

**PLANNING AND DEVELOPMENT DEPARTMENT
MEMORANDUM 13-41**

DATE: September 23rd, 2013
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: John Pick, City Manager
Brook Svoboda, Director of Planning and Development
SUBJECT: CB-1812, 1st Amendment to the Webster Lake Promenade Planned Unit
Development

ITEM/ISSUE

Attached is Council Bill 1812, a bill for a Special Ordinance Rezoning from Planned Unit Development (PUD), to Planned Unit Development certain real property in the City of Northglenn commonly known as the “Webster Lake Promenade” in the County of Adams, State of Colorado, and amending the zoning map of the City of Northglenn

BACKGROUND

Hawkins Development, the Developer, has initiated an amendment to the Grant of Easements and Declaration of Covenants, Conditions and Restrictions, which proposed amendment requires the City’s approval through an amendment to the PUD through a rezoning process. The attached **Exhibit B** of the ordinance details the requested changes. In short the requested changes are as follows:

- Increased lease (rental) rate in lieu of PIF – adequate language has been provided to demonstrate that additional lease shall go to Common Area Maintenance costs, in the same manner contemplated for the PIF
- Under Section 13.6, there was a incorrect reference to Exhibit D-1, it should have read Exhibit C-1

BUDGET IMPLICATIONS

There are no direct budget implications at this time.

STAFF REFERENCE

Brook Svoboda, Director of Planning and Development – bsvoboda@northglenn.org, 303.450.8937

A RESOLUTION ACKNOWLEDGING AUTHORITY OF HD NORTHGLENN, LLC TO AMEND THE GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, HD Northglenn, LLC is currently developing a parcel of land described in the attached Exhibit A (the "Shopping Center Land");

WHEREAS, HD Northglenn, LLC desires to amend the Grant of Easements and Declaration of Covenants, Conditions and Restrictions dated July 8, 2013, recorded on July 9, 2013 as Instrument Number 2013000058468, Adams County, Colorado Public Records (the "Declaration"), which encumbers the Shopping Center Land; and

WHEREAS, HD Northglenn, LLC has requested NURA to join in the execution of the amendment to the Declaration to evidence NURA's approval of Paragraph 3 of the amendment, in which NURA acknowledges the authority of HD Northglenn to amend the Declaration subject to certain limitations.

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 NURA joining in the execution of the amendment to the Declaration attached hereto as **Exhibit B**, and the Chair is authorized to execute the same on behalf of the Authority.

DATED this 13th day of November, 2013.

Rosie Garner
Chair

ATTEST:

APPROVED AS TO FORM

Debbie Tuttle
Executive Director

Jeff Parker
Board Attorney

EXHIBIT A
LEGAL DESCRIPTION OF SHOPPING CENTER LAND

LOTS 1 THROUGH 7, BLOCK 1, AND OUTLOT A, BLOCK 1, WEBSTER LAKE PROMENADE SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JULY 5, 2013, UNDER RECEPTION NO. 2013000057754, COUNTY OF ADAMS, STATE OF COLORADO.

**AMENDMENT TO
GRANT OF EASEMENTS
AND
DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS**

THIS AMENDMENT TO GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS (this “**Amendment**”) is made as of September 17, 2013 (the “**Effective Date**”), by **HD NORTHGLENN, LLC**, a Utah limited liability company (“**Declarant**”);

W I T N E S S E T H:

WHEREAS, Declarant created that certain Grant of Easements and Declaration of Covenants, Conditions & Restrictions dated July 8, 2013, recorded on July 9, 2013 as Instrument Number 2013000058468, Adams County, Colorado Public Records (the “**Declaration**”), which Declaration encumbers certain property located in the southwest quadrant of 120th Avenue and Grant Street, City of Northglenn, Adams County, State of Colorado, which property is defined in the Declaration as the “**Shopping Center Land**” and is more particularly described on **Exhibit A** attached hereto; and

WHEREAS, Declarant desires to amend the Declaration as set forth herein, which Declarant is permitted to do as set forth in the Declaration, with the consent of the City of Northglenn, Colorado (the “**City**”), as set forth below;

NOW THEREFORE, Declarant hereby amends the Declaration as follows (any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Declaration):

1. The second grammatical paragraph of Section 11 is hereby amended to provide as follows:

Each Owner acknowledges that it, its customers and the public at large will be benefitted by the Project Attributes and hereby agrees that it shall at all times assess, collect and remit, as herein directed, a Project Improvement Fee (“**PIF**”) in the amount of one half of one percent (0.5%) of all Sales (as hereinafter defined) from its Lot(s). The PIF shall be imposed upon and collected from such Owner’s and/or its tenants’ customers and shall be due and payable in regard to all Sales. As used herein, the term “**Sales**” shall mean any exchange of goods or services for money or other media of exchange, including all sales of tangible personal property and/or services initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of such Owner’s Lot(s). Notwithstanding the foregoing, Declarant, in its sole discretion, may from time to time establish uniform guidelines for which Sales are included for purposes of calculating the PIF. Such guidelines shall be delivered to Owners in writing and Owners shall be entitled to rely thereon for purposes of compliance with this Section 11. Also notwithstanding the foregoing or any other provisions of this Declaration, Declarant, in its sole discretion, may from time to time exempt such Owners from the provisions of this Section 11, in whole or part, as and to such extent as Declarant may see fit in its sole and absolute discretion. In all events,

Owners and/or their tenants shall be subject to all sales and use taxes that may be imposed by the State, the City and/or any other applicable taxing authority (collectively, “**Taxing Authority**”); provided, however, notwithstanding anything to the contrary contained herein, in the event that any Owner (and its tenant(s)) is exempt from the provisions of this Section 11, then such Owner (and its tenant(s)) shall pay such sales and use taxes solely on sales made from such Owner’s or tenant’s business without regard to the PIF. Further, in the event that Declarant exempts any Owner from the obligation to pay the PIF, then such Owner (and its tenant(s)) shall be exempt from all other obligations of Section 11 of the Declaration, including without limitation, providing any Reports to the Report Recipients as set forth below. In any case where Declarant grants an exemption to the payment of the PIF to an Owner, Declarant will provide to the City and the Agency an accounting of the funds (if any) that were received in lieu thereof and a statement that such funds are being or will be applied to PIF purposes. However, while such funds shall be utilized by Developer for PIF purposes, such Owner and/or its tenants will not be obligated to pay sales tax on such funds.

2. The reference in Section 13.6 of the Declaration to “Exhibit D - #1” is hereby replaced with a reference to “Exhibit C-1.” Notwithstanding any other provision of the Declaration to the contrary, Declarant, in its sole and absolute discretion, may from time to time exempt such Owners from the provisions of Exhibit D to the Declaration, in whole or part, and to such extent, as Declarant may see fit in its sole and absolute discretion.

3. Notwithstanding anything to the contrary set forth in the Redevelopment Agreement dated October 10, 2012, recorded as Document No. 2013000057751, as amended by that certain First Addendum to Redevelopment Agreement dated May 20, 2013, recorded as Document No. 2013000057752 (collectively, the “**Redevelopment Agreement**”), the City and the Authority hereby acknowledge and agree that the Declaration may be amended by Declarant in its sole discretion except for the provisions expressly set forth in Section 13.6 of the Declaration.

4. Except as so amended, the Declaration shall remain as presently constituted.

5. Execution of this Amendment by the City shall constitute an affirmative representation by the City that the City has obtained City Council approval of this Amendment and that any necessary amendment to the PUD has been obtained pursuant to the Northglenn Municipal Code, as required by the Redevelopment Agreement.

(SIGNATURE APPEARS ON THE FOLLOWING PAGE)

EXECUTED as of the day and year first above written.

DECLARANT:

HD NORTHGLENN, LLC,
a Utah limited liability

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

By: _____
Kevin B. Hawkins, its Manager

STATE OF COLORADO)
:ss
COUNTY OF ARAPAHOE)

The foregoing instrument was subscribed, sworn to, and acknowledged before me on _____, 2013 by by Kevin B. Hawkins in the capacity indicated.

Notary Public

[CITY APPROVAL ON FOLLOWING PAGE]

THE CITY OF NORTHGLENN, COLORADO HEREBY APPROVES THE FOREGOING AMENDMENT TO GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS DATED JULY 8, 2013, RECORDED ON JULY 9, 2013 AS INSTRUMENT NUMBER 2013000058468, ADAMS COUNTY, COLORADO PUBLIC RECORDS, DATED AUGUST 21, 2013, AS OF THE DATE FIRST APPEARING ABOVE:

CITY OF NORTHGLENN, COLORADO,
a municipal corporation

By: Joyce Downing
Joyce Downing, Mayor

ATTEST:

Johanna Small
Johanna Small, CMC, City Clerk

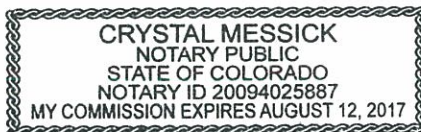
APPROVED AS TO FORM:

Corey Y. Hoffmann
Corey Y. Hoffmann, City Attorney

STATE OF COLORADO)
 :ss
COUNTY OF ADAMS)

The foregoing instrument was subscribed, sworn to, and acknowledged before me on October 14, 2013 by Joyce Downing, as Mayor of the City of Northglenn, Colorado, a municipal corporation.

Crystal Messick
Notary Public



[NORTHGLENN URBAN RENEWAL AUTHORITY
JOINDER ON FOLLOWING PAGE]

NORTHGLENN URBAN RENEWAL AUTHORITY HEREBY JOINS IN THE EXECUTION OF THE FOREGOING AMENDMENT TO GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS DATED JULY 8, 2013, RECORDED ON JULY 9, 2013 AS INSTRUMENT NUMBER 2013000058468, ADAMS COUNTY, COLORADO PUBLIC RECORDS, DATED AUGUST 21, 2013, AS OF THE DATE FIRST APPEARING ABOVE SOLELY TO EVIDENCE ITS APPROVAL WITH RESPECT TO PARAGRAPH 3.

NORTHGLENN URBAN RENEWAL AUTHORITY,

By: _____
Rosie Garner, Chair

ATTEST:

APPROVED AS TO FORM:

Jeff Parker, Authority Attorney

STATE OF COLORADO)
 :ss
COUNTY OF ADAMS)

The foregoing instrument was subscribed, sworn to, and acknowledged before me on _____, 2013 by Rosie Garner, as Chair of the Northglenn Urban Renewal Authority.

Notary Public