

SPONSORED BY: MAYOR NOVAK AND COUNCIL MEMBER MARTIN

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-37  
Series of 2007

\_\_\_\_\_  
Series of 2007

A RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTHGLENN, THE NORTHGLENN URBAN RENEWAL AUTHORITY, PRIME WEST DEVELOPMENT, INC. AND ZING DEVELOPMENT STRATEGIES, LLC, A COLORADO LIMITED LIABILITY COMPANY

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

Section 1. The Development Agreement between the City of Northglenn, the Northglenn Urban Renewal Authority, Prime West Development, Inc., and Zing Development Strategies, LLC, attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2007.

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

ATTEST:

\_\_\_\_\_  
DIANA L. LENTZ, CMC  
City Clerk

APPROVED AS TO FORM:

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

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and executed this \_\_\_\_ day of May, 2007 (the "**Effective Date**"), by and between the **CITY OF NORTHGLENN, COLORADO**, a Colorado home rule municipal corporation (hereafter referred to as the "**City**"), the **NORTHGLENN URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (hereafter referred to as "**NURA**") (the City and NURA may hereafter also collectively be referred to as the "**Developer**"), and **PRIME WEST DEVELOPMENT, INC.**, a Colorado corporation, and **ZING DEVELOPMENT STRATEGIES, LLC**, a Colorado limited liability company (Prime West Development, Inc. and Zing Development Strategies, LLC shall hereafter be referred to collectively as the "**Subdeveloper**"). Each of the City, NURA and Subdeveloper may be hereafter referred to as a "**Party**", and collectively they may be hereafter referred to as the "**Parties**".

### W I T N E S S E T H

**WHEREAS**, the City owns and NURA collectively own 17 acres, more or less, of real property described in Exhibit A (the "**Property**"), which is shown and depicted on the Area Plan, which is attached as Exhibit B, and the City and NURA have determined that the Property is in need of development as a commercial, entertainment, residential, cultural, and municipal district (the "**District**");

**WHEREAS**, in order to facilitate the development of the Property the City has selected Subdeveloper to develop the Property in cooperation with the City and NURA into a commercial, entertainment, residential, cultural, and municipal district;

**WHEREAS**, the City has determined that Subdeveloper possesses the financial, management and development capability to develop the Property in a manner which will be beneficial to the citizens and residents of the City; and

**WHEREAS**, the Parties hereto wish to memorialize their agreement as to various aspects of the development of the Property and thereby set forth their various and respective duties and responsibilities in connection with such development.

**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. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** The following terms have the respective meanings set forth below:

"**Applicable Laws**" shall mean any law, ordinance, order, rule, regulation, requirement or judicial decision of any Governmental Authority, which is at any time during the Term applicable to the District, including, all Governmental Requirements and other requirements applicable to the Property. Such laws, ordinance, orders, rules, regulations shall include, without limitation, any of those which relate to

zoning, public health, public safety, environmental protection, accessibility, the removal of architectural barriers and the existence or removal of any Hazardous Materials.

**"Area Plan"** shall mean the site plan showing the Property, as well as other contiguous property owned by the Developer including but not limited to the Northglenn Recreation Center and the Northglenn City Hall, which is attached hereto as Exhibit B.

**"Business"** shall mean any occupation, work, or trade in which a person or entity is engaged, including retail, office, and food services, whether for profit or not.

**"Certificate of Commencement"** shall mean the Certificate issued by the City and NURA and accepted by the Subdeveloper at the completion of the Feasibility Period, which Certificate shall trigger the obligations of the Developer and the Subdeveloper pursuant to Parts 3 and 4 of this Agreement.

**"Certificate of Commencement of Construction"** shall mean a document substantially in the form of Exhibit J attached hereto, issued by the City to the Subdeveloper in accordance with this Agreement and evidencing Subdeveloper's commencement of construction of the Work, or phases thereof, as the case may be.

**"Certificate of Substantial Completion"** shall mean a document substantially in the form of Exhibit K attached hereto, issued by the City to the Subdeveloper in accordance with this Agreement and evidencing Subdeveloper's substantial completion of the Work, or phases thereof, as the case may be. *"Certificate of Substantial Completion"* shall also mean a document substantially in the form of Exhibit K attached hereto, issued by the City to the Subdeveloper confirming that the Subdeveloper has met its obligations under the terms of the this Agreement regarding the construction of the District.

**"City Public Improvements"** shall mean all public improvements that (a) are necessary to provide proper access to and egress from the District, utility services to the District, and other public infrastructure reasonably necessary for the development and operation of a mixed-use project similar to the Development; and (b) will be constructed by the City, including, but not limited to, those improvements listed on Exhibit G attached to this Agreement.

**"Development"** shall mean all work within the District required to transform the District into a commercial, entertainment, residential, cultural, and municipal district, including the demolition of existing structures and construction of new structures and improvements in the District, including surface parking lots, signage, landscaping, drainage, sidewalks, and utilities within the District, and the Subdeveloper Public Improvements.

**"Development Plan"** shall mean the plan prepared by Subdeveloper consisting of drawings and a narrative generally describing the proposed Development. The Parties contemplate that the Development Plan will be generally consistent with the preliminary design for the Development depicted on the Preliminary Development Plan.

"**District**" shall mean the Property, consisting of seventeen (17) acres, more less.

"**Environmental Laws**" shall mean all current and future federal, state and local statutes, regulations, ordinances and rules relating to (1) the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; (2) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; or (3) the protection of human health, safety or the indoor or outdoor environmental, including (without limitation) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et. seq.* ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et. seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et. seq.* ("**RCRA**"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et. seq.*; the Clean Water Act, 33 U.S.C. Section 1251, *et. seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado, as amended; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

"**Feasibility Period**" shall mean that period consisting of no longer than six (6) months in duration, commencing upon full execution of this Development Agreement, in which the Developer and the Subdeveloper shall master plan the Property and investigate the feasibility of at a minimum the Town Center Property as defined hereinbelow.

"**Force Majeure**" shall mean delays in the performance of a Party's obligations hereunder that are caused by reason of acts of God, extraordinarily inclement weather, strikes, lockouts, labor troubles, inability to procure necessary labor, materials, supplies or inventory (including, if applicable, the general unavailability of suitable film product) at commercially reasonable rates, failure of power, illegality, general unavailability of permits or approvals required under applicable Governmental Requirements, riots, insurrection, acts of terrorism or war, or other reason of a similar or dissimilar nature not the fault of or within the reasonable control of such Party, including (without limitation) the failure of the other Party to perform its obligations as and when required hereunder.

"**Governmental Authority**" shall mean any federal, state, municipal or local governmental authority, agency or board or any division thereof having jurisdiction over the District.

"**Governmental Requirements**" shall mean those Applicable Laws, which relate to the development, construction, occupancy or use of the District.

"**Hazardous Materials**" shall mean (a) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any Environmental Laws; (b) any substance, product, waste or

other material of any nature whatsoever (including, without limitation, mold and other biological agents) which may give rise to liability under any Environmental Laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products contained within regularly operated motor vehicles; (d) asbestos and asbestos-containing materials; (e) subsurface gas (including radon); (f) urea formaldehyde foam insulation; (g) polychlorinated biphenyls; (h) freon and other chlorofluorocarbons; and (i) underground storage tanks.

**"Hotel Parcel"** shall mean the parcel of real property in the City that is located to the west of the Property and that is used for hotel purposes as of the Effective Date. A portion of the Hotel Parcel is depicted on the Area Plan.

**"Initial Tenant"** shall mean the first business to occupy a Lot or a portion of a Lot in the District after the Effective Date of this Agreement.

**"Lots"** shall mean the individual parcels of real property, into which the District is divided for development purposes.

**"Pre-Approved Tenants"** shall mean the tenants listed by name on Exhibit D attached to this Agreement.

**"Preliminary Development Plan"** shall mean the preliminary site plan for the Development attached to this Agreement as Exhibit I.

**"Prohibited Uses"** shall mean the prohibited uses listed on Exhibit F attached to this Agreement.

**"Property"** shall mean the real property containing approximately seventeen (17) acres currently owned by the City and NURA, which shall be developed into a first class commercial, entertainment, residential, cultural, and municipal district, and which is more specifically described in Exhibit A.

**"Recorded"** shall mean recorded in the real property records maintained by the Clerk and Recorder of Adams County, Colorado.

**"Residential/Mixed Use Property"** shall mean that portion of the Property consisting of approximately six (6) acres, and located generally east of Grant Street.

**"Subdeveloper Public Improvements"** shall mean those public improvements listed on Exhibit H attached to this Agreement which are to be constructed by Subdeveloper within the District.

**"Subsequent Tenant"** shall mean any business that occupies a Lot or a portion thereof, in the District after that Lot or a portion thereof has been occupied by an Initial Tenant.

**"Tenant"** shall mean any entity leasing or purchasing property or operating a Business in the District.

**"Tenancing Criteria"** shall mean the tenancing criteria set forth on Exhibit E attached to this Agreement.

**"Term"** shall mean the period during which this Agreement is effective as set forth in Section 8.

**"Town Center Property"** shall mean that portion of the Property consisting of approximately eleven (11) acres, and located generally west of Grant Street.

**1.2 Exhibits.** The following Exhibits are attached to and incorporated into this Agreement:

- Exhibit A – Description of the Property
- Exhibit B – Area Plan
- Exhibit C – Not Used
- Exhibit D – List of Pre-Approved Tenants
- Exhibit E – Tenancing Criteria
- Exhibit F – List of Prohibited Uses
- Exhibit G – City Public Improvements
- Exhibit H – Subdeveloper Public Improvements
- Exhibit I – Preliminary Development Plan
- Exhibit J – Form of Certificate of Commencement of Construction
- Exhibit K – Form of Certificate of Substantial Completion

## **2. RELATIONSHIP OF CITY TO NURA**

For purposes of this Agreement, the City and NURA agree that because each owns discrete portions of the Property to be developed hereunder, that in order to efficiently act as the Developer hereunder, the City and NURA must be able to jointly act to perform obligations and otherwise adhere to and enforce the terms and conditions of this Agreement. Accordingly, NURA hereby authorizes the City to negotiate on its behalf regarding the provisions of this Agreement but retains the right to approve any specific additional contracts or contract terms prior to execution thereof.

## **3. FEASIBILITY PERIOD**

During the Feasibility Period, which Feasibility Period shall last no longer than six (6) months from the date of full execution of this Agreement, the Developer and the Subdeveloper shall jointly determine the specific boundaries of the Property, which Property shall consist of the approximately seventeen (17) acres located on the east and west sides of Grant Street at 120<sup>th</sup> Avenue as generally depicted on **Exhibit A**, attached hereto and incorporated herein by this reference. Subdeveloper shall have the first ninety (90) days of the Feasibility Period to undertake its due diligence described hereinbelow (the "Inspection Period") of at a minimum, the Town Center Property.

At the expiration of the Feasibility Period, Subdeveloper shall give notice to Developer of the exact portion of the Property upon which Subdeveloper desires to purchase and close. Notwithstanding the initial purchase described herein, the Developer and the Subdeveloper shall undertake the site planning of the Town Center Property, and shall also undertake at elevation studies of the Town Center Property. Provided, however, nothing in this Agreement shall be deemed to preclude the Developer and the Subdeveloper from including additional areas within the Area Plan in the site planning and elevations studies undertaken during the Feasibility Period. However, the Parties intend as of the date of this Agreement that the portion of the Property located on the west side of Grant Street (the "Town Center Property") containing approximately eleven (11) acres shall be purchased and developed first, and the portion of the Property located on the east side of Grant Street containing approximately six (6) acres (the "Residential/Mixed-Use Property") will be purchased and developed subsequent to the Town Center Property. The Parties agree that such intentions are subject to change by mutual agreement based on then pending market conditions. During the Feasibility Period and the Inspection Period, the Parties shall also have the following obligations:

**3.1 Developer Obligations During the Feasibility Period.** Developer shall during the Feasibility Period:

A. At Developer's expense and in cooperation with Subdeveloper, master plan the Property, which shall include design guidelines for the Property.

B. Undertake at its discretion a community input process concerning the Development;

C. Apply for and use commercially reasonable efforts to obtain all required land use approvals of the City Planner, Planning Commission and City Council for such plans for at a minimum the Town Center Property. The City shall specifically in cooperation with the Subdeveloper apply for and use commercially reasonable efforts to obtain approval for rezoning of the District in order to permit the structures and uses contemplated for the Development under the Development Plan, including preparing and submitting all rezoning plans, preliminary PUD documents and related documents, minor subdivision approval for two initial areas described herein, and attending all required hearings and meetings. Developer shall cause to be created as a result of the land use approvals two separate platted areas, one identified as the Town Center Lots consisting of approximately eleven (11) acres, and the other identified as the Residential/Mixed Use Lot, consisting of approximately six (6) acres, which lots shall be subject to the master plan and the Preliminary PUD;

D. Upon execution of this Agreement, pay the amount of Ten Thousand Dollars (\$10,000.00) to RLA Design (RLA), which amount is the remaining amount due and owing to RLA for services rendered and previously authorized by Subdeveloper; and

E. Developer in cooperation with Subdeveloper shall agree on a Development Schedule,

**3.2 Developer Obligations During the Inspection Period.** Developer shall during the Inspection Period:

A. Developer has already provided Subdeveloper with an ALTA survey together with a title commitment for the Property. Developer shall within ten (10) days of execution of this Agreement deliver to Subdeveloper an updated owners' title insurance commitment (the "Updated Commitment") for the Property in the amount of the approximate purchase price of \$7.00 per square foot as described in Section 6 below, together with copies of all documents enumerated on Schedule B-2 of the Updated Commitment. Developer shall also within ten (10) days of execution of this Agreement deliver to Subdeveloper an updated ALTA survey (the "Updated Survey") containing topography which survey shall be sufficient to remove any Survey Exceptions from the title insurance policy subject to adverse matters, if any, noted on the Updated Survey and shall be certified to the Subdeveloper as of the Closing date, consistent with the approval for the Town Center Lot and the Residential/Mixed Use Lot identified in Section 3.1, subsection C of this Agreement;

B. Provide Subdeveloper with all due diligence information in the City's and/or NURA's possession or control, including any and all reports, studies and surveys associated with the Town Center Development including by way of example environmental studies, soils reports, traffic studies, and infrastructure information including as-built drawings. Developer makes no representations or warranties of any kind whatsoever regarding the Property, including without limitation, any warranties of fitness, habitability, condition or suitability of the Property for the Subdeveloper's intended use. Subdeveloper shall rely solely upon its own due diligence investigation described herein to determine the acceptability of the Property; and

C. Provide access to Subdeveloper to the Property during the Inspection Period and thereafter through and including Closing to allow Subdeveloper, and/or its representatives and agents to conduct whatever due diligence activities they deem necessary.

**3.3 Subdeveloper Obligations During the Feasibility Period.** Subdeveloper shall during the Feasibility Period:

A. In cooperation with Developer, master plan the Property, which master plan shall include design guidelines for the Property;

B. Undertake commercially reasonable efforts to identify tenant interest, at a minimum in the Town Center Property;

D. Obtain initial construction pricing of both the Subdeveloper Public Improvements and the contemplated private/tenant improvements;

E. Subdeveloper in cooperation with Developer shall agree on a Development Schedule;

F. Within six (6) months from the date of the commencement of the Feasibility Period, Subdeveloper shall notify Developer of the completion of the Feasibility Period by requesting the issuance of a Certificate of Commencement. Subdeveloper shall request said Certificate of Commencement if it determines at its sole discretion that it desires to proceed with the Development of the Town Center Property.

Developer shall review the request for a Certificate of Commencement, and so long as said request is based on commercially reasonable expectations, is consistent with the approved plans for the Property and is in substantial conformance with Exhibit B, Developer shall determine to approve said Certificate of Commencement, which approval shall not be unreasonably withheld or delayed. If Subdeveloper determines for any reason that it can not perform the obligations under this Agreement on or before the completion of the Feasibility Period, Subdeveloper shall notify Developer, and neither party shall have any further obligations under this Agreement, and Developer shall refund the Earnest Money as defined herein to Subdeveloper; and

F. The Parties may also agree in writing to one ninety (90) day extension of the Feasibility Period for good cause.

**3.4 Subdeveloper Obligations During the Inspection Period.** Subdeveloper shall during the Inspection Period:

A. Undertake commercially reasonable due diligence of the Town Center Property. Such due diligence shall specifically include providing objections, if any, to the Updated Commitment and the Updated Survey within fifteen (15) business days of the receipt of said Updated Commitment and Updated Survey, and any underlying documentation; and

B. Access the Property, as necessary to conduct surveys, appraisals, engineering tests, inspections and other due diligence items the Subdeveloper deems necessary to evaluate the Property. Subdeveloper shall be responsible for any and all claims, mechanics' liens, claims, damages, losses, costs or expenses arising from Subdeveloper and Subdeveloper's representatives' access onto the Property, including any such damage caused by any due diligence activity on the Property.

**3.5 Resolution of Items During and Following the Inspection Period.** Developer and Subdeveloper shall reasonably resolve, when possible, any objections of Subdeveloper during the thirty (30) day period following the expiration of the Inspection Period (the "Resolution Period"). If the Developer does not resolve Subdeveloper's objections during the Resolution Period, Subdeveloper shall have the option of proceeding to Closing without resolution of said objections, or terminating this Agreement prior to expiration of the Resolution Period. At any time during the Inspection Period or the Resolution Period, Subdeveloper may in its sole and absolute discretion, elect not to proceed with the purchase of the Town Center Property or additional portions of the Property, by giving notice to the Developer, in which case the Earnest Money shall be refunded to Subdeveloper and both parties shall be released from all rights, obligations and liabilities hereunder. Provided, however, if Subdeveloper does not give such notice to Developer of termination prior to the expiration of the Resolution Period based on due diligence issues arising during said Inspection Period, said failure shall be deemed a waiver of Subdeveloper's right to terminate this Agreement based on objections arising during said Inspection Period.

#### **4. SUBDEVELOPER OBLIGATIONS FOLLOWING ISSUANCE OF CERTIFICATE OF COMMENCEMENT**

**4.1 Plans.** Subdeveloper shall at its sole cost and expense prepare all development and related plans, including a Final PUD Plan and an amended subdivision plat, for the Development, with input from the City. Subdeveloper shall in cooperation with the Developer apply for and use commercially reasonable efforts to obtain all required approvals of the City Planner, Planning Commission and City Council for such plans. Subdeveloper shall also prepare at its sole cost and expense all civil engineering and architectural designs and renderings for the Development, with input from the City.

**4.2 Improvements.** Subdeveloper shall construct all improvements for the Development, including the Subdeveloper Public Improvements but excluding the City Public Improvements, within the District in accordance with the approved Final PUD Plan and the amended subdivision plat. Subdeveloper shall be solely responsible for all costs associated with such construction of the Subdeveloper Public Improvements. Subdeveloper shall also construct all buildings, structures and other improvements within the Development. Subdeveloper shall use commercially reasonable efforts to cause the design and construction of the Development to be performed in a good, professional and workmanlike manner in accordance with industry standards. Subdeveloper shall also construct at a public park at the south end of the Town Center Property (the "Public Park") in accordance with plans and specifications provided to Subdeveloper by Developer, and Developer shall agree to reimburse Subdeveloper for the cost of said construction. The precise amount of reimbursement shall be determined during the Feasibility Period and shall be paid to Subdeveloper in four payments upon thirty percent (30%), sixty percent (60%), ninety percent (90%), and upon substantial completion of the Public Park.

**4.3 Final Rezoning.** Subdeveloper shall, in cooperation with the Developer, apply for and use commercially reasonable efforts to obtain approval for final rezoning of the District in order to permit the structures and uses contemplated for the Development under the Final PUD Plan, including preparing and submitting all rezoning plans and related documents, and attending all required hearings and meetings. For purposes of this Agreement, the rezoning process is contemplated to include following the issuance of the Certificate of Commencement application for both a Final PUD Plan within the meaning of Article 16 of the City of Northglenn Zoning Ordinance, and an amended subdivision plat within the meaning of Chapter 12 of the Northglenn Municipal Code, which amended plat may be a minor subdivision depending upon how many lots are created.

**4.4 Phasing of Development.** Subdeveloper shall reserve the right to develop the Property in phases. Subdeveloper shall at a minimum develop the approximately eleven (11) acre site identified as the Town Center Property. Provided, however, Subdeveloper reserves the ability, with the City's concurrence, to develop additional property identified in the Area Plan including the Residential/Mixed-Use Property without the phasing of said Development.

**4.5 Marketing and Leasing.** Subdeveloper shall be solely responsible for the marketing and leasing of the Property in accordance with the criteria described in Section 7.1 of this Agreement.

**4.6 Common Area Maintenance; Covenants, Conditions and Restrictions; Property Management.**

A. Common Area Maintenance. Following the issuance of a Certificate of Substantial Completion, Subdeveloper shall subject all or a mutually agreed upon portion of the real property within the District to a common area maintenance agreement ("CAM"), setting forth the maintenance standards for the District, or a portion thereof, which shall be designed to keep the District clean, attractive, well-lit, safe and secure. Subdeveloper shall negotiate the terms and conditions of the CAM with the City and any other Owners or Tenants, and shall use commercially reasonable efforts to enter into the CAM with the City and said Owners and/or Tenants. Upon its execution, Subdeveloper shall cause the CAM to be recorded against all or a specified portion of the real property in the District. All Lots within the District, unless otherwise agreed upon by the City and the Subdeveloper, shall be bound by the CAM. The owner of any Lot may require any of its Tenants to perform the owner's obligations under the CAM with respect to the premises occupied by the Tenants. It is the Parties' intent to exclude the Public Park from the provisions of the CAM, and to cause the Developer to be responsible for maintenance and responsibility for said Public Park, but said Public Park shall be maintained to a standard no less than the standards contained in Subdeveloper's CC&Rs described below.

B. Covenants, Conditions and Restrictions. A property owners' association (the "Association") shall be created by the Subdeveloper under the laws of the State of Colorado, and the Subdeveloper or the Association shall be responsible for creating and imposing Covenants, Conditions and Restrictions ("CC&Rs") on the Property which shall include at a minimum the provisions of the CAM and CAM fees, and which CC&Rs shall be approved by the City Manager or the City Manager's designee. Said CC&Rs shall include provisions for the Developer to maintain the Public Park area at its sole costs and expense, subject to the standards set forth in the CC&Rs.

C. Property Management. Following the issuance of a Certificate of Substantial Completion Subdeveloper or Subdeveloper's designee shall be responsible for the management of the Property within the District, with the exception of the Public Park and any other portions of the Property mutually agreed upon by the Parties.

**4.9 Reciprocal Easement Agreement.** The Subdeveloper shall use commercially reasonable efforts to enter into a reciprocal easement agreement with the owner of the Hotel Parcel to provide for reciprocal rights regarding access and egress and storm water detention with respect to the District and the Hotel Parcel.

**4.10 Sign Plan.** With input from the City, Subdeveloper shall develop a comprehensive sign plan for the District. The City shall have discretion to condition, and to approve or reject, in whole or in part the sign plan. Subdeveloper shall apply for and use commercially reasonable efforts to obtain approval of the City Planner for the sign plan. Notwithstanding the provisions of this Section 4.10 to the contrary, Subdeveloper shall have a right to construct one monument sign adjacent to 120<sup>th</sup> Avenue and one monument sign on City-owned property adjacent to I-25. Each such monument sign may identify the name of the Development and the names of the major Tenants of the Development, as selected by Subdeveloper.

**5. DEVELOPER OBLIGATIONS FOLLOWING ISSUANCE OF CERTIFICATE OF COMMENCEMENT**

**5.1 Land Use Applications.** City shall in cooperation with the Subdeveloper apply for and use commercially reasonable efforts to obtain all required land use approvals of the City Planner, Planning Commission and City Council for such plans. The City shall specifically in cooperation with the Subdeveloper apply for and use commercially reasonable efforts to obtain approval for rezoning of the District in order to permit the structures and uses contemplated for the Development under the Development Plan, including preparing and submitting all rezoning plans and related documents, and attending all required hearings and meetings. For purposes of this Agreement, the rezoning process following the Certificate of Commencement is contemplated to include application for both a Final PUD within the meaning of Article 16 of the City of Northglenn Zoning Ordinance, and an amended subdivision plat within the meaning of Chapter 12 of the Northglenn Municipal Code, which amended plat may be a minor subdivision depending upon how many lots are created.

**5.2 City Public Improvements.** The Developer shall design the City Public Improvements in consultation with Subdeveloper. The City shall construct the City Public Improvements in accordance with mutually agreed upon plans and specifications prepared by the City, the amended subdivision plat and site plans prepared by Subdeveloper and approved by the City for the Development, with the exception of the Public Park and any other improvements that the Developer requests be constructed by Subdeveloper. The City shall be responsible for all costs associated with the design and construction of the City Public Improvements.

**5.3 Demolition.** Developer shall demolish and clear any structures existing in the District if and to the extent such demolition is necessary to construct the Development in accordance with the approved Development Plan.

**5.4 Reimbursement of Cost of Public Park.** Developer shall reimburse Subdeveloper for the cost of constructing the Public Park. The precise amount of reimbursement shall be determined during the Feasibility Period and shall be paid to Subdeveloper in four payments upon thirty percent (30%), sixty percent (60%), ninety percent (90%), and upon substantial completion of the Public Park.

**5.5 City Review.** The City shall promptly review, respond to, and take action on items that the City is required to approve in connection with the Development and Subdeveloper's obligations set forth in Section 2, including, without limitation, the Final PUD Plan, the amended subdivision plat, rezoning plans and applications, and sign plan for the Development. The City shall not unreasonably delay, condition or withhold its review or approval of such items.

**5.6 Rezoning and Variances.** The City shall take such actions as may be reasonably necessary to permit the development of the Development within the District as contemplated by the Preliminary Development Plan, including, without limitation, an amendment to the zoning code to amend to set-back requirements and parking requirements as they apply to the District. The City shall initiate and diligently prosecute all such applications and amendments and prepare all required plans and related

documents in connection with such applications and amendments. However, nothing herein contained shall be construed as requiring the City to approve any application or in any way limiting the City's quasi-judicial and police power over land use matters.

**5.7 Environmental Matters.** In connection with its activities on or about the District and its ownership of any portion of the District, the City shall comply in all material respects with all applicable Environmental Laws.

## **6. TRANSFER OF PROPERTY/CLOSING**

**6.1** Subdeveloper agrees to buy, and the Developer agrees to transfer as set forth herein, the Town Center Property, as described below. The terms and conditions of said transfer shall be determined following the completion of the Feasibility Period, the issuance of a Certificate of Commencement, and the approval of the associated land use applications including the initial subdivision consisting of the Town Center Lots and the Residential/Mixed Use Lot, and the Preliminary PUD for the Property. However, the Parties agree that the purchase price (the "Purchase Price") for the Town Center Property shall be Seven Dollars (\$7.00) per square foot of land. The Purchase Price shall be adjusted to reflect the actual square footage of land in accordance with the Planned Unit Development for the Town Center Property, which square footage shall exclude the public park to be included of the south side of the Town Center Property, to be more specifically defined prior to Closing. Subsequent transfers of property following the sale of the Town Center Property may include, without limitation, a land sale, ground lease, exchange, or other commercially reasonable mechanism of conveyance. The Purchase Price for the Town Center Property shall be payable as follows:

A. An Earnest Money Deposit in the amount of Fifty Thousand Dollars (\$50,000.00) paid in the form of certified funds deliverable within fifteen (15) business days of full execution of this Agreement (the "Earnest Money"). The Earnest Money shall be placed in an interest bearing escrow account at Land Title, and any interest accrued shall be included as part of the Earnest Money. If any of the contingencies set forth in Sections 3, 4, 5 and 6 of this Agreement are not satisfied or waived in writing, the Earnest Money shall be refunded to Subdeveloper, and the Parties shall be released from all other obligations under this Agreement. Upon written notice of satisfaction or waiver of all contingencies set forth in this Agreement, the Earnest Money shall be nonrefundable, and such money shall remain in an interest bearing escrow account and shall be credited against the Purchase Price at Closing. Developer's sole remedy for Subdeveloper's failure to close on the acquisition of the Town Center Property shall be the forfeiture of the Earnest money relating thereto.

B. The balance of the Purchase Price shall be paid in certified funds at Closing, subject to customary Closing adjustment.

**6.2** Provided that Developer and Subdeveloper have substantially completed their respective obligations set forth hereinabove, and within fifteen (15) business days following receipt by Subdeveloper of all required site plan approvals set forth above and building permits, and the pre-leasing of fifty percent (50%) of the rentable square feet of the Town Center Property, Closing shall occur, and Developer will deliver the Town Center Property as follows:

- A. All leases on the Town Center Property shall have been previously terminated;
- B. The site will be delivered in an environmental condition acceptable to Subdeveloper;
- C. The property being conveyed shall be a finished lot with off-site utility improvements in place or otherwise to be provided by Developer;
- D. Adequate storm water detention facilities shall be provided at a mutually determined location;
- E. Off-site roadway improvements including the widening and improvement of Grant Street, and the improvement of the intersection of Grant Street and 120<sup>th</sup> Avenue;
- F. The Town Center Property shall at a minimum have obtained Preliminary PUD approval and initial subdivision approval consisting of the Town Center Lots and the Residential/Mixed Use Lot;
- G. The conveyance of the Property or the Town Center Property shall include any water and sewer tap credits associated with the demolition of any improvements that were removed including the former Heidi's building, the "shoppette" site, the motel, and the Sinclair gas station. Provided, however, said credits shall only apply to the Property, or the portion of the Property including the Town Center Property where the water and sewer taps were previously located and which are being conveyed at Closing.

**6.3** Form of Deed. The transfer of the Property, if by sale, shall be by Special Warranty Deed, subject to any permitted exceptions, and subject to the Developer's right to repurchase the Town Center Property as described below in Section 11.1.4.

## **7. TENANT SELECTION**

**7.1 Initial Tenants.** Subdeveloper shall be responsible for recruiting all Tenants for the District. Subdeveloper shall submit the name of each potential Initial Tenant to the City for review and approval, except any potential Initial Tenant that is one of the Pre-Approved Tenants. If Subdeveloper submits to the City the name of a potential Initial Tenant that, in Subdeveloper's reasonable judgment, satisfies the Tenanting Criteria, and Subdeveloper states its reasons why the potential Initial Tenant satisfies the Tenanting Criteria, then that potential Initial Tenant shall be a "**Qualified Tenant**". Each Qualified Tenant shall be deemed approved by the City unless, within 10 days after Subdeveloper submits the Qualified Tenant to the City, the City Manager objects to the Qualified Tenant in writing to Subdeveloper and states as the basis for his or her objection the reasons why the Qualified Tenant does not satisfy the Tenanting Criteria. If the City Manager objects to a Qualified Tenant, then Subdeveloper may appeal that objection, in writing, to the Northglenn City Council. The City Council shall affirm or reverse the objection within fourteen (14) days following receipt of the written appeal. If the City Council reverses the objection or fails to act within the 14-day period,

then the City shall be deemed to have approved the Qualified Tenant. In no event shall more than \_\_\_\_\_ percent (\_\_\_\_\_% ) of the gross leasable area of the Development be leased to Initial Tenants designated "Restaurant-QSR" on Exhibit G without City approval.

**7.2 Prohibited Uses.** Subdeveloper shall not conduct any of the Prohibited Uses within the District and shall not permit any Tenant to conduct any of the Prohibited Uses within the District, without the City's prior written consent.

## **8. ISSUANCE OF CERTIFICATE OF COMMENCEMENT OF CONSTRUCTION**

**8.1** Developer shall upon written request of Subdeveloper issue a Certificate of Commencement of Construction to Subdeveloper evidencing that the Subdeveloper has met its obligations under the terms of this Agreement regarding the commencement of construction, and upon issuance of said Certificate of Commencement of Construction, Developer shall no longer have the ability to repurchase the property as a remedy pursuant to Section 11.1.4 of this Agreement.

## **9. TERM**

The Term of this Agreement shall commence on the Effective Date and expire upon the earlier of (a) Subdeveloper's satisfaction of all of its obligations under this Agreement, but no earlier than Subdeveloper's conveyance of all of its ownership interests in every Lot in the District, or (b) the termination of this Agreement.

## **10. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**10.1 Mutual Warranties and Representations.** Each Party hereby warrants and represents to other as follows:

**10.1.1** Authority. That the Party and each person executing this Agreement on behalf of the Party (or in any representative capacity) has full right and lawful authority to execute this Agreement;

**10.1.2** Environmental Laws. That the Party has complied in all material respects with all applicable Environmental Laws affecting the District, to the extent the Party is or has been obligated to comply under applicable Environmental Laws.

Each Party acknowledges that the other Party has relied on each of the foregoing warranties and representations in executing this Agreement, that each of the same is material and that each of said warranties and representations are true as of the date hereof and will be true as of the Effective Date.

## **11. BREACH BY THE SUBDEVELOPER - CITY REMEDIES.**

**11.1 Event of Default.** Each of the following shall be deemed an "Event of Default" by Subdeveloper and a breach of this Agreement:

**11.1.1 Violation of Material Term.** Subdeveloper violates or fails to perform any material condition, covenant or agreement required by it to be performed, provided, however, if the nature of the default is such that it cannot be cured practicably within thirty (30) days, but Subdeveloper commences the curing within thirty (30) days after notice from City and thereafter diligently prosecutes the curing, then the cure period shall be extended for the amount of time practicably required to effect the cure, but in any event the cure period shall last no more than ninety (90) days after notice from Subdeveloper.

**11.1.2 Bankruptcy.** Subdeveloper or any of Subdeveloper's guarantors makes a general assignment for the benefit of its creditors, files a petition or other request for bankruptcy, or other reorganization, liquidation, dissolution or similar relief, or a proceeding requesting any of the foregoing is filed against it and not dismissed within ninety (90) days of filing, or a trustee, receiver or liquidator is appointed for Subdeveloper or a substantial portion of its property.

**11.1.3 Remedies.** Upon an Event of Default, the City shall have all remedies available to it at law and equity, including the right to seek injunctive relief or, in its discretion, to terminate this Agreement, and shall also have the unique right set forth below in Section 11.1.4 for the material breach set forth therein.

**11.1.4 Developer's Ability to Repurchase the Town Center Property.** In the event that the Closing described in Section 6 of this Agreement is completed, and the Subdeveloper's or the Subdeveloper's successor in interest has not commenced construction of the Development within six (6) months of the date of Closing, such a failure shall be deemed a material breach of this Agreement, and solely for the breach by Subdeveloper regarding such a failure to proceed, the City shall have the right, but not the obligation, to repurchase the Town Center Property for the Purchase Price. Developer and Subdeveloper acknowledge and agree that this remedy of the right to repurchase the Town Center Property is based on the unique nature and character of the Development, and the Parties hereto agree that such a unique remedy is necessary and appropriate under the circumstances

## **12. BREACH BY THE CITY – SUBDEVELOPER REMEDIES**

**12.1 Event of Default.** Each of the following shall be deemed an "Event of Default" by Subdeveloper and a breach of this Agreement:

**12.1.1 Violation of Material Term.** City violates or fails to perform any material condition, covenant or agreement required by it to be performed within the time allowed by the Development Schedule provided, however, if the nature of the default is such that it cannot be cured practicably within thirty (30) days, but City commences the curing within thirty (30) days after notice from Subdeveloper and thereafter diligently prosecutes

the curing, then the cure period shall be extended for the amount of time practicably required to effect the cure, but in any event the cure period shall last no more than ninety (90) days after notice from Subdeveloper.

**12.2 Remedies.** Upon an Event of Default, Subdeveloper shall have all remedies available to it at law and equity, including the right to seek injunctive relief and to terminate the Agreement.

### **13. INSURANCE AND INDEMNIFICATION**

**13.1 Subdeveloper's Insurance.** Subdeveloper shall procure and maintain, at its cost and expense, or cause to be maintained, all the following insurance:

**13.1.1 Commercial General Liability Insurance.** Following Closing and until Subdeveloper no longer owns any property within the District, Subdeveloper shall maintain commercial or comprehensive general liability insurance on an occurrence basis, insuring against any and all claims for damages to person or property or loss of life or of property occurring on or about the District or arising from the operation of the District by Subdeveloper and or arising from any tortious acts or negligence of Subdeveloper or any of Subdeveloper's agents, employees, licensees or contractors, with coverage limits of not less than \$2,000,000 for bodily injury or death to any one person and not less than \$2,000,000 for bodily injury or death arising from any one accident or occurrence, and not less than \$500,000 for property damage, with such deductibles as Subdeveloper may customarily carry in the conduct of its business.

**13.1.2 Property Insurance.** Following Closing and until Subdeveloper no longer owns any property within the District, Subdeveloper shall procure and maintain in full force and effect a policy or policies of so-called "all-risks" property insurance covering the buildings and other improvements owned by Subdeveloper within the District, with coverage at least as broad as the Standard ISO Form CP 1030 including fire, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief and sprinkler leakage endorsements. The amount of coverage of Subdeveloper's insurance hereunder shall be equal to the full replacement cost of the insured buildings and improvements, with such deductibles as Subdeveloper may customarily carry in the conduct of its business.

**13.1.3 Worker's Compensation.** Subdeveloper shall maintain worker's compensation insurance as required by the applicable laws of the State of Colorado.

**13.1.4 Named Insured.** The City shall be named as an additional insured on the commercial general liability insurance policy required in Section 13.1.1, and said policy shall specifically include any activities undertaken by Subdeveloper during the Feasibility Period defined herein.

**13.2 Subdeveloper's Indemnity.** Subdeveloper shall indemnify, defend (with counsel reasonably satisfactory to City) and hold City harmless from and against all claims, damages, liabilities and expense, including reasonable attorneys' fees, in connection with loss of life, bodily injury or damage to property in or about the District to the extent arising from or out of (a) Subdeveloper's Environmental Acts, or (b) any willful misconduct or negligence of Subdeveloper, its employees, agents, licensees or contractors.

## **14. GENERAL PROVISIONS**

**14.1 Notices.** Except as provided herein to the contrary, any notice, request or demand to be given pursuant to this Agreement, shall be in writing and shall be sent by United States certified mail, return receipt requested, or delivered by a reputable overnight courier delivery service, addressed to Subdeveloper or the Developer at the following addresses:

Subdeveloper: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All such notices, requests and demands shall be deemed given upon receipt of the addressee (or upon wrongful refusal of attempted delivery). Either Party may, by notice, designate different and/or additional addresses for notices, requests or demands to it. The parties may provide courtesy copies of any notices via facsimile.

**14.2 Assignment.** This Agreement, or any part thereof, may be assigned by the Subdeveloper only upon the prior written consent of the City. The City's consent to an assignment by Subdeveloper shall not be withheld if such assignment is to a corporation or other legal entity which is more than 50% owned or controlled by Subdeveloper or Subdeveloper's owners or principals. The City's consent to an assignment by Subdeveloper shall not be unreasonably withheld if, after complete disclosure of the financial, construction and management experience and ability of the proposed assignee, the City concludes that the assignee is capable of developing and/or managing the Development in a manner which is consistent with the manner in which experience has shown Subdeveloper is capable of constructing and/or managing the Development. In no other event shall this Agreement be assignable in whole or in any part. Any such purported or attempted assignment shall work a termination of this Agreement and shall excuse the City from any further duty or obligation hereunder. The previous provisions of this Section 14.2 notwithstanding, Subdeveloper may assign this Agreement and Subdeveloper's rights hereunder as collateral to any bona fide lender to whom Subdeveloper grants a first deed of trust against the Development.

**14.3 Invalid Provisions.** The invalidity and unenforceability of any provision of this Agreement shall not affect or impair any other provision.

**14.4 Joint Preparation.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any Party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements.

**14.5 Relationship of Parties.** Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the Parties.

**14.6 No Continuing Waiver.** No waiver of any default hereunder shall be implied from any omission by either Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either Party hereto to exercise any right or power accruing upon any non-compliance or default by the other Party with respect to any of the terms hereof, or otherwise accruing hereunder, shall impair any such right or power or be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by a Party to or of any act by the other Party requiring the former Party's consent or approval shall not be deemed to waive or render unnecessary such former Party's consent or approval to or of any subsequent similar acts by the other Party.

**14.7 Entire Agreement.** All Exhibits attached to this Agreement are incorporated herein in their entirety. This Agreement and the Exhibits attached hereto include the entire agreement of the Parties concerning this Agreement. All prior agreements of the Parties with respect to the subject matter hereof (whether written or oral), are hereby merged into this Agreement and shall have no further force or effect except to the extent expressly provided herein. No change, amendment or addition to this Agreement (or the Exhibits attached hereto) shall be effective unless in writing and signed by both Parties.

**14.8 Captions.** The captions of this Agreement are for convenience and reference only and shall not be deemed or construed to define, limit or describe the scope or intent of this Agreement or affect its interpretation or construction.

**14.9 Binding Effect.** The covenants contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and their respective successors and assigns, except as expressly otherwise hereinabove provided. and shall be recorded in the office of the Adams County Clerk and Recorder.

**14.10 Reasonable Consent.** Unless otherwise expressly provided in this Agreement, the Parties shall be reasonable whenever their consent or approval is required, and such approval or consent shall not be unreasonably withheld, delayed or conditioned. In the event that any such consent, approval or permission is specifically withheld, the withholding Party shall set forth in writing its reasons for doing so. Except

as otherwise provided herein, the Parties will endeavor in good faith to respond to any request from the other Party for a consent or approval within fifteen (15) days after receiving the request, but the failure to so respond shall not imply or constitute consent or approval (or denial of consent or approval) of the requested matter.

**14.11 Unavoidable Delays.** If either Party shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of Rent or other sums due hereunder by either Party) by *Force Majeure*, then, except as expressly provided herein to the contrary, for purposes of determining whether the applicable Party is in default of this Agreement (but not for any other purposes hereunder, except as expressly provided herein) performance of such act shall be extended for a period equivalent to the period of such delay.

**14.12 Submission of Agreement.** This Agreement shall not be binding on either Party hereto unless and until executed by both Parties delivered to both Parties. Either Party may revoke its execution of this Agreement at any time prior to its receipt of executed counterpart hereof from the other Party.

**14.13 Attorneys' Fees.** If either Party institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the non-prevailing Party in such action or proceeding (as determined by the court) agrees to reimburse the prevailing Party for the reasonable expenses of such action (including appeals and enforcement actions, if the Party seeking reimbursement prevails), including reasonable attorneys' fees and disbursements incurred by the prevailing Party, regardless of whether the action or proceeding is prosecuted to judgment. The term "attorneys' fees" wherever used in this Agreement, shall mean only the reasonable charges for services actually performed and rendered, of independent, outside legal counsel who are not the employees of the Party in question.

**14.14 Business Days.** Any references in this Agreement to "business days" refer to days other than a Saturday, Sunday or a legal holiday under the laws of the United States or the State of Colorado.

**14.15 Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

**14.16 Exhibits.** Each exhibit to which reference is made herein and which is attached hereto is made a part hereof by reference.

**14.17 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado (excluding conflicts of law principles). For the purpose of resolving conflicts related to or arising out of this Agreement, the Parties expressly agree that venue shall be in the State of Colorado only, and, in addition, the Parties hereby consent to the jurisdiction of the federal and state courts of the State of Colorado.

**14.18 Municipal Powers.** The terms of this Agreement shall not in any way alter, abridge, or modify the powers of the City of Northglenn, while acting in its capacity

as a Colorado municipal corporation, to enact, amend, or enforce municipal ordinances, rules and regulations. Provided, however, the City hereby represents that it intends the execution of this Agreement to constitute a legislative determination regarding the nature and conditions of the development of the Property, and any subsequent closings of Property or logical components thereof as contemplated by this Agreement are solely to implement this Agreement, and are determined to be administrative in nature, to be performed following the satisfaction of the contingencies set forth in this Agreement. Any provisions of this Agreement conflicting with federal, state, or municipal laws, rules or regulations shall be void.

**14.19 Broker Commission.** Each Party represents and warrants to the other Party that it has engaged no broker in connection with this Agreement and to the extent allowed by Applicable Laws, each Party agrees to indemnify the other Party and hold it harmless from any and all liabilities arising from any breach of the foregoing including claims for brokerage commissions and finder's fees and including the non-breaching Party's attorneys' fees.

**14.20 No Third Party Beneficiaries.** No third party beneficiaries to this Agreement are contemplated or intended by either Party.

**IN WITNESS WHEREOF,** the Parties have hereunto set their hands on the day and year first aforesaid.

**CITY OF NORTHGLENN**, a municipal corporation

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

Name: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Diana L. Lentz, CMC, City Clerk

APPROVED AS TO FORM:

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

**NORTHGLENN URBAN RENEWAL AUTHORITY**

\_\_\_\_\_  
By: Phil Carney, Chairman

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeff Parker, Authority Attorney

**SUBDEVELOPER:**

**PRIME WEST DEVELOPMENT, INC.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ZING DEVELOPMENT STRATEGIES, LLC**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **Legal Description of the Property**

## **EXHIBIT B**

### **Area Plan**

## **EXHIBIT D**

### **List of Pre-Approved Tenants**

#### **Grocers**

Sunflower Market  
Wild Oats  
Whole Foods  
Trader Joe's  
AJ's  
Tony's Meats  
King Soopers  
Safeway  
Wal Mart Neighborhood Market

#### **Restaurants - Full Service**

Maggiano's  
Mimi's Café  
Buffalo Wild Wings  
Islands  
Elephant Bar  
Stoney River Steakhouse  
Famous Dave's BBQ  
Sullivan's  
McGrath's Fishhouse  
Ruby Tuesday  
Ruby's Diner  
Brio  
Biaggis  
Buca Di Beppo  
Macaroni Grill  
Red Lobster  
J. Alexander's  
Champps  
Thaifoon  
PF Chang's  
Earl's  
Great Northern Tavern  
Gordon Birsch  
Rock Bottom Brewery  
Old Chicago  
LoDo's  
Austin's  
Houston's  
Houlihan's  
Roadhouse Grill  
BJ's Brewery

Benihana  
Elephant & Castle  
Baker Street Pub  
Sherlock's  
Entertainment  
Comedy Works  
Brunswick Zone  
Fat City  
Skate City  
Brunswick Zone  
Fast Eddy's  
Shakespears  
Lucky Strike  
Coyote Ugly  
Pink E's  
The Improv  
Mint  
Funky Budha  
Lotus  
Cheesecake Factory  
Maestro's  
Rock Fish Grill  
Salt Grass Steakhouse  
Il Fornaio  
North  
Bloom  
Darcy's Pub  
Granite City Brewery  
McCormick & Schmicks  
Devon/Bristol  
O' Charley's  
Morton's  
Red Robin  
Carraba's  
E& O Trading Company  
Ruth's Chris Steakhouse  
Daily Grill  
Kona Grill  
California Pizza Kitchen  
Pizzeria Uno  
BD's Mongolian BBQ  
Dewey's Pub  
On The Border  
Three Margaritas  
Hacienda  
Jack & Grill  
Three Dog Tavern

## **Restaurants - QSR**

Wahoo's Fish Taco  
Qdoba  
Chipotle  
Moe's SW Grill  
Taco Del Mar  
Baja Fresh  
Bocaza Grill  
Tin Star  
Illegal Petes  
Costa Vida  
Rumbi Island Grill  
Tokyo Joe's  
Kokoro's  
Sonada's Sushi  
Pei Wei  
Fire Bowl Café  
Panda Express  
Mark Pi's  
Starbucks  
Caribou Coffee  
It's a Grind  
Panera Bread  
Corner Bakery  
Einstein Café  
Atlanta Bread Company  
San Francisco Oven  
Campania De Italia  
Il Vicino  
Santoro's  
Woody's  
Noodles & Company  
Pasta Pomodoro  
Sauce  
Jamba Juice  
Smoothie King  
Heidi's Deli  
Potbelly's  
Quizno's  
Subway  
Portillo's  
Nathan's Famous  
Jimmy John's  
Deli Tech  
NY Deli News  
Brueger's  
Egg & I  
The Egg Shell

Original Pancake House  
Waffle House  
Dozen's  
Maggie Moo's  
Cold Stone Creamery  
Ben & Jerry's  
Marble Slab  
Dairy Queen  
Baskin Robbins  
Dunkin Donuts  
Lamar's Donuts

**Soft Goods/Shoes**

Hot Topic  
Pac Sun  
Abercrombie & Fitch  
GAP Brands  
Ann Taylor Loft  
Harold's  
White House Black Market  
Forever 21  
Victoria Secret  
Patagonia  
Nine West  
DSW  
Off Broadway Shoes  
Shoe Carnival  
Dress Barn  
TJ Maxx  
Kohl's  
Chico's  
Talbots  
Adrienne Vittadini  
Aeropostle  
Anchor Blue  
Anthropologie  
Barbara & Company  
Casual Corner  
Catherine's  
Contempo Casuals  
Fresh Produce  
The Garment District  
Lane Bryant  
Limited  
Maurice's  
Men's Warehouse  
KG Men's Store

Dardano's  
Famous Footwear

### **Health & Beauty**

Ulta  
Sephora  
Beauty Brands  
Sally Beauty  
Antoinne Du Chez  
Aveda Spa  
Bally's  
24hr Fitness

### **Gifts & Occasions**

Williams & Sonoma  
Crate & Barrel  
Pier One  
Party America  
Party City  
Hallmark  
Cardsmart  
Things Remembered  
Archiver's

### **Books/Music**

Tattered Cover  
Barnes and Nobel  
Borders  
Virgin Records  
Tower Records  
Bookman's  
Hastings

## **Toys**

Timbuk Toys  
Toys R US  
Babies R Us  
Playnix Toys  
Wizard's Chest  
Build A Bear  
Discovery Toys  
Hobbytown USA  
Its Your Move  
KB Toys  
Kazoo & Company  
Pterodactyl Ptoys  
The Right Start

## **Sporting Goods**

Christy Sports  
REI  
EMS  
Gart/Sports Authority  
Sportsman's Warehouse  
Gander Mountain  
Bass Pro Shop  
Mountain Miser  
Orvis  
BC Surf & Sport  
Bicycle Village

## **Electronics**

Best Buy  
Listen Up  
Quality Auto Sound  
Cartoys  
Radio Shack  
Apple Computer  
Wireless Toys  
Go Wireless  
Game Stop  
Rhino Games  
Frye Electronics  
Spring Communications  
Sprint  
T-Mobile  
Verizon

**Banks/Financial Services**

Chase  
1st Bank  
Wells Fargo  
American National  
US Bank  
TCF  
Bellco Credit Union  
Washington Mutual  
UMB

**Entertainment**

Amazing Jakes  
Lucky Strike  
ESPN Zone  
Splits  
Brunswick

## **EXHIBIT E**

### **Tenancing Criteria**

#### **VISION STATEMENT FOR THE DEVELOPMENT**

The Development, from its inception, and through time, should be a place that citizens of the City of Northglenn and visitors and customers who come to the Development will enjoy for its unique aspects of uses and quality of design and architecture. As envisioned by the City and the Subdeveloper, those who visit the Development would come not only to shop or utilize the services offered at the Development but also to stay and linger there as a place to enjoy for a time and would resolve to return. The Development must be sustainable through maintenance of the physical aspects as well as the merchant dynamics. The Development objectives will include sales tax generation and financial stability.

#### **NARRATIVE OF TENANTING CRITERIA BY CATEGORY**

##### **Food**

Full Service Grocery Stores. These stores are national companies currently in the Denver metropolitan market or in the future would have brand names are in the Denver metropolitan market. These full service grocery stores may be up to 65,000 square feet and may include in their merchandise mix, among other things: produce, packaged and fresh meats and fish, canned and bottled goods and food products, packaged and boxed food products, packaged and fresh bakery products, packaged and fresh delicatessen products, paper goods, housewares and other products typically used in homes a available in full service grocery stores, flowers, prepared meals, diary products, magazines, general merchandise, banking services, vision services and pharmacy and health and beauty aid products.

Specialty Grocery Stores. These stores feature one or more food products such as produce meats or fish. These specialty grocery stores are typically smaller than Full Service Grocery Stores but often offer much the same product mix as the Full Service Grocery in smaller quantities or smaller selections. The Specialty Grocery Stores may be emphasize vitamins or delicatessen products and may be known as or include in there "vitamins", "delicatessen", "meat", "produce" in their brand name.

##### **Wine and Liquor**

Packaged Wine and Liquors. Stores as licensed by the state of Colorado and the City of Northglenn. Wine and Liquor stores will be complementary to Food and Restaurant uses. These Wine or Liquors Stores will not have brand names of products prominently displayed or lighted or back lighted in window displays without City approval. They would not be allowed to advertise sale items in windows or on sidewalk displays without City approval. Wine and Liquors would in emphasize wine selection over malt and spirit beverages.

## **Restaurants**

**White Table Cloth Restaurants.** These restaurants typically are more formal restaurants that specialize in a certain cuisine by either national known origin such as "Italian", "French", and "Greek", "Asian", "Latin", "Mexican", "American" or food products such as "Steak", "Chops", and "Fish". Further, White Table Cloth restaurants emphasize dinner of evening dinning menus. While the concept of a white table cloth is not a criteria but a typical industry general name for these more formal restaurants they may or may not use table cloths in their décor. Typically these White Table Cloth restaurants will offer full bar service and may have some live entertainment.

**Casual Dinning Restaurants and Cafes.** These restaurants and cafes are not as formal as White Table Cloth restaurants and have a wide variety of cuisine and menu offerings. They may or may not include bar services and may emphasize certain dining such as breakfast, lunch or dinner menus. Casual dinning will include table services with wait staff and no over the counter services. However, they may offer pick-up or take out services.

**Quick Casual Restaurants.** These smaller restaurants often offer a certain specialized menu offering such as coffee, chicken wings, hamburgers, Mexican, Italian, juice, ice cream, gelato, yogurt, sushi, fish, bagels, pasta, delicatessen; bakery and bakery products. These Quick Casual Restaurants are formatted for faster service than restaurants that have sit down wait staff formats. Typically Quick Casual Restaurants will have an over the counter service and often drive by or drive through services as well as pick-up service.

**Entertainment Restaurants.** These restaurants offer some form of entertainment along with dinning which can include the concept of night clubs, sports such as billiards, or sports entertainment through use of electronics such as TV or other video.

## **Fashion**

Fashion retailers that are national, regional or local brand companies, as well as non-multi chain fashion retailers. These Fashion retailers may be categorized as woman's boutiques, men's stores, or children's stores. They may emphasize certain fashions such as: women's or teens tops and bottoms, women's casual, woman's high fashion or business dress, men's casual or business dress, shoes, coats, lingerie, children's clothing, sports clothing. The Fashion retailers may have other products other than dress such as and by way of example sport clothing retailers may carry products associated with the sport of sports that they emphasize. Further, Fashion Retailers may carry a mix of clothing products or accessories for different sexes, ages, and styles. The fashion component will not include those groups of retailers that emphasize discount or high discount in their advertising or store name or branding or store finish.

## **Service**

Service tenants include but would not be limited to:

**Hair Cutting Shops.** Hair cutting for women and men in salon formats or unisex formats both national or regional branding and local non affiliated facilities. Hair cutting shops may include day spas, manicure and pedicure;

Fitness Studios. Include yoga studios Pilate's studios, day spas, general fitness;

Insurance and Stock Brokerage Offices.

Phone and Wireless Services.

Banks/Financial Services. Banks, credit unions, other financial services offices or branch offices.

Design Services. Interior Design, or other residential or design services including kitchen and bath design studios.

Photographer.

Dry Cleaner.

### **Products and Merchandise**

The category of Product and Merchandise tenants is very large and any attempt to describe all those would be futile. Therefore, the following list is not totally inclusive or descriptive and therefore should be intended to limit:

Fine Art Galleries and Studios.

Florists and Plant Stores.

Hardware Stores. Would not be general hardware but would be upgraded or specialty hardware.

Optical Stores.

Furniture Stores. Would include patio furniture, Kitchen, designer furniture stores. Furniture Stores category would exclude stores that specialize in mattress sales or advertise and direct marketing toward discount values.

Book Stores and Children's Book Stores.

Electronic Stores. Those merchant that sell specialty electronics', computers, telecommunication, auto electronics including radio and CD players, Specialty Electronics as sold by Radio Shack. Electronic stores would include those that sell both large and small appliances used in the home, auto and business.

Sporting Goods. Includes but not limited to those who sell products covering several sports. Sporting good merchants that specialize in one or a few sports including but not limited to; skiing or ski shops that rent and sell skiing gear, fishing gear and products, mountain climbing, kayaking, running, golf, tennis, hockey, gymnastics.

Pharmacy and Beauty Aids. Stores that specialize in Beauty Aids or Health Products. Pharmacies that could be considered Drug Stores that not only sell health products and pharmaceuticals but also carry general merchandise.

Hobbies and Crafts. Stores that offer several hobbies or crafts and those that specialize in on or a few hobbies or crafts such as that would include but not be limited to; fine art painting, sculpture, graphics, framing; coin collecting or collection of antiquity materials; model trains or other model hobbies; pen and calligraphy Hobbies and Crafts would exclude those that specialize in the re-sale of so called antique furniture.

Toy Stores.

Cigar and Pipe Store. Those that sell imported cigar and briar pipes and smoking products. This category would exclude stores that emphasize cigarettes.

Housewares and Home Stores. Those stores that sell products for the home including but not limited to products for the kitchen, dinning, bedroom, living room. The products sold can be both functional and decorative furnishings and include furniture and wall and floor coverings. The Houseware and Home Store category would include those stores that sell container items or furnishings that specialize in home and office organization.

Pet Stores. Those that sell specialty items pets. The Pet Store category would exclude large animals and stores that are large format pet stores that carry products for several pets. Pet Stores would be limited to no more than 2,000 square feet.

Greeting Cards and Party Product Store.

Photography and Optical Products.

## **EXHIBIT F**

### **List of Prohibited Uses**

No portion of the Shopping Center may at any time be used for any of the following uses:

1. Adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); provided, however, that this prohibition shall not exclude incidental sales of adult items by a national chain general interest bookstore or national chain general interest video rental store in the same manner as offered in the majority of such chain's stores and properly screened from children;
2. Amusement arcade, amusement park or amusement rides.
3. Assembling, manufacturing, industrial, distilling, refining or smelting facility.
4. Auction house, fire sale or bankruptcy sale (except pursuant to court order), provided that any occupant that in fact goes out of business may hold one going out of business sale not to exceed four weeks in duration.
5. Bail bonds business.
6. Banquet hall.
7. Barber college or beauty school.
8. Blood bank.
9. Boat sales office, showroom or storage facility.
10. Carnival.
11. Car wash.
12. Flea market.
13. Gambling establishment or betting parlor.
14. Head shop (drug paraphernalia).
15. House of worship.
16. Junk yard.

17. Land fill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage.
18. Massage parlor, except as part of, and ancillary to, a separate primary use that is permitted hereunder (such as foot massage services offered by a shoe store).
19. Medical or dental health facility.
20. Mobile home or trailer court, labor camp, junkyard or stockyard.
21. Mortuary, crematorium or funeral home.
22. Motel.
23. Pawn shop.
24. Public or private nuisances (premises emitting or resulting in strong, unusual or offensive odors, fumes, dust or vapors, noises or sounds which are objectionable, or creating a hazardous condition).
25. Repair or service center (excluding repair or service work incidental to the operation of permitted retail uses hereunder).
26. Skating rink.
27. Stockyard.
28. Surplus, salvage or liquidation store (such as a Goodwill, Salvation Army or government surplus store).
29. Telephone call center.
30. Unemployment office.
31. Warehouse (excluding any warehousing incidental to the operation of uses permitted within the District).

## **EXHIBIT G**

### **City Public Improvements**

Each initially capitalized term used but not defined in this Exhibit G shall have the meaning set forth for the term in the Agreement.

1. The widening of and improvements to 120th Avenue in the location indicated on the Area Plan, including, without limitation, grading, pavement, curb and gutter, sidewalks, signage and lane striping.
2. The widening of and improvements to Grant Street in the location indicated on the Area Plan, including, without limitation, grading, pavement, median with landscaping, curbs and gutters, sidewalks, signage and lane striping.
3. Intersection improvements at the intersection of 120th Avenue and Grant Street in the location indicated on the Area Plan, including, without limitation, traffic and pedestrian signals, signage, turn lanes, acceleration and deceleration lanes, pedestrian crosswalks, and storm water drainage facilities.
4. Intersection improvements on Grant Street at the intersection of the "Main Street" entrance to the District in the location indicated on the Area Plan, including, without limitation, traffic and pedestrian signals, signage, turn lanes, acceleration and deceleration lanes, pedestrian crosswalks, and storm water drainage facilities.
5. Off-site water, storm drainage, and sanitary sewer lines, structures and facilities as necessary to serve the Development, and other users served by such facilities.
6. Off-site electric and natural gas utility lines and equipment as necessary to serve the Development, and other uses served by such facilities.
7. Off-site telephone, CATV and other telecommunications lines and equipment as necessary to serve the Development, and other uses served by such facilities.
8. The relocation of on-site water, storm sewer, sanitary sewer lines, structures and facilities, electric and natural gas utility lines and equipment, and telephone, CATV and other telecommunications lines and equipment to the extent such facilities are located within the District and serve users other than users within the Development.

## **EXHIBIT H**

### **Subdeveloper Public Improvements**

## **EXHIBIT I**

### **Preliminary Development Plan**

**EXHIBIT J**

**Form of Certificate of Commencement of Construction**

## **EXHIBIT K**

### **Form of Certificate of Substantial Completion**