shall be effective to amend this Agreement.

13.14 FURTHER ASSURANCES. The parties agree to execute such documents and take such action as shall be reasonably requested by the other party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the provisions and intent of this Agreement.

13.15 ESTOPPEL CERTIFICATE. The parties agree to execute such documents as the other party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the respective obligations of the parties and such other matters as the requesting party shall reasonably request.

13.16 WAIVER. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement shall constitute a waiver of such breach or of any other covenant, agreement, term or condition. Any party by giving notice to the other parties may, but shall not be required to, waive any of its rights or any conditions to any of its obligations under this Agreement. No waiver shall effect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

13.17 THE CITY AND WHA NOT A PARTNER; DEVELOPER NOT THE AGENT OF THE CITY. Except as described in Section 12.21, below, the City and WHA shall not be deemed or constituted a partner or joint venturer of the Developer, the Developer shall not be the agent of the City or the WHA and the City and the WHA shall not be responsible for any debt or liability of the Developer.

13.18 NONLIABILITY OF CITY OFFICIALS AND EMPLOYEES. No councilor, commissioner, Board member, official, employee, agent or consultant of the City shall be personally liable to the Developer in the event of default, or breach or event of a default by the City or for any amount that may become due to the Developer under the terms of this Agreement.

13.19 CITY COOPERATION. The City will cooperate with the Developer to obtain the City's approval of the ODP, any amendment to the ODP, and the City's issuance of any permits,

licenses, or commitments necessary for the Project; provided, however, that approval or issuance of such permits, licenses or commitments lies in the sole and exclusive discretion of the City.

13.20 RECORDING. This Agreement shall be recorded in the public records of the Clerk and Recorder of Adams County, Colorado.

13.21 SPECIAL LIMITED PARTNER. The Westminster Housing Authority will participate in the Project's ownership as a special limited partner but will be subject to no additional conditions for its participation other than those set forth in this Agreement.

IN WITNESS THEREOF, the undersigned have executed this agreement as of the date first above written.

CITY OF WESTMINSTER

RENAISSANCE I, LLLP

\_\_\_\_\_  
J. Brent McFall  
City Manager

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
City Clerk

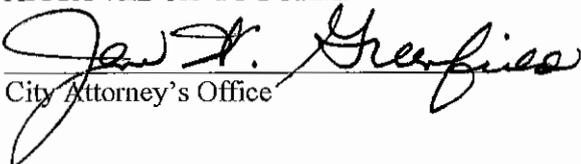
WESTMINSTER HOUSING AUTHORITY

\_\_\_\_\_  
J. Brent McFall  
Executive Director

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney's Office



**EXHIBIT "B"**

**PLANNING & ENGINEERING FEE SCHEDULE**

<b>Planning</b>	<b>Processing Fees</b>
PDP or Amendment – Concept Review	\$350 (x) sq. rt. of acres (\$350 min.)
PDP or Amendment – Technical Review	\$350 (x) sq. rt. of acres (\$350 min.)
ODP or Amendment – Concept Review	\$400 (x) sq. rt. of acres (\$400 min.)
ODP or Amendment – Technical Review	\$400 (x) sq. rt. of acres (\$400 min.)
<b>Combined PDP/ODP (Including Amendments)</b>	
Concept Review	\$550 (x) sq. rt. of acres (\$550 min.)
Technical Review	\$550 (x) sq. rt. of acres (\$550 min.)
1 <sup>st</sup> Concept Development Proposal Sign Posting Fee	\$50
Rezoning, Establishment of Zoning	\$500
Annexation	\$300
Comprehensive Land Use Plan (CLUP) Amendment	\$500
Administrative Amendment (PDP/ODP) that does <u>not</u> require mylars	\$250
Public Hearing	\$350
ODP Waiver	\$250
Special or Conditional Use Permit	\$450
Temporary Use Permit	\$100
Zoning Verification Letter	\$50
Affidavit of Correction	\$100
Recording Fees – Oversize and mylars	\$50 + \$20/pg
Letter and legal size (to be E-filed)	\$10/pg
Comprehensive Land Use Plan	\$45
Comprehensive Land Use Plan Disk	\$5
Plan Submittal Document	\$20
Northeast Comprehensive Development Plan	\$5
Copies of Plans on File	\$5/pg
<b>Engineering</b>	<b>Processing Fees</b>
Construction Drawing Review *	\$750 + \$75 (x) the sq. rt. of acres (\$1,125 max.)
Minor Replat (Lot Line Adjustment)	\$300
Vacations (R.O.W. and Easements)	\$300
Land Disturbance Permit	\$250
R.O.W./Street Permit	\$50 (+) Trench Cut Impact Fee
Flood Plain Information (Non-Residents Only)	\$20
Blueline Copies	\$5/Sheet

\* *Construction Drawing Review includes: Final Plat, Address Plat, Construction Drawings and Public Improvements Agreements (PIA)*

**EXHIBIT "C"**

**BUILDING PERMIT FEE SCHEDULE**

TOTAL VALUATION	FEE <sup>1</sup>
\$1 to \$500	\$19.50
\$501 to \$2,000	\$19.50 for the first \$500 plus \$2.65 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$59.25 for the first \$2,000 plus \$11.90 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$332.95 for the first \$25,000 plus \$8.55 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$546.70 for the first \$50,000 plus \$5.95 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$844.20 for the first \$100,000 plus \$4.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$2,684.20 for the first \$500,000 plus \$3.95 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$4,659.20 for the first \$1,000,000 plus \$2.65 for each additional \$1,000 or fraction thereof

**Miscellaneous Permit Fees:**

Solar Systems	\$300.00
Mobile Home Set-up w/elec	\$125.00
Construction trailer w/elec	\$125.00
Banners	\$25.00
Bus Bench	\$25.00
Election Sign	\$25.00
Permanent Sign	Per Fee Schedule

**Miscellaneous SFD Residential Permit Fees:**

Detached Storage Shed	\$80.00
Re-Roofing	\$100.00
Water Heater Replacement	\$40.00
Air Conditioner	\$80.00*
Furnace Replacement	\$60.00*
Evaporative Cooler	\$60.00*
Lawn Irrigation Sprinkler	\$60.00
Aboveground Pool	\$50.00
Spas/Hot Tub	\$80.00*
Gas Log	\$60.00**
Fence	\$50.00

\*May also require an electrical permit fee.

\*\* See Section 11-9-3(E)2 for exceptions.

**Fire Department Fees**

- Operational permits, per event: \$50.00
- Construction permits: Based on valuation and assessed in accordance with the building permit fee schedule.

**Other Inspections and Fees:**

1. Inspections outside of normal business hours	\$50.00 per hr. minimum charge of two hrs
2. Reinspection fees	\$50.00
3. Inspections for which no fee is specifically indicated	\$50.00 per hr
4. Additional plan review required by changes, additions, or other revisions to plans including individual residential lot grading re-reviews or reinspections	\$50.00 per hr.
5. For use of outside consultants for plan review and inspection, or both	actual costs***
6. Copy of previously issued Certificate of Occupancy	\$5.00 each
7. Letter of code compliance	\$25.00
8. Removal of stop work order	\$250.00
9. Temporary Certificate of Occupancy	5% of permit fee but not less than \$100.00
10. Plan Review Fee	65% of building permit fee.
11. Estimated Use Tax	3.85% of 50% of total valuation
12. Plan Review and Inspection Fee for Individual Residential Lot Grading	\$400 per lot

\*\*\* Actual costs are those above and beyond the plan review fee as established by Section 11-9-3(E)4.

<sup>1</sup> Additional permit and plan review fees will be due if more than one trade (building, electrical, plumbing or mechanical) is involved in the project as Westminster issues permits for a project, not based on trade. Sub contractor permit and plan review fees are calculated as a percentage of the general building permit and plan review fees. For work involving more than one primary trade, contact the building Division for permit costs.

Exhibit "D"  
Acquisition Parcels

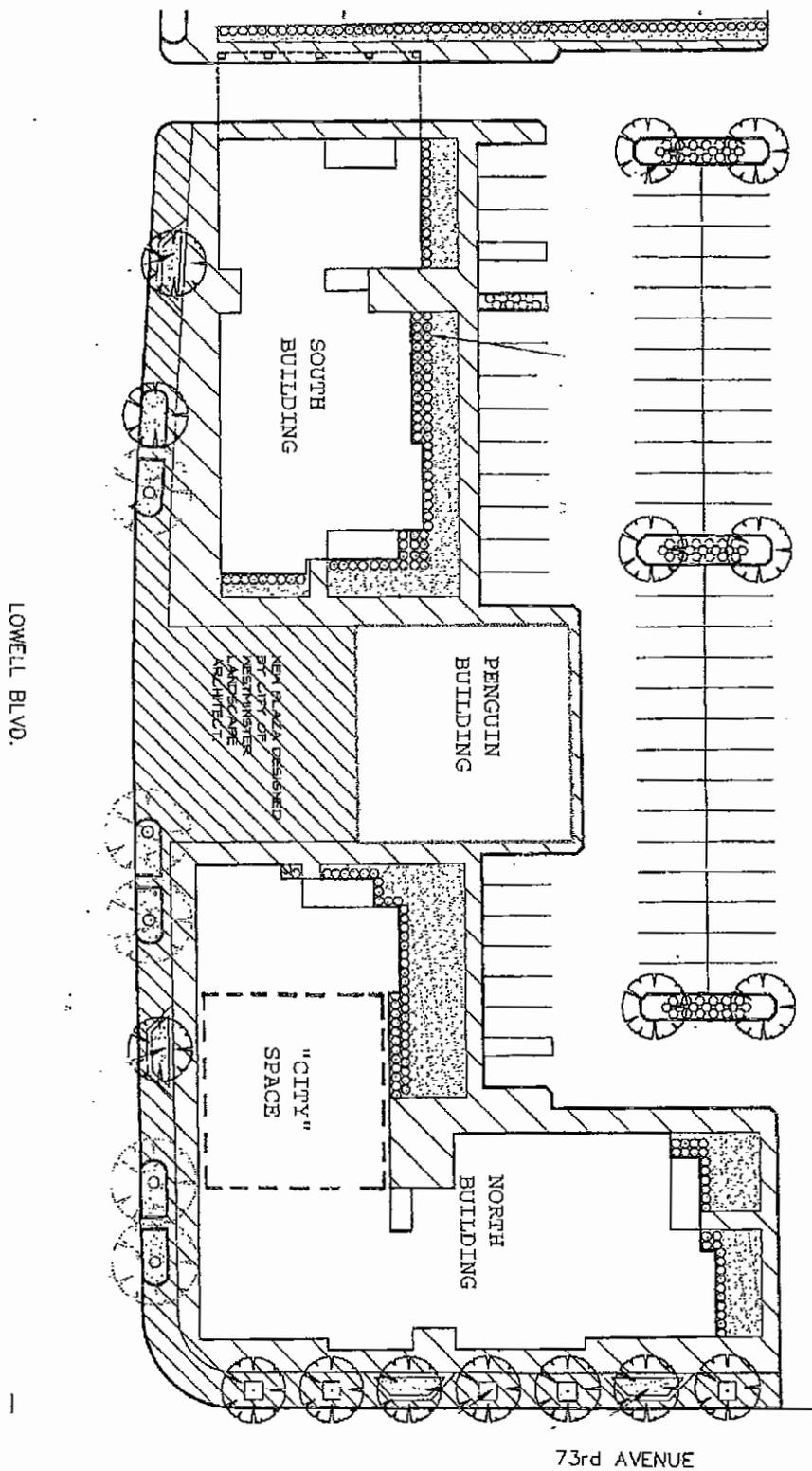


Parcels to be place under Purchase & Sale Agreements



EXHIBIT "E"

General Location of Commercial Space to be Designated to City



# WHA Agenda Item 3 B

## Agenda Memorandum

Westminster Housing Authority Meeting  
May 14, 2012



**SUBJECT:** Resolution No. 46 re Accepting the Assignment of \$5,056,803 of Private Activity Bond Allocation from the City of Westminster

**Prepared By:** Signy Mikita, Community Development Program Planner

### Recommended Board Action

Adopt Resolution No. 46 accepting the assignment from the City of Westminster of \$5,056,803 of private activity bond allocation for 2012 for the qualified purposes set forth in the assignment, and authorize the Chair to execute the necessary documents.

### Summary Statement

- The City of Westminster's 2012 private activity bond (PAB) allocation is \$5,056,803. The City has assigned the entire \$5,056,803 of this allocation to the Westminster Housing Authority.
- Renaissance, LLLP, has applied to the Westminster Housing Authority for the use of this PAB cap in order to finance the construction of a mixed use project located in the southwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard to include up to 49 affordable residential units and 7,700 square feet of commercial space, currently known as Lowell Plaza. The PAB allocation can be used for the residential portion of this project.
- The attached Resolution has been reviewed and approved by the Authority Attorney's Office and is ready for the Board of Commissioners' formal action. This Resolution will accept the PAB allocation from the City.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the Authority accept the assignment of the City's 2012 private activity bond?

**Alternative**

Take no action and refuse to accept the assignment. This option is not recommended as the Westminster Housing Authority needs the assignment for the Lowell Plaza project in order to finance the redevelopment of the site and help the revitalization of south Westminster.

**Background Information**

City Staff has been working with Renaissance, LLLP, to redevelop the southwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard since 2011 as part of the overall South Westminster Revitalization Program. Renaissance, LLLP, has submitted plans to develop a mixed use project that would include up to 49 affordable residential units and 7,700 square feet of commercial space, currently known as the Lowell Plaza redevelopment project. Renaissance is requesting the City's full 2012 PAB allocation of \$5,056,803. Renaissance is also requesting up to an additional \$1 million of the 2011 PAB assigned to Westminster Commons be redirected to Lowell Plaza, as Westminster Commons has approximately \$2 million in excess PAB cap. City Staff reviewed this project with City Council on April 16, 2012.

Therefore, the Authority is in need of this PAB capacity assigned by the City. Upon receipt of the assignment, the Authority will make this financing option available to Renaissance, LLLP, who would undertake the construction of the project .

Respectfully submitted,

J. Brent McFall  
Executive Director

**Attachments**

- Resolution
- Assignment of Allocation

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **46**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2012

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF THE ASSIGNMENT  
OF \$5,056,803 OF THE CITY OF WESTMINSTER'S PRIVATE ACTIVITY  
BOND ALLOCATION FOR 2012 BY THE AUTHORITY**

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Westminster, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling in the amount of \$5,056,803 (the "2012 Allocation"); and

WHEREAS, the Westminster Housing Authority (the "Authority") has requested that the City assign the 2012 Allocation to the Authority pursuant to Section 24-32-1706 of the Allocation Act to be used to issue bonds to finance the construction of a residential rental multi-family housing project to be located in the City (the "Project"); and

WHEREAS, the Authority desires to accept the assignment of the 2012 Allocation by the City; and

WHEREAS, there has been presented to the Board of Commissioners (the "Board") the form of an Assignment of Allocation (the "Assignment").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER HOUSING AUTHORITY:

Section 1. The Authority hereby accepts the attached assignment of the 2012 Allocation by the City for use solely in connection with the financing of the Project.

Section 2. The form, terms and provisions of the Assignment hereby are approved and the officers of the Authority hereby are authorized and directed to execute and deliver the Assignment, with such changes therein as are approved by the officers of the Authority executing the Assignment. The execution of the Assignment shall be conclusive evidence of the approval by the Authority of such document in accordance with the terms hereof.

Section 3. The officers of the Authority shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution and the Assignment, including making a determination to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose pursuant to Section 24-32-1706(3)(c), C.R.S.

Section 4. 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 5. All action not inconsistent with the provisions of this Resolution heretofore taken by the Board and the officers of the Authority directed toward the assignment of the 2012 Allocation and the authorization of the Assignment hereby are ratified, approved and confirmed.

Section 6. This Resolution shall be in full force and effect upon its passage and adoption.

PASSED AND ADOPTED this 14<sup>th</sup> day of May, 2012.

ATTEST:

\_\_\_\_\_  
Chair

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Attorney for the Authority

## **ASSIGNMENT OF ALLOCATION**

THIS ASSIGNMENT (the "Assignment") dated this 14<sup>th</sup> day of May, 2012, is between the City of Westminster, Colorado, a home rule municipality (the "Assignor"), and the Westminster Housing Authority, Colorado, a body corporate and politic (the "Assignee").

### **RECITALS**

A. The Assignee intends to finance a project consisting of the construction of a residential rental multi-family housing project to be located in the City of Westminster, Colorado (the "Project"). The Project will be designed to qualify as a "project" within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the "Act").

B. The Assignee intends to provide for the issuance of its Multi-family Housing Revenue Bonds in the maximum aggregate principal amount of \$5,056,803 (the "Proposed Bonds"), pursuant to the provisions of the Act for the purpose of financing the Project.

C. The Assignee, pursuant to a resolution adopted by the Board of Commissioners of the Assignee on May 14, 2012, declared its intention to take all steps necessary or advisable to effect the issuance of the Proposed Bonds for the financing of the Project.

D. The Assignee has requested that the Assignor assign to the Assignee \$5,056,803 of the Assignor's 2012 allocation under the bond ceiling for the State of Colorado and its issuing authorities (the "State Ceiling") computed under Section 146(d) of the Internal Revenue Code of 1986 (the "Code") as provided for the Assignor as a "designated local issuing authority" under part 17 of article 32 of title 24, Colorado Revised Statutes (the "Allocation Act"), for use in connection with the financing of the Project.

E. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, \$5,056,803 of the Assignor's 2012 allocation from the State Ceiling, which allocation the Assignor has committed and reserved for the Project.

### **ASSIGNMENT**

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee, the Assignor's 2012 allocation from the State Ceiling for private activity bonds in an amount equal to \$5,056,803 for the purpose of issuing the Proposed Bonds to finance the Project. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the "Statewide Balance" as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2012, or (b) Section 24-32-1706(3)(c), C.R.S., applies.

2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.

3. The Assignee hereby:

a. accepts the assignment of \$5,056,803 of the Assignor's allocation from the State Ceiling described above; and

b. agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such allocation.

4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute the debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF WESTMINSTER, COLORADO, as  
Assignor

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
City Clerk

WESTMINSTER HOUSING AUTHORITY, as  
Assignee

\_\_\_\_\_  
Chair

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary