

**CITY MANAGER'S OFFICE  
MEMORANDUM**

DATE: June 27, 2016  
TO: Honorable Mayor Joyce Downing and City Council Members  
FROM: James A. Hayes, AICP, City Manager *JH*  
SUBJECT: **Council Resolution CR-71**  
Acquisition of Real Property located at 421 W. 112<sup>th</sup> Avenue

---

**BACKGROUND**

Over the last several weeks, at City Council direction, the City Manager and City Attorney have been negotiating a contract to buy and sell real estate with the owners of real property at 421 W. 112<sup>th</sup> Avenue. The property is owned by the family of Odell Barry and the lead negotiator has been his son, Damon Barry. Attached to this memorandum is a contract to buy and sell real estate in the amount of \$420,000.00 with a closing date of July 22, 2016. The City Attorney has approved the contract as to form and the sellers will execute the contract in the same form.

**BUDGET IMPLICATIONS**

The City has not formally budgeted for this acquisition in the 2016 budget or capital improvement program since the opportunity to acquire the land arose after the annual budget was approved. Staff is proposing to use General Fund reserves to complete the acquisition. The proceeds from SCL Hospital land sale were added to the reserves in that fund, which in turn, may be used for land acquisition.

The City will also be seeking open space grants via Adams County to be used to offset the acquisition costs. The next grant funding cycle is due in August with a formal decision in October. It is acceptable to complete the closing in advance of grant approval and if grants are made available, they may be used for reimbursement of the City expenditures.

**RECOMMENDATION**

Attached to this memorandum is a Resolution that, if approved, would:

1. Authorizes the purchase of property generally located at 421 W. 112<sup>th</sup> Avenue for the purchase price of \$420,000.00 and further authorizes the City Manager to execute the necessary documents, subject to City Attorney approval as to the legal form of such documents.

Staff recommends approval of this Resolution.

**STAFF REFERENCE**

James A. Hayes, AICP, City Manager

[jhayes@northglenn.org](mailto:jhayes@northglenn.org)

303.450.8706

**ATTACHMENTS**

- ☐ Resolution
- ☐ Contract to Buy and Sell Real Estate

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-71  
Series of 2016

\_\_\_\_\_  
Series of 2016

A RESOLUTION AUTHORIZING THE CITY'S PURCHASE OF PROPERTY GENERALLY LOCATED AT 421 WEST 112TH AVENUE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS TO COMPLETE THE TRANSACTION

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

Section 1. The City Council hereby authorizes the purchase of property generally located at 421 West 112<sup>th</sup> Avenue by approving the Contract to Buy and Sell Real Estate attached hereto as **Exhibit A**, and incorporated herein by this reference between the City and Odell C. Barry and Damon Odell Barry, for the purchase price of \$420,000.00, and further authorizes the City Manager to execute the necessary documents, subject to City Attorney approval as to the legal form of such documents.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

## CONTRACT TO BUY AND SELL REAL ESTATE

June 27, 2016 (the "Effective Date")

1. PARTIES AND PROPERTY. The City of Northglenn, Colorado (Buyer), agrees to buy, and Damon O. Barry, individually and Odell C. Barry, individually (collectively, the "Seller"), agrees to sell, on the terms and conditions set forth in this contract, the following described real estate in the County of Adams, Colorado, to wit:

See **Exhibit A**, attached hereto and incorporated herein by this reference, also known by the street address of 421 West 112<sup>th</sup> Avenue, Northglenn, Colorado

together with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto (collectively the "Property").

2. INCLUSIONS/EXCLUSIONS. \_\_\_\_\_

---



---

3. PURCHASE PRICE AND TERMS. The purchase price for the Property (the "Purchase Price") shall be Four Hundred and Twenty Thousand Dollars and No Cents (\$420,000.00) and shall be paid in full as adjusted by prorations as provided for herein in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check, and cashier's check (Good Funds).

4. NOT ASSIGNABLE. This contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

5. EVIDENCE OF TITLE.

(a) Seller shall, within seven (7) calendar days following the Effective Date, to the extent not previously delivered, cause to be delivered to Buyer, at Buyer's expense: (i) a current ALTA extended coverage owners title insurance commitment on the Property issued by the Title Company, in the an amount of Four Hundred and Twenty Thousand Dollars and No Cents (\$420,000.00); (ii) legible copies of all matters of record referenced in Schedule B-II of the Commitment; (iii) a current certificate of taxes due for the Land issued by the County Assessor's office, if any, (the documents identified in clauses (i), (ii) and (iii) hereof being collectively referred to as the "Title Commitment"); and (iv) a copy of any existing survey of the Land in Seller's possession ("Existing Survey").

(b) Buyer shall have the option, at its expense, during the Contingency Period, which period shall be defined as such time that the parties can perform their due diligence, and which shall continue from the Effective Date until 5:00 p.m. on July 14, 2016 to obtain a survey for the Property in form acceptable to Buyer and sufficient to permit Title Company to delete standard survey exceptions (the "Survey"). If obtained by Buyer, Buyer shall deliver a copy of the Survey to Seller and to Title Company, and the Survey shall be in a form reasonably

satisfactory to Title Company as having been made in compliance with applicable law and land survey standards and ALTA requirements for extended coverage owner's title insurance, certified to Buyer, Seller, Title Company and any other parties specified by Buyer. Any additional expense related to the Survey shall be at the expense of Buyer. In the event Buyer does not elect to obtain the Survey, Buyer shall have no right to object to any matter on the Title Commitment that would be removed upon delivery of a Survey meeting the requirements specified herein.

(c) Buyer shall have until 5:00 p.m. on July 14, 2016 (the "Title Objection Period") to notify Seller in writing ("Title Objection Notice") of any objection Buyer may have to any matter contained in the Title Commitment or shown on the Survey ("Objection"). All matters shown in the Title Commitment and/or the Survey that are not objected to in a Title Objection Notice prior to expiration of the Title Objection Period shall be deemed "Permitted Exceptions"; provided, however, that Buyer shall not be required to object to, and Seller shall be obligated to remove at or before Closing, any monetary liens attributable to Seller's activities shown on the Title Commitment or any update thereto. Current real property taxes and assessments not yet due and payable, government liens for special improvements not installed as of the Effective Date, if any, and all other matters which may be caused by Buyer or agreed to by Buyer in writing shall also be Permitted Exceptions. Seller shall have five (5) days from receipt of the Title Objection Notice (the "Title Response Time") to notify Buyer in writing of its election either to cure the Objections so specified, or to take no action (a "Title Response Notice"). If Seller does not deliver a Title Response Notice to Buyer prior to expiration of the Title Response Time, Seller shall be deemed to have elected to take no action with respect to the Objections. If Seller elects (or is deemed to have elected) to take no action with respect to any Objection, then Buyer shall have, as its exclusive remedy, the right to terminate this Agreement or to waive such Objections and close with no reduction in the Purchase Price. If, in such event, Buyer fails to notify Seller within five (5) days after the expiration of Title Response Time that Buyer elects to terminate this Agreement, then Buyer shall be deemed to have elected to close the transaction evidenced by this Agreement and to waive such Objections, with no reduction in the Purchase Price, and in such event the Objections shall be deemed Permitted Exceptions. If Buyer timely elects to terminate this Agreement in accordance with the provisions of this Section 3(c), then the Deposit shall be returned to Buyer and both parties shall be relieved from all further obligations under this Agreement, except for the obligations of Buyer or Seller that expressly survive the termination of this Agreement, all of which shall continue in full force and effect. Seller shall have no obligation to agree to cure any Objection, but if Seller elects to cure an Objection, Seller shall use its commercially reasonable efforts and diligently pursue any cure.

(d) If any update of the Title Commitment or Survey prior to Closing contains any new exception, new title or survey matter or any additional requirements not previously shown in the Title Commitment or Survey, Buyer shall have five (5) days thereafter to give Seller written notice of Buyer's objections thereto (an "Additional Objection"). Any Additional Objection shall be treated in the same manner as an Objection under Section 3(c).

6. INSPECTION. Seller agrees to provide Buyer on or before July 5, 2016, with a Seller's Property Disclosure form completed by Seller to the best of Seller's current actual knowledge. Buyer or any designee, shall have the right to have inspection(s) of the physical condition of the Property and Inclusions, at Buyer's expense. If written notice of any

unsatisfactory condition, signed by or on behalf of Buyer, is not received by Seller on or before July 14, 2016 (Objection Deadline), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer. If such notice is received by Seller as set forth above, and if Buyer and Seller have not agreed, in writing, to a settlement thereof on or before July 8, 2016 (Resolution Deadline), this contract shall terminate three calendar days following the Resolution Deadline; unless, within the three calendar days, Seller receives written notice from Buyer waiving objection to any unsatisfactory condition. Buyer is responsible for and shall pay for any damage which occurs to the Property and Inclusions as a result of such inspection. Buyer is purchasing the Property in an "as is" physical condition and in an "as is" state of repair, with all faults, except as provide herein. Except as may be set forth in this Agreement, Buyer does hereby waive, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, whether express or implied, including, by way of description but not limitation, those of fitness for a particular purpose and use. Except as otherwise stated herein, if Buyer terminates this Agreement after the end of the Contingency Period, then Buyer shall be deemed in default under this Agreement and Seller shall have such remedies as set forth in Section 9.(a) below.

7. DATE OF CLOSING. The date of closing shall be July 22, 2016, or by mutual agreement at an earlier date. The hour of closing shall be as designated by mutual agreement of the parties, and shall occur at the office of the Title Company.

(a) All general real estate taxes and assessments ("Taxes") for all calendar years prior to the date of Closing, if any, shall be paid by Seller on or before Closing. All Taxes for the calendar year in which the Closing shall occur, which are not due and payable as of Closing, shall be prorated to the Closing Date based on the actual Taxes for the year of closing, if known, and if not known, based on the most recent assessed valuations and most recent mill levy available, which proration shall be deemed a final settlement between the parties.

(b) All title charges for the base premium for the Owner's policy of title insurance in the amount of the Purchase Price, including any endorsements thereto shall be paid by Buyer. The recording fee for the deed of conveyance, documentary fee and transfer taxes, if any, and the premium for any title endorsements or coverage amounts above the coverage agreed to be provided by Seller shall be paid by Buyer. All other closing costs imposed by the Title Company shall be paid by Buyer.

(c) Possession of the Property, subject to Permitted Exceptions, shall be delivered to the Buyer on the date of Closing.

(d) As part of the Closing, Seller shall deliver to Buyer or Escrow Holder, as applicable, the following:

- (i) a general warranty deed in the statutory form;
- (ii) the unconditional commitment of the Title Company to issue the Title Policy as required under the Agreement;
- (iii) a bill of sale without warranties conveying to Buyer the personal property belonging to Seller and used in connection with the operation of the Property, if any;

(iv) an affidavit, as required by the Title Company, necessary to delete the standard printed title exceptions; and

(v) evidence, as required by the Title Company, that those acting for the Seller have full authority to consummate this transaction in accordance with the terms of this Agreement; and

(vi) such other documents, including affidavits, as may be reasonably required in order for the Title Company to issue the title policy contemplated by this Agreement and for the parties to close the transactions evidenced hereby.

(e) As part of Closing, Buyer shall deliver to the Seller or Escrow Holder, as applicable, the following:

(i) the Purchase Price in the amount and form as stated herein;

(ii) evidence, as required by the Title Company, that those acting for the Buyer have full authority to consummate this transaction in accordance with the terms of this Agreement; and

(iii) such other documents, including affidavits, as the Title Company may reasonably require in order to issue the title policy contemplated by this Agreement and close the transactions evidenced hereby.

8. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before closing from the proceeds of this transaction or from any other source.

9. TIME OF ESSENCE/REMEDIES. Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) IF BUYER IS IN DEFAULT (Specific Performance).

Seller may elect to treat this contract as cancelled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller, and Seller may recover such damages as may be proper.

(b) IF SELLER IS IN DEFAULT.

Buyer may elect to treat this contract as cancelled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

(c) COSTS AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

10. ADDITIONAL PROVISIONS. Additional Provisions are attached as Exhibit B and incorporated by this reference. (The language of these additional provisions has not been approved by the Colorado Real Estate Commission.)

11. RECOMMENDATION OF LEGAL COUNSEL. By signing this document, Buyer and Seller acknowledge that the Selling Company or the Listing Company has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this contract.

12. TERMINATION. In the event this contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations.

13. GENERAL MATTERS.

(a) This Agreement can be amended only in writing by both parties and supersedes any and all agreements between the parties hereto regarding the Property which are prior in time to this Agreement.

(b) If any portion of the Property is taken by eminent domain or condemnation or any transfer in lieu of eminent domain or condemnation, or if the Building is destroyed or materially damaged prior to the Closing to the extent that repairs would reasonably be expected to cost in excess of \$10,000, Buyer may (i) complete the purchase of the Property without reduction in the Purchase Price but (y) in the event of any taking by eminent domain or condemnation or any transfer in lieu of eminent domain or condemnation, Buyer shall be entitled at Closing and Seller shall at Closing assign to Buyer all condemnation awards and settlements with respect thereto; or (ii) in the event of the destruction or material damage to the improvements on the Property, Buyer shall be entitled at Closing and Seller shall at Closing assign to Buyer all insurance proceeds with respect thereto.

(c) Time is of the essence of this Agreement.

(d) Unless otherwise expressly provided herein, all tenders and notices required hereunder shall be made and given in writing by confirmed facsimile transmission to the parties hereto and their counsel at the facsimile numbers herein set forth and shall be effective as of the date of transmission; or by personal delivery (which shall be effective as of the date of delivery); or by mailing by U.S. certified mail, return receipt requested (which shall be effective as of the 3rd business day after deposit); or by private contract carrier (which shall be effective as of the date of delivery). Facsimile numbers and addresses for notice are:

To the Purchaser: City of Northglenn, Colorado  
Attn: City Manager  
11701 Community Center Drive  
Northglenn, Colorado 80233-8061

Telephone: (303) 451-8326  
Facsimile: (303) 450-8798

With a copy to: Corey Y. Hoffmann, Esq.  
Hoffmann, Parker, Wilson & Carberry, PC  
511 Sixteenth Street, Suite 610  
Denver, Colorado 80202  
Telephone: (303) 825-6444  
Facsimile: (303) 825-1269

If to Seller: Damon O. Barry  
3626 W. 100<sup>th</sup> Ave  
Westminster, CO 80031

With a Copy to: Shawn L. McIntire, Esq.  
1225 17<sup>th</sup> Street, Suite 2300  
Denver, CO 80202

And: Odell C. Barry  
2651 Ranch Reserve Ridge  
Westminster, CO 80234

(e) As specifically limited herein, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and permitted assigns of the parties hereto.

(f) The performance and interpretation of this Agreement shall be controlled by the laws of the state in which the Property is located.

(g) Buyer acknowledges Seller's disclosure that the property may be located in a special taxing district. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

(h) The delivery of electronic or facsimile copies of any parties' signature herein, or on any other agreement or instrument to be delivered in connection herewith shall be valid and binding for all purposes. Upon request, either party will deliver to the other the



original of the agreement or instrument delivered by electronic mail or facsimile, however failure to furnish an executed original shall not affect the effectiveness of any execution evidenced by a facsimile signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

14. DATES. If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date shall be automatically extended to the next succeeding weekday that is not a holiday (a "business day").

15. BROKERS' FEES. It is agreed and warranted by each party that no agent, person, or entity whatsoever is due any real estate commission for services performed in relation to this Agreement and Property described therein.

16. Next Business Day: In the event any date described herein for payment or performance of the provisions hereof falls on a Saturday, Sunday or legal holiday, the time for such payment or performance shall be extended to the next business day.

17. Entire Document: Seller and Buyer acknowledge that there are no statements, warranties, or representations between them that are not included in this agreement, and this agreement shall not be modified or changed in any manner, unless in writing, and executed by all the parties hereto.

18. Survival of Contract Provisions: To the extent that the provisions herein set forth require performance to be completed subsequent to the closing, such provisions shall survive the closing and be binding upon the parties hereto, and shall not merge into the deed or deeds to be delivered in accordance with this Contract.

19. Hazardous Materials: Seller has not to the best of Seller's knowledge used hazardous materials (as defined hereinafter) on, from, or affecting the property in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of hazardous materials, and that, to the best of Seller's knowledge, no person or entity has used hazardous materials on, from, or affecting the property in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of hazardous materials. Seller has never received any notice of any violations of federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of hazardous materials, and, to the best of Seller's knowledge, there have been no actions commenced or threatened by any person or entity for noncompliance therewith. For purposes of this Contract, "hazardous materials" shall mean and include any flammable explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, asbestos, formaldehyde compounds, PCBs, radon, and any other substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal or applicable state or local laws, ordinances, or

IN WITNESS WHEREOF, the parties hereto have executed this Contract to Buy and Sell Real Estate the date and year first above written.

SELLER:

Danion O. Barry, individually

14



© 2008 Pearson Education, Inc. All rights reserved. This publication is protected by copyright. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission from the publisher.

Odell C. Barry, individually

C. Barry, individually