

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-118  
Series of 2011

\_\_\_\_\_  
Series of 2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT REGARDING HURON CENTER SALES TAX SHARING BETWEEN THE CITY OF NORTHGLENN AND THE NORTHGLENN URBAN RENEWAL AUTHORITY

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

Section 1. The City Council hereby approves the Intergovernmental Agreement Regarding Huron Center Sales Tax Sharing between the City of Northglenn and the Northglenn Urban Renewal Authority, attached hereto as **Exhibit A**, and authorizes the Mayor to execute the same on behalf of the City.

DATED, at Northglenn, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**INTERGOVERNMENTAL AGREEMENT  
HURON CENTER SALES TAX SHARING**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made this 18<sup>th</sup> day of November, 2011, (the "Effective Date") by and between the NORTHGLENN URBAN RENEWAL AUTHORITY, a Colorado Urban Renewal Authority ("NURA"), and the CITY OF NORTHGLENN, a Colorado home rule municipality (the "City") (individually a "Party" and collectively, the "Parties").

**W I T N E S S E T H**

**WHEREAS**, Section 18(2)(a) of Article XIV to the Colorado Constitution, as well as C.R.S. § 29-1-201, *et seq.*, specifically C.R.S. § 29-1-203, authorize and encourage governments to cooperate by contracting with one another to their mutual benefit;

**WHEREAS**, Colorado's Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, specifically C.R.S. § 31-25-112, expressly authorizes municipalities and urban renewal authorities to cooperate on urban renewal activities;

**WHEREAS**, NURA is authorized under the provisions of Colorado's Urban Renewal Law to enter into agreements and provide financial incentives for the redevelopment of property to eliminate blight;

**WHEREAS**, Colorado's Urban Renewal Law, specifically, C.R.S. § 31-25-107(9)(a), allows a municipality to share municipal sales tax revenue with an urban renewal authority;

**WHEREAS**, concurrently with this Agreement, NURA anticipates entering into an incentive agreement (the "Incentive Agreement") with a developer, Evergreen 104<sup>TH</sup> & Huron, LLC ("Evergreen") (a copy of such agreement to be attached as **Exhibit A** and incorporated herein by reference upon full execution), to redevelop certain real property in the City of Northglenn commonly described as the Huron Center, located generally at the southwest corner of 104<sup>th</sup> Avenue and Huron Street, Northglenn, Colorado, and more particularly described in the Incentive Agreement (the "Property");

**WHEREAS**, under the Incentive Agreement, NURA will reimburse Evergreen an amount equal to a portion of the enhanced sales tax revenues paid to the City for the Property for a period of up to twelve (12) years;

**WHEREAS**, the enhanced sales tax revenues upon which payments are to be based under the Incentive Agreement and this Agreement are allocated seventy-five percent (75%) to NURA and twenty-five percent (25%) to the City;

**WHEREAS**, the City desires to support NURA's efforts to encourage the redevelopment of the Property, and therefore, desires to distribute to NURA a portion of the enhanced sales tax revenues paid to the City for the Property for a period of twelve years as more specifically set forth herein;

**WHEREAS**, in entering into this Agreement, the City Council of the City specifically finds that the establishment or substantial expansion of retail sales tax generating businesses within the City will be encouraged; thereby stimulating the economy of and within the City; thereby providing employment for residents of the City and others; thereby expanding the goods available for purchase and consumption by residents of the City; and further increasing the sales taxes collected by the City;

**WHEREAS**, the City Council finds that the redevelopment of the Property is necessary to promote the public welfare including the expansion of retail sales tax and/or seat tax generating business and expanded employment opportunities;

**WHEREAS**, the City Council further finds that entering into this Agreement shall provide a mechanism for the provision to the residents of the City of necessary public and private improvements at no cost or reduced cost to the residents and the government of the City; and

**WHEREAS**, the Parties wish to memorialize all aspects of their agreement as to the terms and conditions of such reimbursement in this Agreement.

**NOW, THEREFORE**, in consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**I. GENERAL TERMS**

A. Municipal Code Compliance. This Agreement is entered into in compliance with the provisions of Article 12, Chapter 5 of the Northglenn Municipal Code, and with the purpose of facilitating improvements permitted thereunder.

B. Payments. The Parties hereby mutually agree that the City shall make payments to NURA in amounts equal to the "Sales Tax Equivalency Payments" (as that term is defined in the Incentive Agreement), said "Sales Tax Equivalency Payments" that NURA has agreed to make to Evergreen pursuant to the Incentive Agreement. Such payments shall be made on or before the date the Sales Tax Equivalency Payments from NURA to Evergreen are due under the Incentive Agreement.

C. Termination. If at any time NURA's obligation to make the Sales Tax Equivalency Payments to Evergreen is suspended or terminates, the Parties' obligations under this Agreement shall be suspended or terminated, accordingly.

D. Collection. It shall be the duty of the City to undertake collection of all sales tax generated within the Property, and thereafter to administer division and sharing thereof, in accordance with the provisions of Sections 5-12-7 and 5-12-8 of the City's Municipal Code.

E. No Debt. This Agreement shall never constitute a debt or obligation of the City within any Constitutional or Statutory provision.

F. Legal Challenges. Any and all undisbursed amounts subject to sharing hereunder shall be escrowed in the event there is a legal challenge to the Enhanced Sales Tax Incentive Program in general or to this Agreement. In the event of such a legal challenge, NURA may continue to receive reimbursements under this Agreement if it posts a bond or other security, in a form acceptable to the City, for the full amount of such reimbursements.

G. Condition Precedent. Full execution of the Incentive Agreement shall be a condition precedent to the effectiveness of this Agreement.

## II. MISCELLANEOUS

A. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Adams County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by a party shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the following addresses set forth on the first page of this Agreement.

To NURA:                      Executive Director  
   Northglenn Urban Renewal Authority  
   11701 Community Center Drive

Northglenn, CO 80233

With a copy to:

Hayes, Phillips, Hoffmann & Carberry, P.C.  
1530 16<sup>th</sup> Street, Suite 200  
Denver, CO 80202

To the City: City Clerk  
City of Northglenn  
11701 Community Center Drive  
Northglenn, CO 80233

With a copy to: Hayes, Phillips, Hoffmann & Carberry, P.C.  
1530 16<sup>th</sup> Street, Suite 200  
Denver, CO 80202

Either Party may change such notice address upon prior written notice to the other Party.

F. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the Parties shall cooperate to cure any legal defects in this Agreement.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. None of the obligations, benefits, and provisions of this Agreement may be assigned in whole or in any part without the express written authorization of the non-assigning party. In addition, no third party may rely upon or enforce any provision of this Agreement, the same being an agreement solely between NURA and the City, and which Agreement is made for the benefit of no other person or entity.

I. Governmental Immunity. The Parties, their officers, and their employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties and their officers or employees.

*[Remainder of page intentionally left blank – signatures to follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

THE NORTHGLENN URBAN RENEWAL  
AUTHORITY

\_\_\_\_\_  
Jerry Gavette, Chairman

ATTEST:

\_\_\_\_\_  
Susan Baca, Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeff Parker, NURA Attorney

THE CITY OF NORTHGLENN, COLORADO

\_\_\_\_\_  
Joyce Downing, Mayor

ATTEST:

\_\_\_\_\_  
Johanna Small, City Clerk

APPROVED AS TO FORM:

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

**EXHIBIT A**

[Insert Executed Incentive Agreement]



**NORTHGLENN URBAN RENEWAL AUTHORITY  
INCENTIVE AGREEMENT**

THIS INCENTIVE AGREEMENT (the "Agreement") is made and executed this day of \_\_\_\_\_, 2011 (the "Effective Date"), by and between the NORTHGLENN URBAN RENEWAL AUTHORITY, a Colorado Urban Renewal Authority ("NURA"), and EVERGREEN-104<sup>TH</sup> & HURON, L.L.C., an Arizona limited liability company ("Evergreen").

**W I T N E S S E T H**

**WHEREAS**, NURA is authorized under the provisions of Colorado's Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, to enter into agreements and provide financial incentives for the redevelopment of property to eliminate blight;

**WHEREAS**, such redevelopment may be made and encouraged by granting financial assistance to persons who reside within NURA boundaries, to businesses within the NURA boundaries, and to owners of property within NURA boundaries;

**WHEREAS**, Evergreen or its affiliates is under contract to purchase certain real property in the City of the Northglenn (the "City") commonly described as the Huron Center, located generally at the southwest corner of 104<sup>th</sup> Avenue and Huron Street, Northglenn, Colorado, and more particularly described in the attached **Exhibit A** (the "Property");

**WHEREAS**, Evergreen proposes to redevelop the Property, which redevelopment will include the design, permitting and construction of certain public and private improvements specifically described in the attached **Exhibit B** and shown on the site plan attached hereto as **Exhibit C** (the "Improvements");

**WHEREAS**, NURA specifically finds that entering into this Agreement will enhance the physical appearance and economic viability of the Huron Center, will protect adjacent properties from deterioration, will maintain a positive business environment in the City of Northglenn, and will revitalize the Huron Center as a commercial center to attract other businesses to the City and the Northglenn Urban Renewal Area;

**WHEREAS**, the incentives provided under this Agreement will further the public purpose of NURA as set forth in C.R.S. § 31-25-102;

**WHEREAS**, the parties hereto wish to set forth in full their agreement as to the general nature and extent of the public and private improvements to be constructed and installed by Evergreen within and upon the Property, and the manner for and extent of the reimbursement to Evergreen for such construction and installation; and

06/19/06

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**WHEREAS**, the parties wish to memorialize all aspects of their agreement as to the terms and conditions of such reimbursement in this Agreement.

NOW, THEREFORE, in order to promote redevelopment, fulfill NURA's urban renewal purpose as set forth in Colorado's Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, and achieve the above-referenced goals, and in consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## **I. IMPROVEMENTS COMPENSATION**

### **A. Evergreen Obligations.**

1. Evergreen shall design, permit and construct the Improvements to develop and open for use on the Property a specialty grocery store as the anchor tenant. Within \_\_\_ days of acquisition of the Property, Evergreen shall record covenants on the Property restricting tenancy as follows: Funeral parlor; massage parlor (excluding the operation of a massage parlor similar to or of better quality than Massage Envy, or a massage parlor operated in connection with a beauty salon, acupuncture, chiropractic or health clinic, spa or athletic facility); gun range; off-track betting establishment (except incidental sales of state lottery tickets); manufacturing facility; adult book store or similar store selling or exhibiting pornographic materials as a substantial part of its business.

2. Evergreen shall construct the Improvements in a good and workmanlike manner, substantially in accordance with the Final Plans referred to in Section I.A.3 below. The Improvements shall be constructed in compliance with all applicable laws, rules and regulations, including without limitation, local building codes, rules and regulations. All required approvals of any governmental authority with jurisdiction over the Improvements shall be obtained prior to, during, and upon construction of the Improvements.

3. Prior to commencing construction of the Improvements, Evergreen will cause working drawings, plans, specifications and a construction schedule for the Improvements to be prepared, which are subject to the approval of NURA, not to be unreasonably withheld, conditioned or delayed. Failure of NURA to object in writing and with specificity to the proposed drawings, plans, specifications and construction schedule by notice to Evergreen within ten (10) business days after receipt is deemed approval thereof by NURA. The drawings, plans, specifications and construction schedule for the Improvements as mutually approved by the parties are herein referred to as the "Final Plans."

4. Evergreen agrees not to allow any lien or claim of lien to stand against the Property for any work done or materials furnished in connection with construction of the Improvements, and if any such lien or claim of lien arises, Evergreen agrees to cause it to be released of record (either by payment or posting of a statutory bond) within thirty (30) business days following written demand from NURA.

5. Throughout the term of this Agreement, Evergreen agrees to carry or cause its contractors to carry reasonable builder's risk (course of construction) insurance.

6. During the construction of the Improvements, at NURA's option, a senior representative of Evergreen shall meet with NURA or a NURA representative every three (3) months to address issues related to the Property, including without limitation, tenancy, business and market conditions, physical conditions and maintenance, financial conditions, current and future plans for the Property, and any other issues related to the overall economic health of the Property ("Property Matters"). In recognition of the significant financial contribution by NURA to the redevelopment of the Property, Evergreen shall provide NURA with an annual report summarizing the financial condition of the Property, including without limitation rents generated, expenses incurred, and future projections. NURA shall keep any such provided financial records confidential, subject to any disclosures required under the Colorado Open Records Act or any other applicable law or court order. The obligations set forth in this Section I.A.6 shall terminate upon termination of NURA's obligation to pay the Enhanced Sales Tax Equivalency payments as set forth in Section II.D herein.

B. NURA Obligation. Provided Evergreen is in compliance with the terms set forth herein, NURA agrees to reimburse Evergreen an amount up to a maximum of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) for the Actual Direct Costs (as that term is defined below) incurred by Evergreen for the Improvements, as follows:

1. On the first day of each month as construction of the Improvements progresses, Evergreen shall furnish to NURA a request for payment of the costs of the Improvements completed up to the date of the request. The request shall be accompanied by: (1) a statement of completion of the Improvements certified to be correct by Evergreen's general contractor in charge of constructing the Improvements; (2) itemized, reasonably detailed invoices and financial documentation that to NURA's reasonable satisfaction confirm the costs of the construction of the Improvements completed as of the date of the statement, including invoices from contractors performing work on the Improvements and suppliers supplying materials for the Improvements; and (3) appropriate lien waivers from all contractors and materialmen for the work for which payment is requested.

2. Within ten (10) business days of receipt of the reimbursement request and accompanying documentation, provided the reimbursement request is approved by NURA, such approval not to be unreasonably withheld, conditioned or delayed, NURA shall disburse to Evergreen the amount requested. Reimbursements shall be made up to a total amount of Two Million Four Hundred Thousand Dollars \$2,400,000.00.

3. The final Three Hundred Thousand Dollars (\$300,000.00) shall be reimbursed upon substantial completion of the Improvements, as evidenced by issuance of a final certificate of occupancy or the equivalent of either for the Property, and submission of a final lien waiver from the general contractor evidencing that all construction of the Improvements has been performed free and clear of liens and encumbrances. In no event shall NURA be responsible for any costs of the Improvements in excess of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) or the total actual costs of the Improvements, whichever is less.

4. NURA's obligation to reimburse Evergreen under this Section I for the Improvements shall expire on December 31, 2012, subject to events of Force Majeure (as defined in Section IV.K. below). If the Improvements have not been completed by this date, NURA shall have no further obligations to compensate Evergreen for the Improvements under this Section I.

5. All amounts paid to Evergreen under this Agreement shall constitute a lien against the Property, which shall be subordinate to a first deed of trust in favor of Evergreen's lender for the acquisition of the Property. NURA agrees to execute any subordination agreement reasonably necessary to evidence the subordination of this Agreement to Evergreen's lender. Failure of Evergreen to substantially complete the Improvements, as evidenced by the issuance of a final certificate of occupancy for the Property on or before December 31, 2012, shall be a default of this Agreement entitling NURA to a refund of all amounts paid to Evergreen under this Section I. NURA may collect on the lien as permitted by law. Upon substantial completion of the Improvements, as evidenced by the issuance of a final certificate of occupancy for the Property, NURA shall execute and record a document evidencing NURA's release of the lien.

The phrase "Actual Direct Costs" means costs invoiced to Evergreen by the designers, architects, engineers, general contractors, subcontractors, materialmen, suppliers and/or any consultants of the Improvements (or applicable portions thereof), including, without limitation, "hard" and "soft" costs associated with the Improvements, construction management fees, labor costs, and fixture costs, but shall not include internal Evergreen costs, such as Evergreen staff time or Evergreen travel expenses related to the Improvements.

## **II. ENHANCED SALES TAX EQUIVALENCY REIMBURSEMENT**

A. In addition to making payments as set forth in Section I, NURA shall reimburse Evergreen as set forth in this Section II.

B. The base amount of the City's four percent (4%) general sales tax on non-food items less the one-half percent (1/2%) sales tax devoted to water acquisition and the one-half percent (1/2%) sales tax devoted to capital improvements, which results in a three percent (3%) sales tax (the "Three Percent Sales Tax") to be used in determining the "Enhanced Sales Tax" that shall be the basis for the payments from NURA hereunder is Thirty Thousand Dollars (\$30,000.00) (the "Base Amount"). All Three Percent Sales Tax revenues on non-food items paid to the City by any and all businesses within the Property above the Base Amount shall constitute "Enhanced Sales Tax."

C. An amount equal to seventy-five percent (75%) of any and all "Enhanced Sales Tax," as defined in Section II.B above, shall be paid to Evergreen by NURA (the "Enhanced Sales Tax Equivalency Payment").

D. The maximum amount of the Enhanced Sales Tax Equivalency Payment payable to Evergreen shall be One Million Seven Hundred Thousand Dollars (\$1,700,000.00), and the Enhanced Sales Tax Equivalency Payment shall be paid by NURA commencing with the Three Percent Sales Tax on non-food items generated on the Property on or after December 31, 2012 and shall terminate on December 31, 2024. The parties specifically acknowledge and agree that whether or not the entire One Million Seven Hundred Thousand Dollars (\$1,700,000.00) has been received by Evergreen, NURA's obligation to make payments under this Section II shall terminate following payment of the Enhanced Sales Tax Equivalency Payment based on Enhanced Sales Taxes through December 31, 2024. Likewise, the parties acknowledge and agree that receipt by Evergreen of the entire One Million Seven Hundred Thousand Dollars (\$1,700,000.00) prior to December 31, 2024, shall terminate further obligations of NURA under this Section II.

E. Reimbursement to Evergreen shall occur on a quarterly basis (i.e., January - March, April - June, July - September, and October - December). Reimbursements to Evergreen shall be made within forty-five (45) days following the last day of each quarter and shall be calculated based upon the Enhanced Sale Tax from the preceding quarter.

F. In addition to being subject to the conditions precedent set forth in Section III, NURA's obligations under this Section II are specifically subject to Evergreen's completion of construction of the Improvements, as evidenced by issuance of a final certificate of occupancy for the Property, no later than December 31, 2012, subject to events of Force Majeure; provided the events of Force Majeure shall only excuse non-occurrence of this condition for a maximum of one hundred twenty (120) days from December 31, 2012. Should this contingency or the

conditions precedent set forth in Section III not be satisfied on or before the date specified, NURA's obligations under this Section II shall terminate and be of no further force and effect.

G. City Nonappropriation/Multi-Fiscal Year Obligations/Legal Challenges.

1. Nonappropriation. Evergreen acknowledges that the source of NURA funds for the Enhanced Sales Tax Equivalency Payment shall come from distributions from the City from actual Enhanced Sales Taxes attributable to the Property via a separate agreement between NURA and the City. NURA's obligations under this Section II are specifically subject to annual appropriation by the City of Northglenn of sufficient funds to pay to NURA the funds equal to Enhanced Sales Tax Equivalency Payment from the City's Enhanced Sales Taxes from sales within the Property. If the City fails to appropriate sufficient funds in any year, resulting in the inability of the City to distribute such funds to NURA, NURA shall not be obligated to make payment of the non-appropriated amounts in such year. Such non-appropriation shall not give rise to any right of action by Evergreen against the City or NURA, and Evergreen expressly disclaims all rights, claims, liens and priority in or to the City's sales tax revenue.

2. Legal Challenge. If there is a legal challenge to the City's authority to distribute enhanced sales taxes to NURA or NURA's authority to make the Enhanced Sales Tax Equivalency Payments to Evergreen, as contemplated by this Agreement and the agreement between the NURA and the City, NURA's obligation under this Section II shall be suspended during the pendency of the legal challenge and any appeal period. Notwithstanding the foregoing, in the event there is such a legal challenge to either the City's authority or NURA's authority, NURA shall use commercially reasonable efforts defend and uphold the City's authority or NURA's authority, as the case may be.

**III. CONDITIONS PRECEDENT**

The following conditions shall be conditions precedent to any obligation of NURA to Evergreen under this Agreement:

1. Evergreen shall acquire ownership of the Property on or before March 1, 2012, subject to events of Force Majeure; provided the events of Force Majeure shall only excuse non-occurrence of this condition for a maximum of one hundred twenty (120) days from March 1, 2012; and

2. Evergreen shall execute a lease of at least ten (10) years with the specific grocery store named in the confidential letter delivered to NURA by Evergreen dated \_\_\_\_\_, 2011, on or before March 1, 2012, for at least 37,000 square feet at the Property subject to events of Force Majeure; provided the events of Force Majeure shall only excuse non-occurrence of this condition for a maximum of one hundred twenty (120) days from March 1, 2012.

#### IV. MISCELLANEOUS

A. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Adams County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by NURA shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Evergreen and NURA, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement. The parties acknowledge that the City of Northglenn is not a party to this Agreement, and shall not be bound or obligated by the terms set forth herein. The obligations set forth herein shall be and remain the sole obligations of NURA and Evergreen.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the following addresses set forth on the first page of this Agreement.

To NURA:                    Executive Director  
                                  Northglenn Urban Renewal Authority  
                                  11701 Community Center Drive  
                                  Northglenn, CO 80233

With a copy to:            Hayes, Phillips, Hoffmann & Carberry, P.C.  
                                  1530 16<sup>th</sup> Street, Suite 200  
                                  Denver, CO 80202

To the Purchaser:        EVERGREEN-104th & Huron, L.L.C.  
                                  2390 E. Camelback Road, STE 410,  
                                  Phoenix, AZ 85016  
                                  Attn: Bruce Pomeroy

With a copy to:            Evergreen Devco, Inc.  
                                  12460 1st Street  
                                  P.O. Box 247  
                                  Eastlake, CO 80237  
                                  Attn: Tyler Carlson



Either party may change such notice address upon prior written notice to the other party.

F. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the parties shall cooperate to cure any legal defects in this Agreement.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. This Agreement may be assigned in whole, but not in part, by Evergreen with the express written authorization of NURA, which may not be unreasonably withheld. Evergreen shall not assign this Agreement to a third-party without transferring ownership of the Property to the same third-party. The preceding sentences notwithstanding, this Agreement and Evergreen's rights hereunder may be assigned in whole, but not in part, without NURA's prior consent to a company under substantially the same ownership as Evergreen or to a lender who holds a first deed of trust against the Property. Should Evergreen assign its rights and obligations under this Agreement, the assignee shall assume full responsibility for fulfilling the remaining obligations of Evergreen under this Agreement. In addition, no third party may rely upon or enforce any provision of this Agreement, the same being an agreement solely between NURA and Evergreen, and which Agreement is made for the benefit of no other person or entity.

I. Governmental Immunity. NURA, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to NURA and its officers or employees.

J. Rights and Remedies. In the event of a breach of the terms of this Agreement by NURA, Evergreen shall be entitled to all rights and remedies available at law or in equity. In addition, in the event of a breach of the terms of this Agreement by Evergreen, NURA shall give Evergreen notice of such breach and a period of 30 days after delivery of such notice within which to cure such breach; provided, however, if such breach cannot reasonably be cured within 30 days, then Evergreen shall be allowed additional time as is reasonably necessary to cure such breach so long as Evergreen begins to cure such breach within 30 days and thereafter diligently pursues the cure to completion.

K. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by either party, such party will not be liable or responsible for, and there will be excluded from the computation of any such period of time, any delays due to strikes; riots; acts of God; shortages of labor or materials; war; federal, terrorism; or extreme and unforeseeable weather conditions; which are beyond the reasonable control of such party (each, an event of “Force Majeure”). A lack of funds, however, will never be deemed beyond a party’s reasonable control.

*[Remainder of page intentionally left blank – signatures to follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

THE NORTHGLENN URBAN RENEWAL  
AUTHORITY

\_\_\_\_\_  
Jerry Gavette, Chairman

ATTEST:

\_\_\_\_\_  
Susan Baca, Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeff Parker, NURA Attorney

EVERGREEN-104TH & HURON, L.L.C., an Arizona  
limited liability company

By: Evergreen Development Company-2011, L.L.C. an  
Arizona limited liability company

Its: Manager

By: Evergreen Devco, Inc., a California  
corporation

Its: Manager

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

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 2011 by \_\_\_\_\_, as \_\_\_\_\_ of EVERGREEN-  
104TH & HURON, L.L.C.

My commission expires:  
(S E A L)

\_\_\_\_\_  
Notary Public

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ADAMS, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

### PARCEL ONE:

ALL OF LOT 1 AND THAT PORTION OF LOT 3, AMENDED PLAT OF A PORTION OF BLOCK 34 HEFTLER HOMES-HILLCREST SIXTH FILING, DESCRIBE AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH P.M.;

THENCE SOUTH 89 DEGREES 46 MINUTES 40 SECONDS WEST ALONG THE NORTH LINE OF SAID SECTION 16, A DISTANCE OF 725.17 FEET;

THENCE SOUTH 00 DEGREES 13 MINUTES 20 SECONDS EAST A DISTANCE OF 275.00 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED:

THENCE NORTH 89 DEGREES 46 MINUTES 40 SECONDS EAST A DISTANCE OF 140.00 FEET; THENCE SOUTH 00 DEGREES 13 MINUTES 20 SECONDS EAST A DISTANCE OF 1.00 FEET; THENCE SOUTH 89 DEGREES 46 MINUTES 40 SECONDS WEST A DISTANCE OF 140.00 FEET TO A POINT 175.00 FEET EASTERLY OF THE EAST RIGHT OF WAY LINE OF CROKE DRIVE;

THENCE NORTH 00 DEGREES 13 MINUTES 20 SECONDS WEST A DISTANCE OF 1.00 FEET TO THE TRUE POINT OF BEGINNING, ADAMS COUNTY, COLORADO. BEARING USED HEREIN BASED ON EAST LINE OF SECTION 16, ASSUMED TRUE NORTH AND SOUTH, COUNTY OF ADAMS, STATE OF COLORADO.

### PARCEL TWO:

LOT 2,  
AMENDED PLAT OF A PORTION OF BLOCK 34 HEFTLER HOMES-HILLCREST SIXTH FILING,

EXCEPT THAT PORTION OF SAID LOT 2 DEEDED TO ALBERSTON'S INC., A DELAWARE CORPORATION IN DEED RECORDED DECEMBER 8, 1977, IN BOOK 2196 AT PAGE 394, COUNTY OF ADAMS, STATE OF COLORADO.

### PARCEL THREE:

Lot 3,  
Amended Plat of a Portion of Block 34,  
Heftler Homes-Hillcrest Sixth Filing, together with that portion of Lot 2 of said Amended Plat of a Portion of Block 34, Heftler Homes-Hillcrest Sixth Filing as set forth in the Deed recorded in Book 2196 at Page 394, but excepting therefrom,

those portions described in Book 2195 at Page 389, and in Book 3076 at page 45, County of Adams, State of Colorado, being more particularly described as follows:

That part of Lot 3, Amended plat of a portion of Block 34, Heftler Homes-Hillcrest Sixth filing, as per the plat thereof recorded September 22, 1977 at Reception No. B094588, being more particularly described as follows:

Beginning at the Northeast corner of Section 16, Township 2 South, Range 68 West of the 6th Principal Meridian; Thence South  $89^{\circ} 46' 40''$  West along the North line of said Section 16 a distance of 250.39 feet;  
Thence South a distance of 100.00 feet to a point on the South right of way line of 104th Avenue, and the Northeast corner of said Lot 3, which point is the true point of beginning of the tract of land herein described;  
Thence South  $89^{\circ} 46' 40''$  West along the South line of said 104th Avenue which is 100.00 feet South of and parallel to the North line of said Section 16, a distance of 334.78 feet to the Northwest corner of said Lot 3;  
Thence South  $00^{\circ} 13' 20''$  East a distance of 176.00 feet;  
Thence South  $89^{\circ} 46' 40''$  West a distance of 140.00 feet to a point which is 175.00 feet Easterly of the East right of way line of Croke Drive as measured at right angles thereto;  
Thence South  $00^{\circ} 13' 20''$  East a distance of 164.00 feet;  
Thence North  $89^{\circ} 46' 40''$  East a distance of 133.30 feet;  
Thence South a distance of 155.00 feet;  
Thence South  $89^{\circ} 46' 40''$  West a distance of 308.19 feet to a point of the East right of way line of Croke Avenue and a point on the West line of said Lot 3;  
Thence Southerly along the East line of Croke Drive along a curve to the right, the chord of which bears South  $02^{\circ} 18' 33''$  West, said curve having a central angle of  $01^{\circ} 47' 03''$  and a radius of 1204.90 feet, an arc distance of 37.52 feet to a point on the Southwest corner of said Lot 3;  
Thence along the South line of said Lot 3, South  $74^{\circ} 30' 00''$  East a distance of 150.63 feet;  
Thence continuing along the South line of said Lot 3 on a curve to the left being tangent to the last described course having a central angle of  $10^{\circ} 48' 40''$  and a radius of 2262.85 feet an arc distance of 426.98 feet to a point which is 285.00 feet West of the West right of way line of Huron Street as measured at right angles thereto, and also being a point on the South line of said Lot 3, which point is 5.01 feet West of the Southeast corner of said Lot 3;  
Thence North along a line 285.00 feet West of and parallel to the West right of way line of said Huron Street a distance of 309.65 feet;  
Thence North  $89^{\circ} 46' 40''$  East a distance of 85.00 feet;  
Thence North a distance of 340.00 feet to the true point of beginning,  
County of Adams, State of Colorado.

#### **PARCEL FOUR:**

LOT 4 AND THAT PORTION OF LOT 3, AMENDED PLAT OF A PORTION OF BLOCK 34 HEFTLER HOMES-HILLCREST SIXTH FILING, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH P.M.;  
THENCE SOUTH ALONG THE CENTERLINE OF HURON STREET, A DISTANCE OF 758.33 FEET; THENCE WEST A DISTANCE OF 150.00 FEET;  
THENCE ALONG A CURVE TO THE RIGHT BEING TANGENT TO THE LAST DESCRIBED COURSE, HAVING A CENTRAL ANGLE OF 4 DEGREES 33 MINUTES 43 SECONDS AND A RADIUS OF 2262.85 FEET AN ARC DISTANCE OF 180.17 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 0 DEGREES 07 MINUTES 37 SECONDS AN ARC DISTANCE OF 5.01 FEET;  
THENCE NORTH A DISTANCE OF 149.65 FEET;  
THENCE NORTH 89 DEGREES 46 MINUTES 40 SECONDS EAST A DISTANCE OF 5.00 FEET; THENCE SOUTH A DISTANCE 150.07 FEET TO THE TRUE POINT OF BEGINNING;  
BEARING USED HEREIN BASED ON EAST LINE OF SECTION 16, ASSUMED TRUE NORTH AND SOUTH, COUNTY OF ADAMS, STATE OF COLORADO.

**PARCEL FIVE:**

ANY EASEMENT RIGHTS AS CREATED IN INSTRUMENT RECORDED MAY 24, 1977 IN BOOK 2144 AT PAGE 957 AND AMENDMENTS RECORDED DECEMBER 6, 1977 IN BOOK 2195 AT PAGE 391 AND NOVEMBER 16, 1978 IN BOOK 2293 AT PAGE 858, COUNTY OF ADAMS, STATE OF COLORADO.

## EXHIBIT "B"

DESCRIPTION	PRICE	TOTAL
<b><i>CONSTRUCTION COSTS</i></b>		
Total Anchor Box Remodel Costs	Subtotal	<b>\$760,488</b>
Total Shops/Pad Remodel Costs	Subtotal	<b>\$964,603</b>
Total Site Work	Subtotal	<b>\$1,482,757</b>
<b><i>TOTAL CONSTRUCTION COSTS - ALTERNATE</i></b>		<b><i>\$3,207,848</i></b>
<b><i>A&amp;E /TESTING /ENVIR. /SOILS/BLUEPRINT</i></b>		
Total Preliminary Architectural Design Services	Subtotal	<b>\$7,000</b>
Total Architectural/Structural CD's & Services	Subtotal	<b>\$45,000</b>
Total Landscape Preliminary & CD's	Subtotal	<b>\$3,500</b>
Total Mechanical, Plumbing, Elec. Preliminary & CD's	Subtotal	<b>\$50,000</b>
Total Civil Engineering Services CD's	Subtotal	<b>\$30,000</b>
ALTA Survey/As-Built Survey	\$8,000.00	<b>\$8,000</b>
Phase I Environmental Assessment	\$5,500.00	<b>\$5,500</b>
Phase II Environmental Assessment	<b>\$15,000.00</b>	<b>\$15,000</b>
Asbestos Study	<b>\$9,000.00</b>	<b>\$9,000</b>
Geotech Report	<b>\$2,500.00</b>	<b>\$2,500</b>
Blueprinting, Plans	\$2,000.00	<b>\$2,000</b>
Roofing Inspection	\$3,000.00	<b>\$3,000</b>
Total Construction Testing	Subtotal	<b>\$5,000</b>
Miscellaneous / Contingency	\$10,000.00	<b>\$10,000</b>
<b><i>TOTAL A &amp; E/TEST/ENV/SOILS/BLUEPRINT</i></b>		<b><i>\$195,500</i></b>

***CITY & UTILITY COMPANY FEES***

	<b>Total Plan Check and Permits</b>	<b>Subtotal</b>	<b>\$33,500</b>
	<b>TOTAL CITY AND UTILITY COMPANY FEES</b>		<b>\$33,500</b>
	<b>TOTAL SOFT COSTS</b>		<b>\$229,000</b>

**TOTAL DEVELOPMENT COSTS \$3,436,848**



## EXHIBIT "B"

### Anchor Box

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- Interior demolition and construction of anchor demising wall
- Split utilities; repair/replace/divide HVAC and fire sprinklers
- Remove entry vestibule and create separate anchor entries
- Repaint building and install new building signage
- Removal and replacement of the entire front parking lot
- Removal and replacement of the entire rear parking lot
- Additional sidewalk and ADA ramp repairs as required by municipality
- Additional bathroom upgrades per municipal requirements
- Energy code upgrades per municipal requirements
- Roof repair as recommended by roofing subcontractor
- Architectural façade repair and improvements
- Installation of underground storm water detention if required by municipality
- Parking lot landscape improvements

### East/West Shops

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- Interior demolition and repair, upgrades of restrooms
- Plumbing and grease trap improvements for additional restaurant users
- Repaint buildings and install new building signage
- Removal and replacement of the entire front parking lot
- Removal and replacement of the entire rear parking lot
- Additional sidewalk and ADA ramp repairs as required by municipality
- Additional bathroom upgrades per municipal requirements
- Energy code upgrades per municipal requirements
- Roof repair as recommended by roofing subcontractor
- Removal and replacement of damaged liquor store floor slab
- Architectural façade repairs and improvements
- Underground storm water retention if required
- Parking lot landscape improvements

### Pad Buildings

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- Repaint buildings
- Removal and replacement of the entire front parking lot
- Landscape installation in parking lot

PARKING PROVIDED - 582 PARKING SPACES  
 PARKING RATIO - 5.5 SPACES PER 1,000 SF

# EXHIBIT C

