




ADMINISTRATION MEMORANDUM
13-19

DATE: August 12, 2013

TO: Honorable Mayor Joyce Downing and City Council Members

COPY: Northglenn Urban Renewal Authority Commissioners

FROM: John Pick, City Manager 
Brook Svoboda, Planning & Development Director 
Debbie Tuttle, Economic Development Manager 

SUBJECT: Hawkins Development Agreement Addendums
CR-79, Second Addendum to Webster Lake Promenade Redevelopment Agreement

BACKGROUND

The original Redevelopment Agreement and Enhanced Sales Tax Incentive Agreement (ESTIP) with Hawkins Development LLC (Redeveloper) were signed on October 10, 2012 to redevelop 11 acres at 120th Avenue and Grant Street.

In the Redevelopment Agreement under Section 9d, the Reconveyance Condition reserves the right for the City and NURA to demand the property back if construction did not commence within ten months after closing. The developer's lender (PrivateBank) has required as a condition of the construction loan that this Reconveyance Condition be deleted from the Redevelopment Agreement.

Resolution CR-79 is a Second Amendment to the Redevelopment Agreement. Under the Section 3 of the Amendment the Reconveyance Condition is terminated. In exchange for this termination new language has been added under Sections 4 and 5 that the Redeveloper agrees that in the event that Lot 6 (Pad F) is not completed by the July 31, 2016, the Redeveloper is obligated to reimburse the City and the Authority in an amount equal to Six Dollars (\$6.00) per square foot or \$653,706 for that property.

Approval of Resolution CR-80 is a First Amendment to the ESTIP Agreement which secures the payment obligation under Section 5a of the Second Amendment to the Redevelopment Agreement. The ESTIP First Amendment provides that if the project is not completed by July 31, 2016 that the ESTIP reimbursement is reduced by the amount under 5a of the Redevelopment Agreement (\$653,706).

STAFF RECOMMENDATIONS

If Council agrees, it is staff's recommendation to approve Resolutions CR-79 and CR-80 to amend both the Redevelopment and ESTIP Agreements with the Redeveloper.

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

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-79
Series of 2013

Series of 2013

A RESOLUTION APPROVING THE SECOND ADDENDUM TO REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTHGLENN, THE NORTHGLENN URBAN RENEWAL AUTHORITY AND HD NORTHGLENN, LLC, AS SUCCESSOR IN INTEREST TO HAWKINS DEVELOPMENT, LLC

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

Section 1. The Second Addendum to Redevelopment Agreement between the City of Northglenn, the Northglenn Urban Renewal Authority, and Hawkins Development, LLC, attached hereto as **Exhibit 1**, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

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

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

SECOND ADDENDUM TO REDEVELOPMENT AGREEMENT

THIS SECOND ADDENDUM TO REDEVELOPMENT AGREEMENT (the “Second Addendum”) is made and executed effective this 14th day of August, 2013, by and among the THE CITY OF NORTHGLENN, COLORADO, a municipal corporation (the “City”), the NORTHGLENN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”), and HD NORTHGLENN, LLC, a Utah limited liability company (the “Redeveloper”), as successor in interest to Hawkins Development, LLC, a Utah limited liability company (the “Original Redeveloper”).

W I T N E S S E T H

WHEREAS, the City, the Authority and the Original Redeveloper previously entered into a Redevelopment Agreement dated October 10, 2012 (the “Original Redevelopment Agreement”) regarding approximately 11 acres, more or less, of real property described in **Exhibit A** attached hereto and incorporated herein (the “Property”);

WHEREAS, the City, the Authority and the Original Redeveloper further previously entered into that First Addendum to Redevelopment Agreement dated May 20, 2013 (the “First Addendum”) regarding the Property;

WHEREAS, Section 9, subsection (d) of the Original Redevelopment Agreement obligates Redeveloper to commence construction of the Project (as that term is defined in said Original Redevelopment Agreement) within ten (10) months after the date of Closing (as that term is defined in the Original Redevelopment Agreement), and if such construction is not commenced within such time, the City and the Authority reserved the right to demand that the Property be reconveyed to the City and the Authority at no cost (the “Reconveyance Condition”);

WHEREAS, in accordance with the terms of the Original Development Agreement and the First Addendum, the City and the Authority conveyed their respective rights, titles and interests in and to the Property to Redeveloper by that Special Warranty Deed (the “Deed”) dated July 8, 2013 and recorded July 9, 2013 in the Adams County, Colorado Clerk and Recorder’s Office (the “Official Records”) at Reception No. 2013000058467, subject to the Reconveyance Condition;

WHEREAS, The PrivateBank and Trust Company (“PrivateBank”), acting as lender for Redeveloper, is requiring as a condition of funding its construction loan to Redeveloper that the City and the Authority explicitly terminate the Reconveyance Condition based on Redeveloper’s commencement of construction of the infrastructure for the Project in accordance with the provisions of the Original Development Agreement and the First Addendum; and

WHEREAS, while the Original Redevelopment Agreement did not explicitly contemplate such a termination of the Reconveyance Condition, the City and the Authority are amenable to the termination of the Reconveyance Condition, subject to terms and conditions contained in this Second Addendum.

A G R E E M E N T

NOW, THEREFORE, the parties hereto, for themselves, their successors and assigns, in and for the consideration of the performance of the mutual duties and responsibilities set forth herein, the receipt and adequacy of such consideration being hereby acknowledged, do hereby covenant and agree as follows:

1. RECITALS INCORPORATED. The recitals set forth above are incorporated into this Second Addendum and shall be deemed terms and provisions hereof, to the same extent as if fully set forth in this Section 1.

2. RESTATEMENT OF ORIGINAL REDEVELOPMENT AGREEMENT AND FIRST ADDENDUM. The parties hereto reaffirm and incorporate herein by this reference the rights, duties, obligations and definitions set forth in the Original Redevelopment Agreement and the First Addendum, as modified herein.

3. CITY AND AUTHORITY OBLIGATIONS. In exchange for Redeveloper's obligations set forth in Sections 4 and 5 of this Second Addendum, and other good and valuable consideration, the City, the Authority and the Redeveloper agree that subsection 9(d) of the Original Redevelopment Agreement and any provisions in the Original Development Agreement or the First Addendum regarding the Reconveyance Condition are hereby terminated in their entireties and rendered null and void. Further, the City, the Authority and the Redeveloper agree that any provisions in the Deed related to such Section 9(d) and the Reconveyance Condition are hereby deleted in their entireties and rendered null and void. In connection with the foregoing, the City, the Authority and the Redeveloper, contemporaneously with execution of this Agreement, shall execute, deliver and record in the Official Records a Notice of Termination in the form attached hereto as **Exhibit B**, and incorporated herein by this reference, terminating of record the Reconveyance Condition.

4. COMPLETION OF PROJECT. In exchange for the termination of the Reconveyance Condition as set forth above and the execution and delivery by the City and the Authority of the Notice of Termination, the Redeveloper agrees that the Project shall be completed no later than July 31, 2016 (the "Completion Date"). In the event the Redeveloper has not completed (or caused to be completed) the Project by the Completion Date, the Redeveloper agrees to the specific additional remedy set forth in Section 5 of this Second Addendum, in addition to the remedies set forth in Section 9, subsections (a) through (c) of the Original Redevelopment Agreement, and Section 6 of the First Addendum.

5. CITY AND AUTHORITY REMEDY FOR REDEVELOPER FAILING TO COMPLETE THE PROJECT BY THE COMPLETION DATE.

(a) The Redeveloper agrees that in the event the Project (excluding any portion thereof which has been conveyed, or is under legally binding contract for conveyance, as of the date hereof, regarding which Redeveloper does not have the legal ability to require such completion) is not completed by the Completion Date, the Redeveloper shall be obligated upon written notice by the City and the Authority to reimburse the City and the Authority for their respective conveyances of Lot 6 (also known as Pad F of the Webster Lake Subdivision) pursuant to the

Deed in an amount equal to Six Dollars (\$6.00) per square foot of said Lot 6, which shall result in a payment to the City and the Authority in the aggregate amount of Six Hundred Fifty-Three Thousand Seven Hundred Six and 00/100 Dollars (\$653,706.00) (the "Repayment"). The Repayment shall be made solely from funds to be received by Redeveloper under that certain Enhanced Sales Tax Incentive Program Agreement dated October 10, 2012 by and between the City and Redeveloper (as successor-in-interest to Original Redeveloper), as amended pursuant to the First Amendment (defined below), to which the City and the Authority shall look solely for payment, unless and until the payments to be received by Redeveloper thereunder are exhausted without making the Repayment in full, in which event Redeveloper shall pay the shortfall. Furthermore, if PrivateBank becomes the owner of all or any portion of the Property (whether by foreclosure, deed-in-lieu of foreclosure or otherwise), PrivateBank and its successors and assigns (including, without limitation, any purchaser at a foreclosure sale) will in no event be liable for the Repayment, which shall remain the obligation of Redeveloper hereunder. Provided however, the Repayment required in the event the Project is not completed by the Completion Date as set forth above shall be made pursuant to that First Amendment (defined below) notwithstanding any change in ownership of the Property or assignment of the First Amendment (defined below). Any Repayment shall be paid to or collected by the City, which shall then disburse to the Authority its share thereof.

(b) In order to secure the payment obligation set forth in subsection (a) of this Section 5, the Redeveloper shall execute and deliver the First Amendment to the Enhanced Sales Tax Incentive Agreement (the "First Amendment") in the form attached hereto as **Exhibit C**, and incorporated herein by this reference.

6. **INTEGRATION.** Except as modified herein, the Original Redevelopment Agreement and the First Addendum remain in full force and effect, and are hereby ratified by the City, the Authority and the Redeveloper. In the event of any conflict between the Redevelopment Agreement, the First Addendum and this Second Addendum, the terms and conditions of this Second Addendum shall control.

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IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum to be effective as of the date first above set forth.

CITY OF NORTHGLENN, a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

NORTHGLENN URBAN RENEWAL AUTHORITY,
a body corporate and politic of the State of Colorado

By: Rosie Garner, Chair

ATTEST:

APPROVED AS TO FORM:

Jeff Parker, Authority Attorney

HD NORTHGLENN, LLC, a Utah limited liability company

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

By: 

Kevin B. Hawkins, Manager

EXHIBIT A
Legal Description

PARCEL 1:

LOTS 1 THROUGH 7, BLOCK 1, AND OUTLOT A, BLOCK 1, WEBSTER LAKE PROMENADE SUBDIVISION, COUNTY OF ADAMS, STATE OF COLORADO.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS BY VEHICULAR AND PEDESTRIAN TRAFFIC, VEHICULAR PARKING AND UTILITIES WITHIN THE "COMMON AREAS" AS MORE FULLY DEFINED AND DESCRIBED IN GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JULY 9, 2013 UNDER RECEPTION NO. 2013000058468, COUNTY OF ADAMS, STATE OF COLORADO.

PARCEL 3:

EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AS MORE FULLY DEFINED AND DESCRIBED IN AMENDED AND RESTATED ACCESS EASEMENT RECORDED FEBRUARY 22, 2008 UNDER RECEPTION NO. 2008000013877.

EXHIBIT B
Form of Notice of Termination

When Recorded

Return to:

Bryan B. Todd, Esq.
358 S. Rio Grande St., Ste, 200
Salt Lake City, UT 84101

NOTICE OF TERMINATION

THE CITY OF NORTHGLENN, COLORADO, a municipal corporation (the “**City**”), the **NORTHGLENN URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (the “**Authority**”), and **HD NORTHGLENN, LLC**, a Utah limited liability company (“**Redeveloper**”), hereby provide notice that the RDA Reconveyance Provision and the Deed Reconveyance Provision, as such terms are defined below, are hereby terminated, rendered null and void, and are deleted from the Redevelopment Agreement and the Deed, as such terms are also defined below.

The “**Redevelopment Agreement**” is defined as that certain Redevelopment Agreement dated October 10, 2012 between the City, the Authority and Hawkins Development, LLC, a Utah limited liability company (“**Original Redeveloper**”), as modified by a First Addendum to Redevelopment Agreement dated May 20, 2013 between the City, the Authority and Original Redeveloper, assigned by Original Redeveloper to Redeveloper, and further modified by a Second Addendum to Redevelopment Agreement dated on or about the date hereof.

The “**Deed**” is defined as that certain Special Warranty Deed dated July 8, 2013 and recorded July 9, 2013 in the Adams County, CO public records under reception no. 2013000058467, by which the City and the Authority conveyed the property subject to the Redevelopment Agreement to Redeveloper, which property is more particularly described in **Exhibit A** attached hereto and incorporated herein.

The “**RDA Reconveyance Provision**” is defined as Section 9(d) of the Redevelopment Agreement, which provided as follows:

9. BREACH BY THE REDEVELOPER - CITY AND AUTHORITY REMEDIES.

(d) **The City’s and the Authority’s Ability to Repurchase the Property.** In the event that the Closing described in Section 6 of this Agreement is completed, and the Redeveloper has not commenced construction of the Project within ten (10) months of the date of Closing, such a failure shall be deemed a material breach of this Agreement, and solely for the breach by Redeveloper regarding such a failure to proceed, the City and the Authority shall have the at no cost back to the City and the Authority. The City, the Authority and the Redeveloper acknowledge and agree that this remedy of the right to repurchase the Property is based on the unique nature and character of the Project, and the Parties hereto agree that such a unique remedy is necessary and appropriate under the circumstances.

The “**Deed Reconveyance Provision**” is defined as the following provision appearing in the Deed:

SUBJECT TO THAT ABILITY TO REPURCHASE THE PROPERTY AT NO

Exhibit B-1

COST TO GRANTOR AS MORE PARTICULARLY DESCRIBED IN SECTION 9(d) OF THAT REDEVELOPMENT AGREEMENT DATED OCTOBER 10, 2012, AND RECORDED AT 2013000057751 BY AND BETWEEN GRANTOR AND HAWKINS DEVELOPMENT, LLC.

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IN WITNESS WHEREOF, the parties hereto have executed this Notice of Termination to be effective as of the date first above set forth.

THE CITY OF NORTHGLENN, COLORADO,
a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, by Joyce Downing, as Mayor of the City of Northglenn, Colorado, a municipal corporation.

My commission expires: _____

(S E A L)

Notary Public

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EXHIBIT A
Legal Description of the Property

PARCEL 1:

LOTS 1 THROUGH 7, BLOCK 1, AND OUTLOT A, BLOCK 1, WEBSTER LAKE PROMENADE SUBDIVISION, COUNTY OF ADAMS, STATE OF COLORADO.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS BY VEHICULAR AND PEDESTRIAN TRAFFIC, VEHICULAR PARKING AND UTILITIES WITHIN THE "COMMON AREAS" AS MORE FULLY DEFINED AND DESCRIBED IN GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JULY 9, 2013 UNDER RECEPTION NO. 2013000058468, COUNTY OF ADAMS, STATE OF COLORADO.

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EXHIBIT C
Form of First Amendment to Enhanced Sales Tax Incentive Program Agreement

[attach]