

CITY MANAGER'S OFFICE MEMORANDUM
#21-2019

DATE: April 8, 2019

TO: Honorable Mayor Carol Dodge and City Council Members

THROUGH: Heather Geyer, City Manager *Jmg*

FROM: Debbie Tuttle, Economic Development Manager *DY*

SUBJECT: CB-1924 – Sales Tax Credit Ordinance

CR-34 – Karl's Farm Public Finance Agreement

PURPOSE

The purpose of this CB-1924 on second reading and public hearing is to implement a Sales Tax Credit Ordinance granting a sales tax credit for 2.25%, and an accommodations tax credit for 3.75%, known as a “Credit Public Improvement Fee” (Credit PIF). This Credit PIF is imposed and collected subject to the terms and limitations set forth in the Credit PIF Covenant, the PIF Collection Agreement, and the Public Finance Agreement (PFA) with Karl's Farm Investors, LLC. This Ordinance is an Exhibit to the Public Finance Agreement (PFA), which is scheduled to be presented to Council on April 8, 2019. Following CB-1924 is CR-34, approval of the Karl's Farm Public Finance Agreement.

BACKGROUND

On October 15, 2018, Karl's Farm Investors, LLC (aka KF Developers, Inc). presented to Council a project overview, potential funding sources, and to request City Council's consideration of a Credit PIF in the amount of \$2.18 million. Total infrastructure costs are projected at \$23 million for this project. If the PFA is approved, the City would share 2.25% of City sales tax generated by the project for a ten year period. Additionally, 3.75% of accommodations tax would be shared for thirteen years. This amount is less than 10% of the total public infrastructure costs, and an even smaller percentage of the total project costs. The PFA is comprised of a performance based, share-back of the net new sales and accommodations tax revenues to help fill the financial gap on developing the commercial portion of this development as described in the Sales Tax Credit Ordinance and PFA.

Public Infrastructure Cost	\$23,000,000
Scheduled Debt Issuance	(\$12,740,000)
Developer Contribution	(\$8,078,794)
Public Finance Agreement	(\$2,180,000)

The proposed PFA is consistent with City policy.

BUDGET/TIME IMPLICATIONS

The developer is asking the City Council to consider a share-back of sales and accommodations taxes in the total amount not to exceed \$2.18 million to help offset the financial gap for the commercial development of this project. This request is a share-back of the net new sales generated by the development and does not impact existing revenues.

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STAFF RECOMMENDATION

Staff is recommending that City Council approve CB-1924, an ordinance being presented on second reading and public hearing. Additionally, CR-34 – Karl's Farm Public Finance Agreement is presented for Council's consideration.

STAFF REFERENCE

If Council members have any comments or questions they may contact Debbie Tuttle, Economic Development Manager at dtuttle@nothglenn.org or call 303.450.8743.

CB-1924 – Sales Tax Credit Ordinance
CR-34 – Karl's Farm Public Finance Agreement

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-34
Series of 2019

Series of 2019

A RESOLUTION APPROVING A PUBLIC FINANCE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KF DEVELOPERS, INC. REGARDING THE DEVELOPMENT OF THE KARL'S FARM PROPERTY

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

Section 1. The Public Finance Agreement between the City of Northglenn and KF Developers, Inc., attached hereto as Exhibit A, regarding the development of the Karl's Farm property, is hereby approved and the Mayor is authorized to execute the agreement on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this _____ day of _____, 2019.

CAROL A. DODGE
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

PUBLIC FINANCE AGREEMENT

This PUBLIC FINANCE AGREEMENT (this “**Agreement**”) dated as of _____, 2019, is made by and between KF Developers, Inc, a Colorado corporation (the “**Developer**”), and the City of Northglenn, Colorado, a home rule municipal corporation (the “**City**”). The Developer and the City are sometimes collectively called the “**Parties**,” and individually, a “**Party**.”

RECITALS

All capitalized terms used, but not defined, in these Recitals, have the meanings ascribed to them in this Agreement. The Recitals are incorporated into this Agreement as though fully set forth in the body of this Agreement.

WHEREAS, Developer is the contract purchaser of approximately 63.8 acres of real property described in Exhibit A (the “**Property**”) generally located between Irma Street and Race Street north of E 120th Avenue in the City;

WHEREAS, Developer desires to develop a mix of uses on the Property in multiple phases, including commercial office, retail, hotel, and a variety of residential uses, together with related amenities and uses on the Property (collectively, the “**Project**”);

WHEREAS, because the Property has historically been operated as a dairy farm, the infrastructure surrounding the Property was not designed to accommodate development at the densities proposed for the Project, and significant investment will be required in order to bring all systems in the vicinity of the Property up to appropriate standards to accommodate the Project and to provide necessary infrastructure which benefits this area of the community as a whole;

WHEREAS, due to the significant investment required for such infrastructure, the Project would not be financially feasible through traditional private financing mechanisms alone;

WHEREAS, the Project will create significant economic benefits for the City, will significantly increase sales, use, and property taxes and other revenues to the City, will significantly increase employment, and will enhance the value of the area surrounding the Property and therefore will benefit the public health, safety and welfare; and

WHEREAS, the Developer and the City have agreed upon additional mechanisms to make the Project financially feasible, as described in this Agreement;

WHEREAS, the Developer has submitted a service plan for the City’s approval to form the Karl’s Farm Metropolitan District Nos. 1, 2 and 3; and

WHEREAS, following formation, the Districts expect to issue one or more series of District Bonds to finance all or a portion of the costs of the Eligible Improvements (identified in Exhibit B);

WHEREAS, the Property is the last major infill site in the City and represents an important opportunity for the City to attract new retailers, employers, and residents to the City.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the terms and conditions in this Agreement.

AGREEMENT

1. **DEFINITIONS AND QUALIFICATIONS.** In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

“Accommodations Credit PIF” means the public improvement fee imposed on the Property in the amount of 3.75% on Accommodations Sales, which will be collected in accordance with the terms of the Accommodations Credit PIF Covenant and the PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of this Agreement and the District Bond Documents.

“Accommodations Credit PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Accommodations Credit PIF within the Property. The Accommodations Credit PIF Covenant may be the same document as the Add-On PIF Covenant and/or Credit PIF Covenant, or a separate document, in the Developer’s sole and absolute discretion.

“Accommodations Credit PIF Revenue” means the revenue derived from the imposition of the Accommodations Credit PIF in accordance with the Accommodations Credit PIF Covenant, net of the costs of collection.

“Accommodations Sales” means any exchange of goods or services for money or other media of exchange initiated, consummated, conducted, or transacted within the Property that is subject to Accommodations Tax.

“Accommodations Tax” means the municipal accommodations tax of the City on the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, or similar establishment, for a period of less than thirty days under any concession, permit, right of access, license to use, or other agreement, or otherwise, at such rate and on such terms as conditions as prescribed in the Code.

“Accommodations Tax Credit” means the credit against the City’s Accommodations Tax in the amount of 3.75% on Accommodations Sales, as implemented pursuant to the Tax Credit Ordinance.

“Add-On PIF” means the public improvement fee imposed on the Property in the amount of 1.00% on Taxable Sales, which will be (i) collected in accordance with the terms of the Add-On PIF Covenant and the PIF Collection Agreement, (ii) in addition to the Credit PIF, and (iii) accounted for and spent in accordance with this Agreement and the District Bond Documents.

“Add-On PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Add-On PIF within the Property. The Add-On PIF Covenant may be the same document as the Credit PIF Covenant and/or Accommodations PIF Covenant, or a separate document, in the Developer’s sole and absolute discretion.

“Add-On PIF Revenue” means the revenue derived from the imposition of the Add-On PIF in accordance with the Add-On PIF Covenant, net of the costs of collection.

“Agreement” means this Public Finance Agreement, as it may be amended or supplemented in writing, from time to time. References to sections or exhibits are to this Agreement unless otherwise qualified. All Exhibits are incorporated in this Agreement.

“City” means the City of Northglenn, Colorado, a home rule municipal corporation.

“City Contribution Cap” means Two Million, One Hundred Eighty Thousand Dollars (\$2,180,000.00) which is the maximum combined amount of the Sales Tax Credit and the Accommodations Tax Credit that shall be granted by the City against Sales Tax collectible on Taxable Sales pursuant to the Credit PIF and Accommodations Tax collectible on items that are subject to the Accommodations Tax as described herein.

“City Requirements” means, collectively, (i) the Code, (ii) City regulations, and (iii) obligations imposed through the entitlements and development, subdivision improvement, and/or public improvement agreement(s) for the Property to allow for the uses, densities, and site plans required for the Project.

“Code” means the Municipal Code of the City of Northglenn, as the same may be amended or supplemented.

“Commence(s) Construction” or “Commencement of Construction” shall mean the visible commencement by the Developer or the District of actual physical construction of any of the Eligible Improvements following receipt of a City grading permit, building permit, or other necessary City approval.

“Completion of Construction” occurs upon: (a) for any Eligible Improvement that is or will be dedicated to the City, acknowledgment by the City (pursuant to the Code) that all work has been completed in accordance with the plans and specifications for such Eligible Improvement; or (b) for any Eligible Improvement that will not be dedicated to the City, receipt by the Developer or the District, as applicable, of an engineer’s certificate indicating completion of the work in accordance with the plans and specifications. Completion of Construction shall be deemed to have been achieved upon the acceptance of any Eligible Improvement for dedication notwithstanding that Developer may have a continuing maintenance or warranty obligation under the Code with respect to such Eligible Improvement.

“Costs of Issuance” means, collectively, the reasonable and necessary costs incurred in connection with the issuance of the District Bonds, including, without limitation, underwriter’s compensation, financial consultant fees, fees and expenses of bond counsel, counsel to the underwriter, and counsel to any party or entity from which an opinion of counsel is required, fees and expenses of any provider of credit enhancement, bond insurance, or guaranty, fees and

expenses of the District Bond Trustee, bond registrar, paying agent, and transfer agent and rating agency fees.

“Credit PIF” means the public improvement fee imposed on the Property in the amount of 2.25% on Taxable Sales, which will be collected in accordance with the terms of the Credit PIF Covenant and the PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of this Agreement and the District Bond Documents.

“Credit PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Credit PIF within the Property for the period of time set forth in the Credit PIF Covenant. The Credit PIF Covenant may be the same document as the Add-On PIF Covenant and/or Accommodations PIF Covenant, or a separate document, in the Developer’s sole and absolute discretion.

“Credit PIF Revenue” means the revenue derived from the imposition of the Credit PIF in accordance with the Credit PIF Covenant, net of the costs of collection.

“Developer” means KF Developers Inc, a Colorado corporation, and any successors and assigns approved or permitted in accordance with this Agreement.

“Developer Advances” means, collectively, amounts advanced or incurred by Developer to pay any Eligible Costs. Developer Advances shall include, without limitation, (a) Eligible Costs paid directly or advanced by Developer, (b) advances to the District pursuant to a Reimbursement Agreement for Eligible Costs.

“District or Districts” means one or all of the Karl’s Farm Metropolitan District Nos. 1, 2 and 3 formed pursuant to Sections 32-1-101, *et seq.*, C.R.S., and its successors and assigns.

“District Bonds” means, collectively, one or more series of bonds or other evidences of indebtedness, which may be in the form of a note, loan, or other financial obligation identified as a District Bond, issued or incurred by the District to finance or refinance the Eligible Costs in accordance with the terms and provisions of this Agreement, including any bonds, notes, loans, or other financial obligations issued by the District to refund District Bonds. The definition of District Bonds shall not include any Reimbursement Agreement entered into between the Developer and the District.

“District Bond Documents” means, collectively, the District Bond Indenture and any other documents pursuant to which the District Bonds are issued and secured as to repayment.

“District Bond Indenture” means any indenture or similar documents pursuant to which the District Bonds are issued and secured as to repayment.

“District Bond Requirements” means the principal and interest due on the District Bonds, any amounts required to replenish any Reasonably Required Reserve, any amounts required to repay any bond insurer or other guarantor of the debt service on the District Bonds, fees and expenses of the PIF Collection Agent and District Bond Trustee, bond registrar, paying agent, authenticating agent, and any other amounts approved by the City.

“District Bond Trustee” means the trustee in connection with the issuance of any District Bonds.

“District Debt Service Mill Levy” means a property tax levy of a minimum of 30 mills which will be levied by the District on the taxable property within the District; provided, however, that such rate may be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such levy is neither diminished nor enhanced as a result of such changes. The District Debt Service Mill Levy shall not be less than 30 mills until the District Bonds are repaid in full or defeased, unless the District obtains approval of a lower amount from the City, which determination shall be in the discretion of the City.

“District Pledged Revenue” means, collectively, the revenue produced by (a) the District Debt Service Mill Levy, (b) the District Specific Ownership Taxes, and (c) the Pledged PIF Revenue.

“District Operating Revenue” means revenue produced by the District’s imposition of a mill levy to pay the operations and maintenance expenses of the District, and any Remaining Add-On PIF Revenue.

“District Specific Ownership Taxes” means the revenues received by the District in each year from the specific ownership taxes levied on motor vehicles that relate to the District Debt Service Mill Levy.

“Effective Date” shall have the meaning provided in Section 7.

“Eligible Costs” means, collectively, (a) the reasonable and customary expenditures for design and construction of Eligible Improvements, including necessary and reasonable soft costs, as certified and approved in accordance with Exhibit C, (b) Land Acquisition Costs, (c) Pre-Financing Costs; (d) and Costs of Issuance. Eligible Costs also includes all reasonable and necessary costs related to the engineering and design work for the Eligible Improvements. Cost savings in the line items listed for Eligible Costs in Exhibit B may be allocated to cost overruns in any other line item.

“Eligible Improvements” means the improvements described in Exhibit B.

“Escrow Agent” means a state or national bank or trust company in good standing located in the State of Colorado that is authorized to exercise trust powers, which is selected by the Developer, with the prior written approval of the City Manager (not to be unreasonably withheld, conditioned, or delayed), and is authorized pursuant to an escrow agreement, which shall also be subject to the prior written approval of the City Manager (not to be unreasonably withheld, conditioned, or delayed), to undertake the duties of the Escrow Agent in accordance with this Agreement.

“Event of Default” shall have the meaning provided in Section 11.

“Exhibits” The following Exhibits are a part of this Agreement:

Exhibit A: Legal Description of the Property

Exhibit B: Eligible Improvements

Exhibit C: Procedure for Documenting, Certifying, and Paying Eligible Costs

Exhibit D: Tax Credit Ordinance

“Force Majeure Event” means any one or more of the following events or circumstances that, alone or in combination, directly or indirectly adversely affects the Project: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God or of any government (except that, as to any obligation of the City, any acts of the City itself shall not be considered Force Majeure Events); disruption to local, national or international transport services; shortages of materials, epidemics, or changes in general economic or other conditions affecting the Project; the discovery of (or the discovery of any characteristic of) any characteristic or condition of the Property, including without limitation, visible or buried or otherwise concealed utility lines, including telephone company lines and cables, fiber optic lines and conduits, sewer lines, water pipes, gas lines, electrical lines, and pipelines, as well as underground obstacles and hidden conditions in any areas requiring uncovering or excavation, unknown (or the extent, condition, or characteristics of which was unknown) to the Developer as of the Effective Date; or any other event beyond the Parties’ reasonable control.

“Land Acquisition Costs” means the reasonable and necessary costs incurred by any District or the Developer in connection with the acquisition of land, easements, mineral rights, or other property interests required for the Eligible Improvements.

“Legal Requirements” means all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directions and requirements of all government and governmental authorities applicable to the Project, subject to approved variances or exceptions therefrom.

“Party” or **“Parties”** means one or all of the parties to this Agreement.

“PIF Collection Agent” means an entity retained by the Developer or District for the purpose of collecting, accounting for, and disbursing the PIF Revenue in accordance with the PIF Covenants.

“PIF Collection Agreement” means an agreement related to the collection and remittance of the PIF Revenue between the Developer or District and the PIF Collection Agent.

“PIF Covenants” means the Add-On PIF Covenant, the Credit PIF Covenant, and the Accommodations Credit PIF Covenant.

“PIF Revenue” means the revenue derived from the imposition of the Add-On PIF, the Credit PIF, and the Accommodations Credit PIF, in accordance with the PIF Covenants.

“Pledged PIF Revenue” means all of the Credit PIF Revenue and the maximum amount of Add-On PIF Revenue that may be pledged thereunder without adversely impacting the tax-

exempt status of interest on the District Bonds, as determined by the District's bond counsel, subject to the terms and provisions of this Agreement and as set forth in the District Bond Documents from time to time.

"Pledged Revenue" means the District Pledged Revenue and any other amounts remitted to the District Bond Trustee for the payment of District Bonds.

"Pre-Financing Costs" means the reasonable costs of the Developer and the Districts in forming the Districts, drafting, negotiating, and obtaining approval of this Agreement, the Service Plan, the District Bond Documents, the PIF Covenants, the PIF Collection Agreement, the Tax Credit Ordinance, and related documentation necessary or appropriate for the issuance of the District Bond, and drafting and negotiating loan documents for construction loans for Eligible Improvements. Pre-Financing Costs shall include, without limitation, reasonable attorneys' fees incurred by the District and Developer related to the above items.

"Prime" means the prime rate as published in the Wall Street Journal on the first business day of each calendar month, which shall be adjusted on a current monthly basis as of the first business day of each calendar month.

"Property" means the real property described in **Exhibit A**. Such Property is either owned by Developer as of the date of this Agreement or Developer otherwise has the right or will have the right to develop the Property.

"Project" means the development of the Property to include a mix of uses generally comprised of commercial office, retail, hotel, and a variety of residential uses, together with related amenities and uses.

"Reasonably Required Reserve" means any bond reserve fund held by the District Bond Trustee, which may be funded by the proceeds of the District Bonds, as required by the District Bond Documents.

"Reimbursement Agreement" means, either individually or collectively, one or more agreements between the Developer and the District setting forth terms and conditions under which the Developer will be reimbursed for Developer Advances made by the Developer to the District for Eligible Costs.

"Remaining Add-On PIF Revenue" means any Add-On PIF Revenue that is not pledged to the District Bonds or dedicated to a specific purpose under the District Bond Documents.

"Sales Tax" means the municipal sales tax of the City on sales of goods and services that are subject to municipal sales taxes at such rate and on such terms as conditions as prescribed in the Code.

"Sales Tax Credit" means the credit against the City's Sales Tax in the amount of 2.25% on Taxable Sales, as implemented pursuant to the Tax Credit Ordinance.

“Service Plan” means the Service Plan for the Karl’s Farm Metropolitan Districts Nos. 1, 2 and 3 approved by the City on April 8, 2019, as such plan may be modified or amended from time to time, including any amendment required in connection with approving a financing plan.

“Tax Credit Ordinance” means the ordinance adopted by the City Council of the City approving the Sales Tax Credit and Accommodations Tax Credit, in substantially the form set forth on **Exhibit D**.

“Taxable Sales” means any exchange of goods or services for money or other media of exchange initiated, consummated, conducted, or transacted within the Property that is subject to eligible Sales Tax under Article 12 of Chapter 5 of the Northglenn Municipal Code, but not including Accommodations Sales of five percent (5%), and not including food for consumption

2. **THE DEVELOPER**

2.1 **Construction of Eligible Improvements**. Developer may, in its sole discretion, elect to undertake all, none, or only certain phases of the Project. Developer or any District is only responsible pursuant to this Section 2.1 to finance and construct those Eligible Improvements required to serve the phase of the Project which Developer so elects to undertake. City acknowledges that Developer has not committed to secure any particular retailer or tenant mix or mix of uses, as of the Effective Date.

2.2 **Entitlement**. The development of the Project requires approval of a planned unit development, subdivision plats, construction drawings, building permits, service plans for the Districts, and one or more development agreements to allow the uses, densities, and site layout necessary to accommodate the Project (collectively, “**City Approvals**”). Developer or one or more other landowners will submit applications for the City Approvals and the City agrees to review and expeditiously process and act on applications for City Approvals.

2.3 **Compliance with Design and Construction Regulations; Payment of Fees and Costs**. The design and construction of all Eligible Improvements will comply in all material respects with all Legal Requirements and City Requirements. As required by the Code and City Requirements, the Developer will enter into one or more subdivision improvements, and/or public improvement agreement(s) with the City to the extent not inconsistent with this Agreement, and will pay or cause to be paid all reasonable and nondiscriminatory fees and escrows required pursuant to such agreements, to the extent consistent with the Code.

2.4 **Credit PIF and Add-On PIF**. Developer agrees to impose the Credit PIF , the Accommodations PIF, and the Add-On PIF prior to any Taxable Sales occurring, and upon issuance of the District Bonds, to irrevocably assign the Pledged PIF Revenue to the District or to the District Bond Trustee, through and until the payment in full or defeasance of the District Bonds, provided however, that the Credit PIF shall terminate in accordance with the Credit PIF Covenant on or before ten years from the date the Credit PIF is first collected, and the Accommodations Credit PIF shall terminate in accordance with the Accommodations PIF Covenant on or before thirteen years from the date the Accommodations Credit PIF is first collected, or upon the Tax Credit Termination Date as defined in Section 3.2(a), whichever first occurs. Following payment in full or defeasance of the District Bonds, the Developer, in its sole discretion, may discontinue,

continue, increase, or decrease the Add-On PIF and (subject to Section 3.2(b)) Credit PIF and Accommodations Credit PIF, and use the PIF Revenues for any legal purpose.

2.5 PIF Collection Agreement. The District or Developer shall engage a PIF Collection Agent to collect, disburse, and account for the Credit PIF Revenue, Accommodations PIF Revenue, and the Add-On PIF Revenue pursuant to the PIF Collection Agreement. The District or Developer, as applicable, shall provide the PIF Collection Agreement and any amendments thereto to the City Attorney and the City shall have the right to review the PIF Collection Agreement prior to its execution or amendment by the respective parties thereto, solely in order to ensure that the PIF Revenue is being collected, remitted, and applied as required pursuant to this Agreement. The City will have 30 days after receipt of such PIF Collection Agreement or any amendment thereto by the City Attorney to notify the Developer or the District in writing if it objects to any provisions set forth in such PIF Collection Agreement as not being in compliance with this Agreement (which shall be the sole grounds on which the City may object to the PIF Collection Agreement) setting forth its specific objections in such notice. If the City does not object in writing to the PIF Collection Agreement within such 30-day period, then the parties shall meet and confer regarding any objections of the City to the PIF Collection Agreement. If the City objects in writing to any provisions of the PIF Collection Agreement or the parties are otherwise required to meet and confer regarding the provisions in the PIF Collection Agreement, the PIF Collection Agreement shall not be executed until the City approves the PIF Collection Agreement.

2.6 Conditions Precedent to Issuance of District Bonds. The following condition must be satisfied on or prior to the issuance of the District Bonds, unless waived in writing by the City:

- (a) Recording of the PIF Covenants in the real estate records of Adams County, Colorado.

Upon satisfaction of the above conditions, the District may issue the District Bonds in one or more series, at the District's sole and absolute discretion. Notwithstanding anything to the contrary in this Agreement, the District may issue other bonds and debt that are supported by revenues other than the Pledged Revenue, at its sole and absolute discretion.

3. THE CITY.

3.1 Cooperation. The City agrees to reasonably cooperate with the Developer and other landowners of the Property in reviewing, scheduling hearings for (if necessary), and considering any and all land use applications in a timely fashion.

3.2 Tax Credits.

- (a) Tax Credit Ordinance. Concurrently with the approval of this Agreement by the City Council, the City shall adopt the Tax Credit Ordinance to implement the Sales Tax Credit and Accommodations Tax Credit. At all times prior to the Tax Credit Termination Date (as defined below), the City will authorize, grant, and implement the Sales Tax Credit and Accommodations Tax Credit pursuant to the Tax Credit Ordinance in order for the Credit PIF and Accommodations Credit PIF to be collected for payment of the District Bonds and payment and reimbursement of Eligible Costs in accordance with the Credit PIF Covenant, the Accommodations Credit PIF, and this Agreement. Except as

hereinafter provided, the Sales Tax Credit and Accommodations Tax Credit shall each independently terminate upon the earlier of (i) the date of the payment in full or defeasance of all outstanding District Bonds, (ii) the date that the aggregate amount of the Sales Tax Credit and Accommodations Tax Credit actually granted by the City over time equals the City Contribution Cap (and the City shall provide the Developer, the District, and the PIF Collection Agent written notice of such date within 5 days after the occurrence of such date), or (iii) (A) with respect to the Sales Tax Credit, December 31, ____ or (B) with respect to the Accommodations Tax Credit, December 31, ____ (collectively, the "**Tax Credit Termination Date**").

(b) Post Credit PIF Period. Notwithstanding any language in any agreement to the contrary, if upon payment in full of the District Bonds or the date the Credit PIF or Accommodations Credit PIF expire, whichever first occurs, the City determines that termination of the Sales Tax Credit and/or Accommodations Tax Credit may be precluded by or require a refund of the Sales Tax Credit and/or Accommodations Tax Credit under Article X, Section 20 of the Colorado Constitution, the City may submit a written request to Developer within 30 days after the payment in full of the District Bonds to continue to impose the Credit PIF and/or Accommodations Credit PIF. If the City timely delivers such a written request, subject to the Developer's obligations to comply with applicable laws and agreements then in effect, the Developer shall make commercially reasonable efforts to continue to impose the Credit PIF and/or Accommodations Credit PIF, as requested, and the full amount derived thereafter from imposition of the Credit PIF and/or Accommodations Credit PIF (net of costs of collection) shall be paid to the City as a substitute for the Sales Tax Credit and/or Accommodations Tax Credit revenue it is unable to collect until such time as the City is again able to collect the Sales Tax Credit and/or Accommodations Tax Credit revenue; provided that the City continuously during such period makes reasonable, good faith attempts to raise taxes to allow for the collection of the Sales Tax Credit and/or Accommodations Tax Credit.

(c) Application and Termination of Sales Tax Credit. In adopting the Tax Credit Ordinance, the City is agreeing that it will grant the Sales Tax Credit only to the extent that the Credit PIF is collected from each retailer within the Property and that it will grant the Accommodations Tax Credit only to the extent that the Accommodations Credit PIF is collected from each provider of accommodations within the Property. If the Credit PIF is not collected from one or more tenants within the Property, such tenant(s) shall not be entitled to the Sales Tax Credit and the City shall collect the full amount of Sales Tax from such tenant(s). In such event, the City shall deposit, or shall use its best efforts to cause the entity collecting Sales Taxes to deposit, a portion of the Sales Taxes collected from such tenant(s) equal to the Sales Tax Credit with the Escrow Agent or District Bond Trustee, as applicable, in which event such portion of Sales Taxes shall be deemed District Pledged Revenue. If the Accommodations Credit PIF is not collected from one or more providers of accommodations within the Property, such provider(s) shall not be entitled to the Accommodations Tax Credit and the City shall collect the full amount of Accommodations Tax from such provider(s). In such event, the City shall deposit, or shall use its best efforts to cause the entity collecting Accommodations Taxes to deposit, a portion of the Accommodations Taxes collected from such provider(s) equal to the Accommodations Tax Credit with the Escrow Agent or District Bond Trustee, as

applicable, in which event such portion of Accommodations Taxes shall be deemed District Pledged Revenue.

3.3 Water and Sewer Serving the Property. The City represents and warrants that it provides water and sewer services at standard and non-discriminatory rates to the Property and will provide water and sewer service in connection with the Project upon compliance with City Requirements.

3.4 Compliance with Law. Nothing set forth in this Agreement is intended or shall be construed to constitute or to require (a) an unlawful delegation of authority by the City; (b) an unlawful restraint on the legislative discretion of future City Councils; or (c) the undertaking of any multiple fiscal year obligation by the City except as permitted by applicable law. Nothing in this Agreement is intended to nor shall be construed to create any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of the Constitution or laws of the State of Colorado, or the City's home rule charter, and any such financial obligation of the City created by this Agreement is expressly subject to annual appropriation by the City.

3.5 Change in Sales Tax. Nothing in this Agreement shall impair the right of the City to modify the imposition of sales tax through the Code including the reduction in the rate of taxation or adding exemptions from taxation, provided that such modifications shall not have retroactive effect.

4. USE OF DISTRICT PLEDGED REVENUE.

4.1 Disposition of District Pledged Revenue Prior to Issuance of District Bonds. To the extent that any PIF Revenue is generated prior to the issuance of any District Bonds, all PIF Revenue shall be remitted to the Escrow Agent. The Escrow Agent shall hold all PIF Revenue as directed herein or by an escrow agreement, and shall invest all such amounts so held as directed by the District or Developer in accordance with the escrow agreement and applicable law. The Escrow Agent shall keep accurate books and records of all deposits of PIF Revenue and investment earnings thereon, which books and records shall be available for inspection during regular business hours by the Developer, the District, and the City.

4.2 Disposition of District Pledged Revenue Upon Issuance of District Bonds.

(a) Except as hereinafter provided, upon the issuance of any District Bonds, all District Pledged Revenue on deposit with the Escrow Agent shall be remitted by the Escrow Agent either:

(i) to the District Bond Trustee and applied to one or more of the following purposes: (A) deposited in an interest payment fund for the District Bonds, (B) deposited in a Reasonably Required Reserve Fund or supplemental reserve fund for the District Bonds, (C) applied to the payment of the Costs of Issuance or Pre-Financing Costs, or (D) applied to the payment of District Bond Requirements, or

(ii) in accordance with written instructions provided by the Parties hereto at the time the District Bonds are issued.

(b) After the issuance of any District Bonds, all District Pledged Revenue shall thereafter be deposited with the District Bond Trustee in accordance with the terms and provisions of the District Bond Documents. Notwithstanding any provisions to the contrary contained herein, in the event that District Bonds are issued and there is Remaining Add-On PIF, such Remaining Add-On PIF Revenues on deposit with the Escrow Agent shall be remitted to the Developer, which may use any Remaining Add-On PIF Revenue for any lawful purpose.

4.3 Repayment and Reimbursement. Upon compliance with the requisition process set forth in **Exhibit C**, or the applicable provisions established by the District, the Developer or the District will be paid or reimbursed for Eligible Costs in accordance with the terms of this Agreement. Any such payment or reimbursement of Eligible Costs pursuant to this Agreement shall be made:

(a) to the extent that no District Bonds have been issued or to the extent that not all District Pledged Revenues have been pledged to the payment of outstanding District Bonds, from District Pledged Revenue on deposit with the Escrow Agent in accordance with Section 4.1, or

(b) from the proceeds of the District Bonds in accordance with the District Bond Documents. If such payment or reimbursement is to be made from the net proceeds of District Bonds, the Developer, the City, and the District will not be subject to any additional conditions for payment or reimbursement of Eligible Costs, except as provided in the District Bond Documents.

5. **BOOKS AND ACCOUNTS; FINANCIAL STATEMENTS.**

5.1 The Developer shall keep proper and current itemized records, books, and accounts in which complete and accurate entries will be made of the receipt and use of all amounts of revenue received from any and all sources and such other calculations required by this Agreement, the District Bond Documents, and any applicable law or regulation. The Developer shall prepare, after the close of each fiscal year, a complete financial statement prepared in accordance with generally accepted accounting principles accepted in the United States of America for such year in reasonable detail covering the above information, and if required by statute, certified by a public accountant, and will furnish a copy of such statement to the other Parties within 210 days after the close of each fiscal year, or upon such earlier date as may be required by the District Bond Documents.

5.2 No later than 60 days after the end of each fiscal year, the City shall prepare, or cause to be prepared, and delivered to the Developer and the District, a report setting forth the actual amount of the Sales Tax Credit and Accommodations Tax Credit granted during the preceding fiscal year and the total amount of Sales Tax Credit and Accommodations Tax Credit granted in the aggregated from the Effective Date through the end of the preceding fiscal year.

5.3 All books, records and reports (except those allowed or required by applicable law to be kept confidential) in the possession of the City and the District, including, without limitation, those relating to the Pledged Revenue, Eligible Improvements, Eligible Costs, District Pledged Revenue, District Operating Revenue, and District Bonds will at all reasonable times be open to

inspection by such accountants or other agents as the respective Parties may from time to time designate.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Representations and Warranties by Developer. Developer represents and warrants as follows:

(a) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

(b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions, and obligations, has been duly and validly authorized by all necessary action on the Developer's part, and this Agreement is valid and binding upon the Developer and enforceable according to its terms.

(c) The execution and delivery of this Agreement will not (i) conflict with or contravene the Developer's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which Developer is a party, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of Developer.

(d) There is no litigation, proceeding, initiative, referendum, or investigation pending or, to the Developer's current, actual knowledge (without duty of inquiry or investigation), threatened that contests the powers of the Developer with respect to this Agreement.

(e) This Agreement constitutes a valid and binding obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

6.2 Representations and Warranties by the City. The City represents and warrants as follows:

(a) The City is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

(b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions, and obligations, has been duly and validly authorized by all necessary action on the City's part, and this Agreement is valid and binding upon the City and enforceable according to its terms.

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the City or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the City.

(d) There is no litigation, proceeding, initiative, referendum, or investigation pending or, to the City's current, actual knowledge (without duty of inquiry or investigation), threatened that contests the powers of the City or its officials with respect to this Agreement.

7. **TERM**. The term of this Agreement ("Term") is the period commencing on the date that the City Council ordinance approving this Agreement is final and no longer subject to referendum (the "Effective Date") and terminating on the date of payment in full or defeasance of the District Bonds or the full performance of the covenants of this Agreement, whichever occurs later.

8. **CONFLICTS OF INTEREST**. None of the following will have any personal interest, direct or indirect, in this Agreement: a member of the governing body of the City or an employee of the City who exercises responsibility concerning the City Requirements, or an individual or firm retained by the City who has performed consulting services to the City or this Agreement. None of the above persons or entities will participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

9. **ANTIDISCRIMINATION**. Developer, for itself and its successors and assigns, agrees that in the construction of the Eligible Improvements, Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual preference, disability, marital status, ancestry, or national origin.

10. **NOTICES**. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given upon receipt (or refusal of receipt) if delivered in person, by a nationally recognized overnight courier service, by certified mail or registered mail, postage prepaid return receipt requested, or by email (provided that if sent by email, notice shall also be sent by one of the other means provided in this Section 10 on the next business day) addressed to the Party to whom such notice is to be given at the address set forth on the signature page below or at such other or additional addresses as may be furnished in writing to the other Parties.

11. **EVENTS OF DEFAULT**. The following event shall constitute an "Event of Default" under this Agreement: any Party fails in the performance of any covenant in this Agreement, (except for those events allowing the termination of this Agreement as set forth herein) and such failure continues for 30 days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party. If such default is not of a type which can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such 30-day period that it is actively and diligently

pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

12. **REMEDIES.** Upon the occurrence and continuation of an Event of Default, the non-defaulting Party's remedies will be limited to the right to enforce the defaulting Party's obligations by an action for injunction, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy (unless otherwise expressly authorized by this Agreement). Notwithstanding anything to the contrary in this Agreement, except as provided in this Section 12, no Party will be entitled to or shall have the right to claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive, or exemplary damages, all of which are hereby expressly waived by the Parties. This Section 12 shall survive expiration or early termination of this Agreement.

13. **TERMINATION FOR CONVENIENCE.**

13.1 This Agreement may be terminated by the Developer at any time prior to the earlier to occur of (a) the issuance of any District Bonds, (b) the reimbursement or payment of any Eligible Costs from District Pledged Revenue on deposit with the Escrow Agent, or (c) Commencement of Construction of any of the Eligible Improvements.

13.2 To terminate this Agreement, the Developer shall provide written notice of such termination to the City. Such termination will be effective 30 days after the date of such notice unless prior to such time, the Parties are able to negotiate in good faith to reach an agreement to avoid such termination. Upon such termination, this Agreement will be null and void and of no effect, and no action, claim or demand may be based on any term or provision of this Agreement. In addition the Parties agree to execute a mutual release or other instruments reasonably required to effectuate and give notice of such termination.

13.3 If this Agreement is terminated pursuant to the provisions of this Section 13, any Credit PIF Revenue on Deposit with the Escrow Agent shall be remitted to the City.

14. **NONLIABILITY OF OFFICIALS, AGENTS, MEMBERS, AND EMPLOYEES.** No trustee, board member, commissioner, official, officer, director, employee, consultant, manager, member, shareholder, partner, attorney, or agent of any Party, nor any lender to any Party or to the Project, will be personally liable under this Agreement, whether for any Event of Default or otherwise.

15. **ASSIGNMENT.** This Agreement shall not be assigned in whole or in part by any Party without the prior written consent of the other Parties; provided, however, Developer may assign, pledge, collaterally assign, or otherwise encumber all or any part of this Agreement, including its right to receive any payment or reimbursement, without any Party's consent but after written notice to the City containing the name and address of the assignee: (a) to one or more of the District(s); (b) to any lender or other party that provides acquisition, construction, working capital, tenant improvement, or other financing to Developer relative to the Property; (c) to one or more special purpose entities created to develop, own, and/or operate all or a portion of the Property or of the

Eligible Improvements to be constructed thereon; (d) to a joint venture entity with another developer or investor; or (e) to a national or regional developer with at least 10 years' experience developing mixed-use projects and with a net worth equal to or better than Developer's.

16. **COOPERATION REGARDING DEFENSE.** In the event of any litigation or other legal challenge brought by a third-party involving this Agreement, the District Bonds, or any other material part or provision of this Agreement or the ability of any Party to enter into this Agreement, the Parties will cooperate and jointly defend against such action or challenge, to the extent permitted by law.

17. **SECTION CAPTIONS.** The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

18. **ADDITIONAL DOCUMENTS OR ACTION.** The Parties agree to execute any additional reasonable documents or take any additional reasonable action, including but not limited to executing reasonable estoppel documents requested or required by other Parties or the Developer's lenders, as necessary to carry out this Agreement or as reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent of this Agreement. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement, are asserted or determined to be invalid, illegal, or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent, good faith efforts to amend, reform, or replace such invalid, illegal, or precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

19. **AMENDMENT.** This Agreement may be amended only by an instrument in writing signed by the Parties.

20. **WAIVER OF BREACH.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

21. **GOVERNING LAW.** The laws of the State of Colorado govern this Agreement. Any legal action brought arising out of or related to this Agreement shall be brought only in Adams County District Court, and each Party hereto hereby consents to the exclusive jurisdiction and venue in such court. In any civil litigation arising out of or related to this Agreement, trial shall be to the court and each Party waives all rights to trial by jury. Each Party acknowledges and represents that it makes this waiver knowingly, voluntarily, and intentionally and after careful consideration of the ramifications of this waiver with legal counsel.

22. **BINDING EFFECT, ENTIRE AGREEMENT.** This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Section 15. This Agreement represents the entire Agreement among the Parties and supersedes any prior written or oral agreements or understandings with regard to the Property or

Project not specifically set forth in this Agreement including, without limitation, the Initial Public Finance Agreement, which is amended and restated in its entirety by this Agreement.

23. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement. Executed copies hereof may be delivered by email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the Parties hereto.

24. **LIMITED THIRD-PARTY BENEFICIARIES.** This Agreement is intended to describe the rights and responsibilities only as to the Parties to this Agreement. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement, provided that the District Bond Trustee shall be deemed to be a third party beneficiary hereunder. Notwithstanding anything in this Agreement to the contrary, (a) no third party beneficiary's consent or approval shall be required for any amendment, modification, or termination of this Agreement or for any waivers or consents granted hereunder, and (b) the rights of any third party beneficiaries may be amended, modified, or terminated by the mutual agreement of the Parties.

25. **NO PRESUMPTION.** The Parties and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement will be construed without regard to any presumption or other rule of construction against the Party causing this Agreement to be drafted.

26. **SEVERABILITY.** If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be void or unenforceable, the same will in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity or enforceability of this Agreement as a whole.

27. **MINOR CHANGES.** This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and attached exhibits as they have considered necessary. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of this Agreement will constitute the approval of such changes by the respective Parties.

28. **DAYS.** If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

29. **RECORDING.** This Agreement shall not be recorded in the real property records of Adams County, Colorado.

30. **GOOD FAITH OF PARTIES.** Except as otherwise expressly stated in this Agreement, in the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

31. **PARTIES NOT PARTNERS.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party, except as expressly set forth in this Agreement.

32. **SUBJECT TO ANNUAL APPROPRIATION.** Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations of the City not to be performed during the current fiscal year are subject to annual appropriation.

33. **NO WAIVER OF IMMUNITY.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of _____, 2019.

CITY OF NORTHGLENN, COLORADO

By: _____
Carol A. Dodge, Mayor

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM

Corey Y. Hoffmann, City Attorney

Notice Address

City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233
Attention: City Manager

[SIGNATURE PAGES CONTINUE]

THE DEVELOPER:

KF Developers , Inc,
a Colorado corporation

By: D.F.
Name: Daniel Frank
Its: Director

Notice Address:

With a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Attention: Carolynne C. White, Esq.
Email: cwhite@bhfs.com

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

A PARCEL OF LAND BEING A PORTION OF LOT 19, EASTLAKE SUBDIVISION, AS RECORDED UNDER FILE 1, MAP 30 IN RECORDS OF THE CLERK AND RECORDER OF ADAMS COUNTY, COLORADO, LYING WITHIN SECTION 35, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTH QUARTER CORNER AND AT THE SOUTHEAST CORNER BY A 3-1/4" ALUMINUM CAP STAMPED "CDOT 1991 LS 11424" IN A MONUMENT BOX, ASSUMED TO BEAR NORTH 89°54'49" EAST, A DISTANCE OF 2639.11 FEET

COMMENCING: AT THE SOUTH QUARTER CORNER OF SAID SECTION 35;

THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 35, NORTH 00°29'05" WEST, A DISTANCE OF 90.00 FEET TO THE NORTHERLY RIGHT-OF-WAY EAST 120TH AVENUE AS DESCRIBED IN DEED RECORDED IN BOOK 2003 AT PAGE 531 IN SAID RECORDS AND THE **POINT OF BEGINNING**.

THENCE CONTINUING ALONG SAID WESTERTLY BOUNDARY AND THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35, NORTH 00°29'05" WEST A DISTANCE OF 55.94 FEET TO THE NORTHERLY BOUNDARY OF SAID LOT 19;

THENCE ALONG SAID NORTHERLY BOUNDARY, THE FOLLOWING FIVE COURSES:

1. DEPARTING SAID WEST LINE OF THE NORTHEAST QUARTER, SOUTH 86°38'12" EAST, A DISTANCE OF 1708.02 FEET;
2. SOUTH 27°37'52" WEST, A DISTANCE OF 127.73 FEET;
3. SOUTH 56°19'30" EAST, A DISTANCE OF 718.29 FEET;
4. SOUTH 52°06'02" EAST, A DISTANCE OF 499.78 FEET;
5. NORTH 80°00'29" EAST, A DISTANCE OF 219.93 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 35, ALSO BEING THE EASTERLY BOUNDARY OF SAID LOT 19

THENCE ALONG SAID EASTERLY BOUNDARY AND SAID EAST LINE, SOUTH 00°25'41" EAST, A DISTANCE OF 475.09 FEET TO THE WESTERLY RIGHT-OF-WAY OF RACE STREET AS DESCRIBED IN DEED RECORDED IN BOOK 3436 AT PAGE 607 IN SAID RECORDS;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY AND THE NORTHERLY RIGHT-OF-WAY OF EAST 120TH AVENUE AS DESCRIBED IN DEED RECORDED IN BOOK 2023 AT PAGE 531 IN SAID RECORDS, SOUTH 89°54'49" WEST, A DISTANCE OF 1289.64 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 63.822 ACRES (2,780,057 SQUARE FEET), MORE OR LESS

EXHIBIT A

17368135
8/24/18

EXHIBIT B
ELIGIBLE IMPROVEMENTS

ENGINEER'S OPINION OF PROBABLE COST FOR KARL'S FARM SOUTH

Project Name: **Karl's Farm**

Date: **4/3/2019**

Number of Lots

0

Prepared for: **Centre Communities**

Based off quantities prepared by Innovative Land Consultants

DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	COST
Grading, Demolition and Erosion Control				
Strip Topsoil to Stockpile	9,267	CY	\$ 2.25	\$ 20,850.75
Import Fill	54,417	CY	\$ 10.00	\$ 544,170.00
Retaining Wall	0	SFF	\$ 30.00	\$ -
Erosion Control Maintenance	3	LS	\$ 2,500.00	\$ 7,500.00
Demolish Existing Fence	0	LF	\$ 0.50	\$ -
Silt Fence	1,266	LF	\$ 2.50	\$ 3,165.00
Sediment Basin	1	AC	\$ 1,500.00	\$ 1,650.00
Diversion Ditch	684	LF	\$ 0.75	\$ 513.00
Vehicle Tracking Control	2	EA	\$ 2,750.00	\$ 5,500.00
Stabilized Staging Area	1,100	SY	\$ 3.00	\$ 3,300.00
Concrete Washout Area	1	EA	\$ 750.00	\$ 750.00
Intlet Protection	3	EA	\$ 250.00	\$ 750.00
RRB for culvert protection	0	LF	\$ 8.00	\$ -
Surface Roughening	8.5	AC	\$ 25.00	\$ 212.50
Seeding & Mulching	8.5	AC	\$ 1,200.00	\$ 10,200.00
Demo Vertical Curb & Gutter on 120th	1,540	LF	\$ 9.50	\$ 14,630.00
Demo Asphalt on 120th	70	SY	\$ 21.00	\$ 1,470.00
Demolition existing structures	0.18	LS	\$ 250,000.00	\$ 45,000.00
Asbestos abatement	0.18	LS	\$ 100,000.00	\$ 18,000.00
	0	0	\$ -	\$ -
Grading, Erosion Control and Landscape Improvement Cost				\$ 677,661.25
Sanitary Sewer Improvements				
	0	0	\$ -	\$ -
4' ID MH to 14'	5	EA	\$ 3,886.00	\$ 19,430.00
8" Sanitary Main to 14'	1,823	LF	\$ 41.00	\$ 74,743.00
Lift Station	0.18	LS	\$ 2,275,000.00	\$ 409,500.00
Sanitary Sewer Improvement Cost				\$ 503,673.00
Domestic (Potable) Water Improvements				
8" PVC - C900	237	LF	\$ 29.00	\$ 6,873.00
12" PVC - C900	940	LF	\$ 34.25	\$ 32,195.00
12" Bend (includes thrustblocks)	2	EA	\$ 900.00	\$ 1,800.00
8" Gate Valve w/box	5	EA	\$ 1,710.00	\$ 8,550.00
12" Gate Valve w/box	7	EA	\$ 2,125.00	\$ 14,875.00
8" x 8" Tee	2	EA	\$ 769.00	\$ 1,538.00
12" x 12" Tee	2	EA	\$ 1,150.00	\$ 2,300.00
Fire Hydrant Assembly (includes tee, valve and 6" DIP)	5	EA	\$ 6,978.00	\$ 34,890.00
Connect to Existing	2	EA	\$ 2,500.00	\$ 5,000.00
Water Main Testing	1,177	LF	\$ 0.75	\$ 882.75
12" Plugs	5	EA	\$ 175.00	\$ 875.00
12 x 8 Cross	1	EA	\$ 1,250.00	\$ 1,250.00
Domestic (Potable) Water Improvement Cost				\$ 111,028.75
Dry Utilities, Conduits, Site Amenities, Misc.				

Electric	1,177	LF	\$	45.12	\$	53,106.24
Natural Gas	1,177	LF	\$	35.43	\$	41,701.11
4" conduit sleeves	625	LF	\$	2.00	\$	1,250.00
High Pressure Gas Line Relocation	0.18	LS	\$	370,000.00	\$	66,600.00
Landscaping (open space, tree lawns, detention)	1.9	AC	\$	348,480.00	\$	662,112.00
Monuments	2	EA	\$	50,000.00	\$	100,000.00

Dry Utilities and Conduit Improvement Cost \$ 924,769.35

Street Improvements

Vertical Curb & Gutter	4,416	LF	\$	22.70	\$	100,243.20
Detached Walk	4,306	LF	\$	25.00	\$	107,650.00
ADA Ramp	10	EA	\$	3,500.00	\$	35,000.00
Subgrade Prep Ashpalt and C&G	10,636	SY	\$	3.00	\$	31,908.00
Adjust MH's	8	EA	\$	600.00	\$	4,800.00
Adjust Valves	15	EA	\$	275.00	\$	4,125.00
8' Cross Pan	4	EA	\$	4,000.00	\$	16,000.00
Subbase - 8"	10,636	SY	\$	9.25	\$	98,383.00
Asphalt (5" except Irma, Race and 120th)	2,719	SY	\$	20.95	\$	56,963.05
Asphalt (7" for Irma, Race and 120th)	6,198	SY	\$	29.33	\$	181,787.34
Rework traffic signal (120th and Irma)	0.50	EA	\$	450,000.00	\$	225,000.00
Traffic signal 120th and Race Street	0.50	EA	\$	550,000.00	\$	275,000.00

Street Improvement Cost \$ 1,136,859.59

Storm Sewer Improvements

4' Storm Manhole	2	EA	\$	4,500.00	\$	9,000.00
5' Storm Manhole	2	EA	\$	5,500.00	\$	11,000.00
Type R Inlet - 5'	3	EA	\$	6,652.00	\$	19,956.00
24" RCP (CL-III)	679	LF	\$	75.00	\$	50,925.00
30" RCP (CL-III)	519	LF	\$	91.00	\$	47,229.00
Pond Fallout (Outlet Structure)	0	EA	\$	370,000.00	\$	66,600.00

Storm Sewer Improvement Cost \$ 204,710.00

Signage, Striping and Traffic Controls

Street Signs	7.0	EA	\$	250.00	\$	1,750.00
Striping	8,229	LF	\$	1.85	\$	15,223.65
Turn Striping	14.0	EA	\$	310.00	\$	4,340.00
Turn/Straight Striping	3.0	EA	\$	310.00	\$	930.00
Merge Striping	2	EA	\$	310.00	\$	620.00

Signage and Stripping Improvement Cost \$ 22,863.65

Other Fees and Costs

Review Fees	0.25	LS	\$	120,000.00	\$	30,000.00
Mobilization - earthwork	0.25	LS	\$	25,000.00	\$	6,250.00
Mobilization - water	0.25	LS	\$	15,000.00	\$	3,750.00
Mobilization - sewer	0.25	LS	\$	15,000.00	\$	3,750.00
Mobilization - storm	0.25	LS	\$	15,000.00	\$	3,750.00
Mobilization - paving/concrete	0.25	LS	\$	22,500.00	\$	5,625.00
Mobilization - landscaping	0.25	LS	\$	15,000.00	\$	3,750.00
	0.25	LS	\$	-	\$	-

Development and Other Fees \$ 56,875.00

Subtotal Infrastructure Hard Cost \$ 3,638,440.59

20% Contingency \$ 727,688.12

Infrastructure Hard Cost	\$	4,366,128.71
Entitlements (design consultants) - 7%	\$	254,690.84
Construction Survey - 2.5%	\$	90,961.01
Materials Testing - 3%	\$	109,153.22
Permit Fees - 3%	\$	109,153.22
TOTAL PROJECT COSTS	\$	4,930,087.00

EXHIBIT C

PROCEDURE FOR DOCUMENTING, CERTIFYING, AND PAYING ELIGIBLE COSTS

1. Applicability. All capitalized terms that are not specifically defined in this **Exhibit C** will have the same meaning as defined in this Agreement. The Parties recognize and acknowledge that in connection with issuance and sale of District Bonds, the District may establish a different procedure for the requisition of District Bond proceeds, in which event that procedure shall be substituted for the procedure in this **Exhibit C**.

2. Engineer. The District may select an independent licensed engineer experienced in the design and construction of public improvements in the Denver metropolitan area (the “**Engineer**”). The Engineer shall be responsible for reviewing, approving, and providing the certificate required by paragraph 3.

3. Documentation of Eligible Costs. The District or Developer will be responsible for documenting all Eligible Costs. Eligible Costs may be certified when a pay application has been submitted by a contractor that complies with the procedure set forth in this **Exhibit C** or upon Completion of Construction of an Eligible Improvement. All such submissions shall include a certification signed by both the Engineer and an authorized representative of the District or Developer, as applicable. The certificate shall state that the information contained therein is true and accurate to each individual’s actual knowledge and, to such individual’s actual knowledge, qualifies as Eligible Costs. Such submissions will include copies of backup documentation supporting the listed cost items, copies of contracts for first-tier contractors and suppliers, and copies of each check issued by the District or Developer for each item listed on the statement. Unless required by a District or Developer construction contract then being performed, statements for payment of Eligible Costs shall not include advance payments of any kind for unperformed work or materials not delivered and stored on the Property.

4. Verification, Submission, and Payment from District Bond Proceeds. To the extent that the Eligible Costs are to be paid from District Bond proceeds, each payment request shall include the certificate described in paragraph 3 above and shall be submitted to the District for review within 5 business days after receipt of such request. Such review is solely for the purpose of the District representative and the District Bond Trustee, as applicable, verifying that the work and costs represented in each payment request and supporting documentation qualify as Eligible Improvements and Eligible Costs. The sole grounds for the District denying all or a portion of a payment request shall be (a) that the all or a portion of the work and costs represented in such payment request and supporting documentation do not qualify as Eligible Improvements and Eligible Costs, (b) that the documentation submitted does not comply with the requirements of this **Exhibit C**, or (c) there are insufficient District Bond proceeds to pay the entire amount requested, in which event the payment request may be denied by the District only to the extent of the costs in such payment request for which payment is being properly denied. Upon the earlier of approval of such documentation or expiration of the 5 business day period, the District’s accountant will allocate the Eligible Costs to the Eligible Improvements according to the category for each listed in this **Exhibit C**, or allocate the Eligible Costs as Pre-Financing Costs or Costs of Issuance, as appropriate, and compile an aggregate running total of the Eligible Costs in each category. Thereafter, the District Bond Trustee will make payments of Eligible Costs to the District or

Developer as provided in this Agreement. So long as the payment request is properly certified according to this procedure payment will be made within 7 business days after submission of the payment request.

5. Verification, Submission and Payment from District Pledged Revenue on Deposit with the Escrow Agent. To the extent that no District Bonds have been issued or to the extent that not all District Pledged Revenues have been pledged to the payment of outstanding District Bonds, Eligible Costs shall be paid from District Pledged Revenue on deposit with the Escrow Agent. In such event, each such payment request shall include the certificate described in paragraph 3 above and shall be submitted to the District for review within 5 business days after receipt of such request. Such review is solely for the purpose of the District verifying that the work and costs represented in each payment request and supporting documentation qualify as Eligible Improvements or Eligible Costs. The sole grounds for the District representative denying all or a portion of a payment request shall be (a) that the all or a portion of the work and costs represented in such payment request and supporting documentation do not qualify as Eligible Improvements and Eligible Costs, (b) that the documentation submitted does not comply with the requirements of this **Exhibit C**, or (c) there are insufficient District Bond proceeds to pay the entire amount requested, in which event the payment request may be denied by the District only to the extent of the costs in such payment request for which payment is being properly denied. Upon the earlier of approval of such documentation or expiration of the 5 business day period, the District's accountant will allocate the Eligible Costs to the Eligible Improvements according to the category for each listed in **Exhibit C**, or allocate the Eligible Costs as Pre-Financing Costs or Costs of Issuance, as appropriate, and compile an aggregate running total of Eligible Costs paid of the Eligible Costs in each category from District Pledged Revenue to a District or to the Developer as provided in this Agreement. Thereafter, the Escrow Agent will make payments of Eligible Costs to the District or Developer as provided in this Agreement. So long as the payment request is properly certified according to this procedure, payment will be made within 7 business days of submission of the payment request.

6. Shortfall of District Pledged Revenue. Notwithstanding the foregoing provisions, the Parties acknowledge and agree that District Pledged Revenue on deposit with the Escrow Agent may be insufficient to make the payments or reimbursements permitted by this **Exhibit C**. In the event that there are insufficient District Pledged Revenue to make such payments or reimbursements that have been requested by the Developer or the District, this shall not constitute an Event of Default under this Agreement, any such payments or reimbursements shall be made only from available District Pledged Revenue and any unpaid request, or portion thereof, shall be made when District Pledged Revenue is thereafter received by the Escrow Agent. In the event that the Escrow Agent receives multiple requests for payment or reimbursement of Eligible Costs and the District Pledged Revenue is insufficient to make all such requested payments, the District Pledged Revenue shall be applied to the payment of such requisitions prorata based on the applicable amounts requested.

EXHIBIT D

FORM OF TAX CREDIT ORDINANCE TO BE ADOPTED BY CITY

SPONSORED BY: _____

COUNCILMAN'S BILL

ORDINANCE NO.

No. _____
Series of 2019

Series of 2019

A BILL FOR A SPECIAL ORDINANCE GRANTING A SALES TAX CREDIT IN THE AMOUNT OF 2.25% AND AN ACCOMMODATIONS TAX CREDIT IN THE AMOUNT OF 3.75% TO THE EXTENT THAT CERTAIN PUBLIC IMPROVEMENT FEES ARE IMPOSED AND COLLECTED.

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

WHEREAS, the City has entered into a Public Finance Agreement (the "Public Finance Agreement") with KF Developers, Inc, a Colorado corporation, and _____, concerning the financing and construction of certain eligible improvements in association with the development of a mixed-use development on certain property more specifically described in the Public Finance Agreement (the "Property"), which is generally located between Irma Street and Race Street north of E 120th Avenue in the City of Northglenn (the "City"); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Public Finance Agreement; and

WHEREAS, pursuant to Section 3.2 of the Public Finance Agreement, the City Council has agreed to consider adoption of an ordinance granting a Sales Tax Credit in the amount of 2.25% against the collection of Sales Taxes on Taxable Sales to the extent that a public improvement fee in the amount of 2.25% (the "Credit PIF") has been collected on Taxable Sales, subject to the terms and limitations set forth in the Public Finance Agreement; and

WHEREAS, pursuant to Section 3.2 of the Public Finance Agreement, the City Council has agreed to consider adoption of an ordinance granting an Accommodations Tax Credit in the amount of 3.75% against the collection of Accommodations Taxes on Accommodations Sales to the extent that a public improvement fee in the amount of 3.75% (the "Accommodations Credit PIF") has been collected on Accommodations Sales, subject to the terms and limitations set forth in the Public Finance Agreement; and

WHEREAS, providing for such Sales Tax Credit against the Credit PIF collected and paid on Taxable Sales and providing for such Accommodations Tax Credit against the

Accommodations Credit PIF collected and paid on Accommodations Sales will substantially aid in the financing, acquisition, and construction of necessary Eligible Improvements that will benefit the residents of the City and patrons, occupants, and residents of the Property, and will protect and promote the public health, safety, and general welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO:

Section 1. Notwithstanding any other provisions of Municipal Code of the City of Northglenn to the contrary, and in order to implement the provisions of the Public Finance Agreement, there is hereby granted to each person or entity obligated to pay, collect, or remit Sales Taxes on Taxable Sales, a tax credit against the collection of the Sales Taxes as hereinafter set forth. Such tax credit shall be granted in the form of a reduction in the applicable Sales Tax rate in an amount equal to 2.25% of gross receipts (the "Sales Tax Credit"), and shall attach to a particular transaction only to the extent that the Credit PIF is collected for such transaction. The Sales Tax Credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Sale, but shall be subject to the applicable retailer's remittance of the Credit PIF in accordance with the Credit PIF Covenant and the Public Finance Agreement for a period of ten years from the date the Credit PIF is first collected (as reflected on the retailer's periodic sales tax report).

Further, notwithstanding any other provisions of Municipal Code of the City of Northglenn to the contrary, and in order to implement the provisions of the Public Finance Agreement, there is hereby granted to each person or entity obligated to pay, collect, or remit Accommodations Taxes on Accommodations Sales, a tax credit against the collection of the Accommodations Taxes as hereinafter set forth. Such tax credit shall be granted in the form of a reduction in the applicable Accommodations Tax rate in an amount equal to 3.75% of gross receipts (the "Accommodations Tax Credit"), and shall attach to a particular transaction only to the extent that the Accommodations Credit PIF is collected for such transaction. The Accommodations Tax Credit shall be automatic and shall take effect immediately upon the occurrence of an Accommodations Sale, but shall be subject to the applicable retailer's remittance of the Accommodations Credit PIF in accordance with the Accommodations Credit PIF Covenant and the Public Finance Agreement (as reflected on the retailer's periodic sales tax report).

The Sales Tax Credit and the Accommodations Tax Credit granted pursuant to this Section shall each automatically terminate in accordance with the terms and conditions of the Public Finance Agreement without further action by the City.

Section 2. Invalidity. In the event the Sales Tax Credit and/or Accommodations Tax Credit established herein or the Credit PIF is determined by a final court decision to be unconstitutional, void, invalid, or ineffective for any cause, retailers shall immediately be required to collect and remit the full City Sales Tax as required by the Code and providers of accommodations shall immediately be required to collect and remit the full City Accommodations Tax as required by the Code. If any part or provision of this Ordinance or the application thereof to any person or circumstances is determined by a final court decision to be unconstitutional, void, invalid, or ineffective, such determination shall not affect other provisions or applications of this

Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 3. Change in Tax Rate. Nothing contained in this Ordinance shall prohibit the City, after complying with all requirements of law, from increasing or decreasing the City's Sales Tax rate or Accommodations Tax rate.

Section 4. Effect of Credit, Applicability of TABOR. The City Council hereby determines that the creation or termination of Sales Tax Credit and/or Accommodations Tax Credit does not constitute a tax increase, the imposition of a new tax, or a tax policy change directly causing a net tax revenue gain to the City,

INTRODUCED, READ AND ORDERED POSTED this _____ day of _____, 2019.

CAROL DODGE
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this _____ day of _____, 2019.

CAROL A. DODGE
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

Ex. D - 3

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