

**PLANNING AND DEVELOPMENT MEMORANDUM**  
**#09-31**

August 27, 2009

**TO:** Honorable Mayor Kathleen M. Novak and City Council Members

**FROM:** William Simmons, City Manager *WAS*  
James Hayes, Director, Planning and Development Department *JH*

**SUBJECT:** CR-97 – Designation of 2009 Private Activity Bond Allocation

**RECOMMENDATION**

Staff recommends approval of the attached Resolution, which, if approved, would authorize the assignment of the City's 2009 Private Activity Bond (PAB) allocation to the Colorado Housing Finance Authority (CHFA).

**BACKGROUND**

On June 4, 2009 and July 16, 2009, staff presented the following information to the City Council in a study session. Every year, the City of Northglenn receives an allocation of Private Activity Bond (PAB) capacity "bond cap" to benefit the community. The City's 2009 PAB allocation is \$1,612,980. The City must establish its priority and act no later than September 15, 2009.

PABs are tax-exempt bonds issued by public entities to provide low-cost financing for private projects that serve a public purpose. The federal government grants annual allocations of this bonding authority to states under the Tax Reform Act of 1986. Each state establishes its usage priorities by statute. Colorado's allocation program was established by 24-32-1701 et seq., C.R.S. and is administered by the Colorado Division of Housing. Each state's "volume cap" is calculated according to a formula established by federal tax law: a dollar amount per person (determined each year by the IRS) multiplied by the state's official population (as estimated by the Census Bureau).

The current dollar amount is \$90.00 per person (i.e. Colorado statewide population is 4,939,456 X \$90.00 = \$444,551,040 for the total bond cap available). Fifty percent of the state ceiling is allocated directly to state authorities such as CHFA, CollegeInvest, and Colorado Agricultural Development Authority. The remaining fifty percent is allocated to local governments. Governments whose populations warrant allocations of \$1 million or more receive a direct allocation and the rest is retained in the Statewide Balance (See Attachment A for 2009 state allocations).

In 2008, the City allocated the bond cap to CHFA for their first-time home buyers mortgage program. The allocation of \$1,515,805 was added to CHFA's bond cap and made available to assist buyers of single-family homes in Northglenn. Although the funds were not reserved for Northglenn purchasers, many new Northglenn homeowners took advantage of the program. A total of 30 loans were issued with a total dollar amount of

\$4,619,856. Therefore, the City received three times the value by simply providing the bond cap to CHFA.

In summary, there are four options available for the allocation:

- a. Issue bonds – bond issuance requires an inducement resolution and closing by December 23, 2009; or
- b. Carry forward for a specific purpose to close within a 3 year period (requires filing with IRS); or
- c. Assignment to another issuer for eligible purpose (i.e.: CHFA for their single-family mortgage program); or
- d. Relinquish bond cap to the Statewide Balance.

**BUDGET/TIME IMPLICATIONS**

There is no direct impact to the 2009 Budget. If bond cap isn't assigned or designated by September 15, 2009, the cap will go the statewide balance and the City loses any benefit for the residents of the City.

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-97  
Series of 2009

\_\_\_\_\_  
Series of 2009

A RESOLUTION AUTHORIZING ASSIGNMENT TO THE COLORADO HOUSING AND FINANCE AUTHORITY THE CITY OF NORTHGLENN'S 2009 ALLOCATION FROM THE STATE CEILING FOR PRIVATE ACTIVITY BONDS TO ISSUE REVENUE BONDS FOR THE PURPOSE OF PROVIDING SINGLE-FAMILY MORTGAGE LOANS TO LOW- AND MODERATE-INCOME PERSONS AND FAMILIES IN THE CITY OF NORTHGLENN AND ELSEWHERE IN THE STATE OF COLORADO, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT OF ALLOCATION

WHEREAS, the City of Northglenn, Colorado (the "City") is authorized by the County and Municipality Development Revenue Bond Act, constituting article 3 of title 29, Colorado Revised Statutes, as amended (the "Act"), to issue revenue bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families;

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), restricts the amount of tax-exempt bonds ("Private Activity Bonds") which may be issued in the State to provide such mortgage loans and for certain other purposes (the "State Ceiling");

WHEREAS, pursuant to the Code, the Colorado legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, constituting Part 17 of Article 32 of Title 24, Colorado Revised Statutes, as amended (the "Allocation Act"), providing for the allocation of the State Ceiling among the Colorado Housing and Finance Authority (the "Authority") and other governmental units in the State, and further providing for the assignment of such allocations from such other governmental units to the Authority;

WHEREAS, pursuant to an allocation under C.R.S. § 24-32-1706, the City has an allocation of the 2009 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to September 15, 2009 (the "2009 Allocation");

WHEREAS, the City has determined that, in order to increase the availability of adequate affordable housing for low- and moderate-income persons and families within the City and elsewhere in the State, it is necessary or desirable to provide for the utilization of all or a portion of the 2009 Allocation;

WHEREAS, the City has determined that 2009 Allocation, or a portion thereof, can be utilized most efficiently by assigning it to the Authority to issue Private Activity Bonds for the purpose of providing single family mortgage loans to low- and moderate-income persons and families; and

WHEREAS, the City has determined to assign \$1,612,980 of its 2009 Allocation to the Authority, which assignment is to be evidenced by an Assignment of Allocation between the

City and the Authority (the "Assignment of Allocation").

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The assignment to the Authority of \$1,612,980 of its 2009 Allocation is hereby approved.

Section 2. The form and substance of the Assignment of Allocation are hereby approved; provided, however, that the officers of the City hereby are authorized to make such technical variations, additions or deletions in or to such Assignment of Allocation as they shall deem necessary or appropriate and not inconsistent with the approval thereof by this Resolution.

Section 3. The Mayor of the City are hereby authorized and directed to execute and deliver and the City Clerk is hereby authorized and directed to attest and deliver the Assignment of Allocation on behalf of the City of Northglenn and to take such other steps or actions as may be necessary, useful or convenient to carry out and give effect to the assignment in accordance with the intent of this Resolution.

Section 4. Nothing contained in this Resolution, the Assignment, or the Delegation and Participation Agreement shall constitute a debt, indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation of the City within the meaning of the Constitution or statutes of the State of Colorado or the home rule charter of any political subdivision thereof, nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 5. 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 any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

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

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

CERTIFICATE OF THE CITY OF NORTHGLENN, COLORADO  
CONCERNING ASSIGNMENT OF  
PRIVATE ACTIVITY BOND VOLUME CAP ALLOCATION

I, the undersigned, hereby certify that I am a duly chosen, qualified and City Attorney of the City of Northglenn, Colorado (the "City"), and that:

1. The City is a public body politic and corporate, duly organized and existing under the constitution and laws of the State of Colorado.

2. The City has been previously notified that, pursuant to Section 24-32-1706 of the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), it has an allocation of the State ceiling (as defined in the Allocation Act) for 2009 in the amount of \$1,612,980 (the "2009 Allocation").

3. Attached hereto as Exhibit A is a true and correct copy of a resolution and the related minutes thereto (the "Resolution") authorizing the assignment to the Colorado Housing and Finance Authority (the "Authority") of all or a portion of the 2009 Allocation in an amount equal to \$1,612,980 (the "Assigned Allocation"), and authorizing the execution and delivery of an Assignment of Allocation dated as of August 13, 2009 (the "Assignment of Allocation") between the City and the Authority in connection therewith, which Resolution was duly adopted by the City Council of the City (the "City Council") at a meeting thereof held on August 13, 2009, at which meeting a quorum was present and acting throughout and which Resolution has not been revoked, rescinded, repealed, amended or modified and is in full force and effect on the date hereof.

4. The meeting of the City Council at which action has been taken with respect to the Assignment of Allocation was a regular meeting properly called and open to the public at all times.

5. With respect to the Assigned Allocation, the City has not heretofore: (a) issued private activity bonds; (b) assigned the Assigned Allocation to another "issuing authority," as defined in the Allocation Act; (c) made a mortgage credit certificate election; or (d) treated the Assigned Allocation as an allocation for a project with a carryforward purpose, as defined in the Allocation Act.

6. The Assignment of Allocation, attached hereto as Exhibit B, is in the form presented to and approved by the City Council at the meeting thereof held on August 13, 2009.

7. On or before the date hereof, counterparts of the Assignment of Allocation were officially executed by the Mayor and the City Clerk of the City. On the date of such signing, such persons were the duly sworn, qualified and acting officers of the City authorized to execute the Assignment of Allocation and holding the offices of the Mayor and City Clerk, respectively.

8. The City has authorized the execution, delivery and due performance of the Assignment of Allocation, and the execution and delivery of the Assignment of Allocation and the compliance by the City with the provisions thereof, will not, to the best of my knowledge, conflict with or constitute on the part of the City a breach of or a default under any existing Colorado law, City resolution, court or administrative regulation, decree or order or any agreement or other instrument to which the City is subject or by which it is bound.

9. To the best of my knowledge, there does not exist any action, suit, proceeding or investigation pending, or threatened against the City, contesting (a) the corporate existence of the City, (b) the title of its present officers or any of them to their respective offices, including, without limitation, the members of the City Council, (c) the validity of the Assignment of Allocation or (d) the power of the City to execute, deliver or perform the Assignment of Allocation.

10. No referendum petition has been filed concerning the Resolution; and to the best of my knowledge none is being circulated or planned for circulation.

WITNESS my hand and the seal of the City this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

(SEAL)

EXHIBIT A  
RESOLUTION

EXHIBIT B  
ASSIGNMENT OF ALLOCATION



ASSIGNMENT OF ALLOCATION  
(Single Family Mortgage Revenue Bonds)

This Assignment of Allocation (the "Assignment"), dated this \_\_\_\_ day of August, 2009, is between the City of Northglenn, Colorado (the "Assignor") and the Colorado Housing and Finance Authority (the "Assignee").

WITNESSETH:

WHEREAS, the Assignor and the Assignee are authorized and empowered under the laws of the State of Colorado (the "State") to issue revenue bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), restricts the amount of tax-exempt bonds ("Private Activity Bonds") which may be issued in the State to provide such mortgage loans and for certain other purposes (the "State Ceiling"); and

WHEREAS, pursuant to the Code, the Colorado legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), providing for the allocation of the State Ceiling among the Assignee and other governmental units in the State, and further providing for the assignment of allocations from such other governmental units to the Assignee; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act, the Assignor has an allocation of the 2009 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to **September 15**, the "Allocation"); and

WHEREAS, the Assignor has determined that, in order to increase the availability of adequate affordable housing for low- and moderate-income persons and families within the City of Northglenn, Colorado and elsewhere in the State, it is necessary or desirable to provide for the utilization of all or a portion of the Allocation; and

WHEREAS, the Assignor has determined that the 2009 Allocation, or a portion thereof, can be utilized most efficiently by assigning it to the Assignee to issue Private Activity Bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families ("Revenue Bonds"), and the Assignee has expressed its willingness to attempt to issue Revenue Bonds with respect to the 2009 Allocation; and

WHEREAS, the City Council of the Assignor has determined to assign to the Assignee \$1,612,980 of its 2009 Allocation, and the Assignee has agreed to accept such assignment, which is to be evidenced by this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. The Assignor hereby assigns to the Assignee \$1,612,980 of its 2009 Allocation, subject to the terms and conditions contained herein. The Assignor represents that it has received no monetary consideration for said assignment.

2. The Assignee hereby accepts the assignment to it by the Assignor of \$1,612,980 of Assignor's 2009 Allocation, subject to the terms and conditions contained herein. The Assignee agrees to use its best efforts to issue and sell Revenue Bonds, in one or more series, and to make proceeds of such Revenue Bonds available from time to time during the period of two (2) years from the date of this Assignment for the purchase of mortgage loans in at least the aggregate amount of \$1,612,980 to finance single-family housing facilities located in City of Northglenn, Colorado. Unless otherwise agreed to in writing, the mortgage loans will be subject to all applicable current requirements of Assignee's mortgage revenue bond program, including Assignee's income and purchase price limits.

3. 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.

4. The Assignor and Assignee each agree that it will take such further action and adopt such further proceedings as may be required to implement the terms of this Assignment.

5. Nothing contained in this Assignment shall obligate the Assignee to finance mortgage loans in any particular amount or at any particular interest rate or to use any particular percentage of the proceeds of its Revenue Bonds to provide mortgage loans to finance single-family housing facilities located in City of Northglenn, Colorado.

6. This Assignment is effective upon execution and is irrevocable.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment on the date first written above.

**CITY OF NORTHGLENN, COLORADO**

[S E A L]

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**COLORADO HOUSING AND FINANCE  
AUTHORITY**

[S E A L]

ATTEST:

By: \_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Executive Director