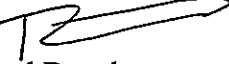




ADMINISTRATIVE MEMORANDUM
13-15

DATE: July 1, 2013

TO: Honorable Mayor and City Council Members

FROM: David Willett, Acting City Manager 
Brook Svoboda, Director of Planning and Development 
Debbie Tuttle, NURA Executive Director 

SUBJECT: Webster Lake Promenade – Master Agreement

BACKGROUND

Resolution CR-64 approves a Master Agreement collaterally assigning the Hawkins Development, LLC agreements concerning the Redevelopment, ESTIP, Rebate, Escrow and Other Agreements as described in Exhibit A (Master Agreement).

Hawkins Development, LLC has formed a single purpose entity named HD Northglenn, LLC for the redevelopment of the Webster Lake Promenade. In order to obtain financing, the bank is requiring that HD Northglenn, LLC assign interest in the agreements to its lender (The Private Bank and Trust Company) through the Master Agreement in case of default. This request is not uncommon from banks however it is generally requested when a project defaults. This Agreement provides the assignment in advance, as part of the financing of the project.

The Northglenn Urban Renewal Authority approved and executed this Agreement on June 26, 2013.

STAFF REFERENCE: If you have any comments or questions, please contact David Willett, Brook Svoboda or Debbie Tuttle.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-64
Series of 2013

Series of 2013

A RESOLUTION APPROVING A MASTER AGREEMENT COLLATERALLY ASSIGNING THE HAWKINS DEVELOPMENT AGREEMENTS

WHEREAS, the City of Northglenn (the "City"), the Northglenn Urban Renewal Authority ("NURA"), and Hawkins Development, LLC are parties to various agreements related to the redevelopment of a project commonly referred to as the Webster Lake Promenade, which agreements are more specifically listed in the Master Agreement Concerning Redevelopment, attached hereto as **Exhibit A** (the "Master Agreement");

WHEREAS, as required by its Lender, Hawkins Development, LLC, has formed a single purpose entity named HD Northglenn, LLC, to which it has (or will soon hereafter) assign its interest in the various redevelopment-related agreements referenced in the Master Agreement;

WHEREAS, to obtain financing, HD Northglenn, LLC, is required to collaterally assign its interest in the redevelopment-related agreements to its lender via the terms of the Master Agreement; and

WHEREAS, the approvals of the City and NURA are required for the assignment to the lender, and therefore, the City and NURA must approve the Master Agreement for HD Northglenn, LLC to obtain the proposed financing.

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

Section 1. The City Council hereby approves the Master Agreement Concerning Redevelopment, attached hereto as **Exhibit A**, and authorizes the Mayor to execute the same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2013.

JOYCE DOWNING
Mayor

ATTEST:

APPROVED AS TO FORM:

JOHANNA SMALL, CMC
City Clerk

COREY Y. HOFFMANN
City Attorney

**MASTER AGREEMENT CONCERNING
REDEVELOPMENT, ESTIP, REBATE, ESCROW AND OTHER AGREEMENTS**

This MASTER AGREEMENT CONCERNING REDEVELOPMENT, ESTIP, REBATE, ESCROW AND OTHER AGREEMENTS, dated as of July _____, 2013 (this "Agreement"), is entered into by and among the **CITY OF NORTHGLENN, COLORADO** (the "City"), **NORTHGLENN URBAN RENEWAL AUTHORITY** ("NURA"), **HD NORTHGLENN, LLC**, a Utah limited liability company ("Borrower"), and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation (together with its successors and assigns, "Lender"). The City, NURA, Borrower and Lender are herein individually referred to as a "Party" and collectively referred to as the "Parties"

RECITALS

A. The City, Borrower (as successor by assignment to Hawkins Development, LLC) and NURA are parties to a Redevelopment Agreement dated October 10, 2012, and a First Addendum to Redevelopment Agreement dated May 20, 2013 (as modified and assigned, the "Redevelopment Agreement"). The Redevelopment Agreement provides for the development of the project commonly known as the Webster Lake Promenade, Northglenn, Colorado, and more particularly described therein (the "Project").

B. In connection with the development of the Project, (i) Borrower and the City have also entered into an Enhanced Sales Tax Incentive Program Agreement dated as of October 8, 2012 (the "ESTIP Agreement"), (ii) Borrower has executed and will cause to be recorded in the real property records for Adams County, Colorado, a Grant of Easements and Declaration of Covenants, Conditions & Restrictions (the "Declarations"), and (iii) Borrower may hereafter enter into an agreement relating to certain water and sewer rebates as described in the Redevelopment Agreement (the "Rebate Agreement"), and

C. To finance the construction of the Project, Borrower has requested, and Lender has agreed to make, a loan in the maximum principal amount of \$8,600,000.00 (the "Loan"), pursuant to the terms of the Construction Loan Agreement of even date herewith made by and between Borrower and Lender (the "Loan Agreement"). The Loan is further evidenced by a Promissory Note from Borrower to Lender in the amount of the Loan (the "Note"), and is secured by a Construction Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing of even date herewith made by Borrower for the benefit of Lender and encumbering the Project (the "Deed of Trust"; together with the Loan Agreement, the Note and all other documents or agreements executed in connection with the Loan, collectively, the "Loan Documents").

D. Pursuant to the terms of the Redevelopment Agreement, Borrower is required to, among other things, deposit \$790,984.87 (the "Borrower Escrow Funds") with Land Title Guaranty Company ("Escrow Agent") to secure the payment and the completion by Borrower of certain onsite improvements to the Project more particularly described in the Redevelopment Agreement (the "Borrower Onsite Public Improvements"), and in connection therewith, Lender, Borrower, the City and the Escrow Agent have entered into an Escrow Agreement (Borrower

Onsite Public Improvements Escrow) of even date herewith (the "Borrower Escrow Agreement").

E. Pursuant to the terms of the Redevelopment Agreement, NURA is required to, among other things, contribute up to \$750,000 to the Project (the "NURA Escrow Funds"), which will be deposited by NURA with Escrow Agent to be used by Borrower for the payment of the costs of certain onsite improvements more particularly described in the Redevelopment Agreement (the "NURA Onsite Public Improvements"), and in connection therewith, Lender, Borrower, NURA and the Escrow Agent have entered into an Escrow Agreement (NURA Onsite Public Improvements Escrow) of even date herewith (the "NURA Escrow Agreement").

F. As a condition to, and as additional security for, the Loan, Borrower has collaterally assigned to Lender (the "Assignment"), among other things: (i) all of Borrower's right, title and interest in, to and under the Redevelopment Agreement, the ESTIP Agreement, the Rebate Agreement, the Borrower Escrow Agreement, the NURA Escrow Agreement and the Declarations (collectively, the "Collateral Agreements"), provided that Lender shall not exercise such rights until an Event of Default has occurred under the Loan Agreement; (ii) all of Borrower's right, title and interest in and to the Borrower Escrow Funds, the NURA Escrow Funds and any amounts to be paid to Borrower pursuant to the Declarations (the "PIF Reimbursements"), provided that Lender shall not exercise such rights until an Event of Default has occurred under the Loan Agreement; (iii) all of Borrower's right, title and interest in and to any amounts to be paid to Borrower pursuant to the ESTIP Agreement (the "ESTIP Reimbursements"); and (iv) (a) all plans, specifications, surveys, architectural renderings and drawings, soil test reports, other reports or examinations of the Project, architectural contracts, engineering contracts, construction contracts, subcontracts and contracts with material suppliers, (b) all service contracts, maintenance contracts, management agreements, warranties, guaranties and the right to use all names now or hereafter used by Borrower in connection with the Project, (c) all permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation, use and occupancy of the Project, including without limitation, certificates of occupancy, and (d) all claims, demands, judgments, insurance proceeds, rights of action, awards or damages, compensation and settlements resulting from the taking of all or any part of the Project under the power of eminent domain or for any damage (whether caused by such taking or casualty or otherwise) to all or any part of the Project, which Borrower has, may have, or may subsequently directly or indirectly enter into, obtain or acquire in connection with the improvement, ownership, operation, leasing or maintenance of the Project, together with the proceeds of all of the foregoing (collectively, the "Additional Collateral").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. **Consent to Assignment.**

(a) Each of the City and NURA hereby consents to the Assignment, and agrees that if Lender has given written notice to the City and NURA that an “Event of Default” has occurred under the Loan Agreement, then Lender shall have the right, at Lender’s option, to assume Borrower’s rights and obligations under any or all of the Collateral Agreements or otherwise in connection with the Additional Collateral. If Lender elects to exercise its rights under the Assignment with respect to any Collateral Agreement, then the City (only as to the ESTIP Agreement and the Rebate Agreement, if any) and NURA shall perform its duties and obligations under such Collateral Agreement for the benefit of Lender (regardless of any prior default by Borrower or any other party under such Collateral Agreement), provided that Lender agrees to perform Borrower’s obligations under such Collateral Agreement.

(b) Each of the City, NURA and Borrower acknowledges and agrees that Lender shall have no obligations to the City or to NURA under any Collateral Agreement until (i) Lender has exercised its rights under the Loan Documents to assume such Collateral Agreement following an Event of Default under the Loan Agreement and (ii) Lender has provided the City and NURA with written notice of such assumption.

3. **Representations and Warranties.** Each of the City and NURA represents and warrants to Lender as of the date hereof that no party is in default under any Collateral Agreement to which it is a party and that there are not any circumstances which would constitute a default with the giving of notice, the passage of time, or both.

4. **Notice and Cure Rights.** Each of the City and NURA agrees to give prompt written notice to Lender of any default or breach by Borrower of any of Borrower’s obligations or duties under any Collateral Agreement, and that, prior to the City or NURA (as applicable) exercising any of its rights or remedies under such Collateral Agreement (including, without limitation, causing the reconveyance of the Project pursuant to the terms of the Redevelopment Agreement), Lender shall have an opportunity to remedy or cure such breach for a period of sixty (60) days after receipt of notice thereof; provided, however, that if such default or breach cannot reasonably be remedied or cured within such sixty (60) day period, Lender shall have such additional period of time as Lender requires to effect a remedy or cure, so long as Lender commences the remedy or cure within the aforesaid sixty (60) day period and diligently pursues such remedy or cure thereafter. If Lender remedies or cures such default or breach, the City or NURA (as applicable) shall accept such remedy or cure and shall not pursue any rights under any Collateral Agreement as a result thereof (including, without limitation, causing the reconveyance of the Project pursuant to the terms of the Redevelopment Agreement).

5. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

6. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns. No other persons shall have any rights under this Agreement. No assignment of the interest of any of the Parties

shall be binding unless and until written notice of such assignment shall be delivered to the other Parties.

7. **Notices.** Any requests, notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express carrier, addressed in each case as follows:

To Lender: The PrivateBank and Trust Company
6400 South Fiddlers Green Circle, Suite 440
Englewood, Colorado 80111
Attn: Sarah A. Miller, Associate Managing Director

With a copy to: The PrivateBank and Trust Company
70 West Madison Street
Chicago, Illinois 60602
Attn: Loan Closing / Loan Operations

And to: Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street
Suite 1600
Denver, Colorado 80202
Attn: Michael Westover, Esq.

To Borrower: HD Northglenn, LLC
c/o Hawkins Development, LLC
10909 Arapahoe Road, Suite 103
Centennial, Colorado 80112
Attn: Kevin B. Hawkins

With a copy to: Bryan B. Todd, Esq.
358 S. Rio Grande Street, Suite 200
Salt Lake City, Utah 84101

To the City: City Manager
11701 Community Center Drive
Box 330061
Northglenn, Colorado 80233

With a copy to: Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 Sixteenth Street, Suite 200
Denver, Colorado 80202
Attn: Corey Y. Hoffmann, Esq.

To NURA: Northglenn Urban Renewal Authority
11701 Community Center Drive
Box 330061
Attn: Debbie Tuttle, Executive Director

With a copy to: Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 Sixteenth Street, Suite 200
Denver, Colorado 80202
Attn: Jefferson H. Parker, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section 7 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third business day following the day sent or when actually received.

8. **Amendment to Declarations.** Each of the City and NURA acknowledges and agrees that, in accordance with the terms of Section 13.6 of the Declarations, and notwithstanding the terms of Section 3(d) of the First Addendum to Redevelopment Agreement to the contrary, Borrower may at any time amend the Declarations without the consent of the City Counsel provided that any such amendment does not modify the terms of Sections 2.1.3, 2.3.1.2, 3.4, 5, 9 or 11, or Exhibits C, part A or D - #1, of the Declarations.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10. **Amendment.** This Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties.

11. **Authority.** Each Party represents and warrants to the other Parties that all administrative and other approvals and consents necessary for the valid execution and delivery of this Agreement have been obtained and that upon execution and delivery hereof, this Agreement shall be binding and enforceable against each of the Parties hereto in accordance with its terms.

12. **Waivers.** The failure of any party to this Agreement at any time or times to require performance of any provision under this Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any Party to this Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Agreement.

13. **Headings.** Section headings of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Agreement.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[The remainder of this page has been left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

LENDER:

**THE PRIVATEBANK AND TRUST
COMPANY**, an Illinois banking corporation

By: _____

Sarah A. Miller
Associate Managing Director

BORROWER:

HD NORTHGLENN, LLC, a Utah limited liability company

By: Hawkins Development, LLC, a Utah limited liability company, its Manager

By: _____
Kevin B. Hawkins, Manager

CITY:

CITY OF NORTHGLENN, COLORADO

By: _____
Name: _____
Title: _____

NURA:

NORTHGLENN URBAN RENEWAL AUTHORITY

By: *Rosie Garner*
Name: Rosie Garner
Title: Chair, NURA