

**ADMINISTRATION MEMORANDUM
NURA 13-12**

DATE: August 14, 2013

TO: Northglenn Urban Renewal Authority Commissioners

COPY: Mayor Joyce Downing
John Pick, City Manager
Corey Hoffman, City Attorney

SUBJECT: Hawkins Redevelopment Agreement Addendums

BACKGROUND

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

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

On August 12, 2013 Council approved Resolution CR-79 which is a Second Amendment to the Redevelopment Agreement. Under the Section 3 of the Amendment the Reconveyance Condition is terminated. In exchange for this termination new language has been added under Sections 4 and 5 that the Redeveloper agrees that in the event that Lot 6 (Pad F) is not completed by the July 31, 2016, the Redeveloper is obligated to reimburse the City and the Authority in an amount equal to Six Dollars (\$6.00) per square foot or \$653,706 for that property.

Also approved by Council on August 12th was Resolution CR-80 which is the First Amendment to the ESTIP Agreement which secures the payment obligation under Section 5a of the Second Amendment to the Redevelopment Agreement. The ESTIP First Amendment provides that if the project is not completed by July 31, 2016 that the ESTIP reimbursement is reduced by the amount under 5a of the Redevelopment Agreement (\$653,706).

STAFF RECOMMENDATIONS

If the NURA board agrees, it is staff's recommendation to approve Resolution N/13-47 to amend both the Redevelopment and ESTIP Agreements with the Redeveloper.

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

NORTHGLENN URBAN RENEWAL AUTHORITY

RESOLUTION NO.

N/13-47
Series of 2013

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE NORTHGLENN URBAN RENEWAL AUTHORITY, THAT:

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

DATED this 14th day of August, 2013.

Rosie Garner
Chair

ATTEST:

APPROVED AS TO FORM

Debbie Tuttle
Executive Director

Jeff Parker
Board Attorney

SECOND ADDENDUM TO REDEVELOPMENT AGREEMENT

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

WITNESSETH

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

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

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

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

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

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

A G R E E M E N T

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

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

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF NORTHGLENN, a municipal corporation

By: Joyce Downing
Name: Joyce Downing
Title: Mayor

ATTEST:

Johanna Small
Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann
Corey Y. Hoffmann, City Attorney

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

By: Rosie Garner, Chairman

ATTEST:

APPROVED AS TO FORM:

Jeff Parker, Authority Attorney

HD NORTHGLENN, LLC, a Utah limited liability company

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

By: 

Kevin B. Hawkins, Manager

EXHIBIT A
Legal Description

PARCEL 1:

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

PARCEL 2:

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

PARCEL 3:

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

EXHIBIT B
Form of Notice of Termination

When Recorded

Return to:

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

NOTICE OF TERMINATION

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

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

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

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

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

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

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

SUBJECT TO THAT ABILITY TO REPURCHASE THE PROPERTY AT NO

Exhibit B-1

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

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HD NORTHGLENN, LLC,
a Utah limited liability company

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

By: 
Kevin B. Hawkins, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 7th
day of August, by Kevin B. Hawkins, as Manager of Hawkins Development, LLC, a Utah
limited liability company, as Manager of HD Northglenn, LLC, a Utah limited liability company.

My commission expires: 4/18/2014

(S E A L)


Notary Public



My Commission Expires April 18, 2014

EXHIBIT A
Legal Description of the Property

PARCEL 1:

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

PARCEL 2:

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

PARCEL 3:

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

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

[attach]

**FIRST AMENDMENT TO ENHANCED SALES TAX INCENTIVE PROGRAM
AGREEMENT (HAWKINS)**

THIS FIRST AMENDMENT TO ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT (the "First Amendment") is made and executed effective this 14th day of August, 2013, by and between THE CITY OF NORTHGLENN, COLORADO, a municipal corporation (hereafter referred to as the "City"), and HD NORTHGLENN, LLC, a Utah limited liability company (hereafter referred to as "HDN"), as successor in interest to HAWKINS DEVELOPMENT, LLC, a Utah limited liability company (hereafter referred to as "Hawkins").

W I T N E S S E T H

WHEREAS, the City and Hawkins previously entered into an Enhanced Sales Tax Incentive Program Agreement dated October 10, 2012 (the "Original ESTIP Agreement"), such agreement entered into as part of a comprehensive Redevelopment Agreement dated October 10, 2012, entered into between the City, Hawkins and the Northglenn Urban Renewal Authority (the "Original Redevelopment Agreement");

WHEREAS, the City, Hawkins and the Northglenn Urban Renewal Authority have subsequently entered into that First Addendum to Redevelopment Agreement dated May 20, 2013 (the "First Addendum"), and the City, HDN (as successor-in-interest to Hawkins) and the Northglenn Urban Renewal Authority have entered into a Second Addendum to Redevelopment Agreement dated August 14, 2013 (the "Second Addendum"), and such Second Addendum requires this First Amendment between the City and HDN.

A G R E E M E N T

NOW THEREFORE, the parties hereto, for themselves and their successors and assigns, in and for the consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

1. Section 2 of the Original ESTIP Agreement is hereby deleted in its entirety and amended to read as follows:

2. Enhanced Sales Tax Incentive Program (ESTIP). In accordance with the goals and purposes of Article 12 of Chapter 5 of the Northglenn Municipal Code, the parties hereby mutually agree to the following ESTIP provisions. For purposes of this Section 2, the total amount of the City's four percent (4%) sales tax is restricted by 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 to be used in determining this reimbursement. All sales tax revenues collected from any and all businesses on the Property above the Sales Tax

Base described herein shall constitute the Enhanced Sales Tax and shall be subject to division and reimbursement as specified herein. The parties agree that the Sales Tax Base shall be zero. The parties hereby agree that the Enhanced Sales Tax as defined herein shall be subject to sharing by the City and HDN on a 50/50 basis, with Fifty Percent (50%) of said Enhanced Sales Tax being available to the City for use in its discretion, and Fifty Percent (50%) to be reimbursed by the City to HDN.

The parties agree that the maximum reimbursement (the "Maximum Reimbursement") of Enhanced Sales Tax revenue subject to distribution to HDN hereunder shall be One Million Four Hundred Thousand Dollars (\$1,400,000.00), and that the "Enhanced Sales Tax" shall be shared commencing with sales taxes generated on the Property on or after January 1, 2015, and shall terminate on or before December 31, 2021 (upon Maximum Reimbursement). ***Provided however, the Maximum Reimbursement hereunder shall be reduced by the amount required to be paid by HDN pursuant to Section 5 of the Second Addendum in the event that the Project is not completed by the Completion Date in accordance with the Second Addendum.*** The parties specifically acknowledge and agree that whether or not the entire Maximum Reimbursement has been earned by HDN, the Enhanced Sales Tax Portion ("ESTIP") reimbursement obligation of this Agreement shall terminate on December 31, 2021, which is seven (7) years from the commencement date of January 1, 2015. Likewise, the parties acknowledge and agree that receipt by HDN of the Maximum Reimbursement amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00), ***or such lesser amount in accordance with Section 5 of the Second Addendum and this Section 2 of this Agreement,*** shall terminate the ESTIP reimbursement obligations of this Agreement.

2. **INTEGRATION.** Except as modified herein, the Original ESTIP Agreement is in full force and effect, and is hereby ratified by the City and HDN. In the event of any conflict between the Original ESTIP Agreement and this First Amendment, the terms and conditions of this First Amendment shall control.

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

HD NORTHGLENN, LLC, a Utah limited liability company

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

By: [Signature]
Kevin B. Hawkins, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

Subscribed, sworn to and acknowledged before me this 7th day of August, 2013 by Kevin B. Hawkins, as Manager of Hawkins Development, LLC, a Utah limited liability company, as Manager of HD Northglenn, LLC, a Utah limited liability company.

My commission expires: 4/18/2014

(SEAL)

[Signature]
Notary Public



My Commission Expires April 18, 2014

