

ADMINISTRATION MEMORANDUM
12-17

DATE: December 13, 2017

TO: NURA Board of Directors

FROM: Debbie Tuttle, NURA Executive:

COPIES: James Hayes, City Manager, AICP
Jason Loveland, Finance Director & NURA Treasurer
Jeff Parker, NURA Attorney

FROM: Debbie Tuttle, Economic Development Manager & NURA Executive Director

SUBJECT: **Evergreen Marketplace LLC – Improvement Reimbursement Agreement**

PURPOSE:

The purpose of this memorandum is to ask the NURA board to consider approval of Resolution N/14-46 for \$250,000 to fill the financial gap to Evergreen Marketplace LLC to complete approximately \$1 million of exterior improvements to the property located at 450-560 Malley Drive.

BACKGROUND:

The principal of J & B Construction presented plans on behalf of Evergreen Marketplace LLC to the NURA board at the November 8, 2018 board meeting. The plans included exterior revitalization of the 39,495 square foot strip center at 450-560 Malley Drive. Evergreen Marketplace purchased the property for \$4.225 Million in late October. They have plans to invest approximately \$1M for new facades, signage, landscaping, and parking lot improvements. The construction will be similar to the adjacent Green Solutions exterior improvements to provide continuity in the center. The financial gap and incentive requested is \$250,000.

CONSTRUCTION & TIMING:

Construction is planned to start in the summer of 2018 and be completed by December 2018. A complete list of the exterior improvements is provided in **Exhibit B** of the Improvement Reimbursement Agreement (**Exhibit A**).

BUDGET IMPLICATIONS:

This property is located in URA 2, and if the board approves this resolution it has been included in the 2018 budget. If approved, the first \$125,000 payment would be paid in 2018 after the construction completion, and the paid invoices have been provided to staff. The second payment would be paid on the first anniversary date of the first payment.

STAFF RECOMMENDATION: It is staff's recommendation to approve Resolution N/17-46 for an Improvement Reimbursement Agreement in the amount not to exceed \$250,000. If the board approves this incentive it will improve the appearance of the property and help eliminate blight in this center.

STAFF REFERENCE:

If have any comments or questions, you may contact Debbie Tuttle at dtuttle@northglenn.org at 303-450-8743.

NORTHGLENN URBAN RENEWAL AUTHORITY

RESOLUTION NO.

N/17-46
Series of 2017

A RESOLUTION APPROVING AN IMPROVEMENT REIMBURSEMENT AGREEMENT WITH EVERGREEN MARKETPLACE LLC FOR THE PROPERTIES LOCATED AT 450-560 MALLEY DRIVE, NORTHGLENN, COLORADO

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

Section 1. The Improvement Reimbursement Agreement attached hereto as **Exhibit A** is hereby approved for up to a maximum amount of up to Two Hundred Fifty Thousand Dollars and zero cents (**\$250,000.00**) and the Chair is authorized to execute the same on behalf of the Authority.

DATED this ____ day of _____, 2017

Rosie Garner
Chair

ATTEST:

APPROVED AS TO FORM

Debbie Tuttle
Executive Director

Jeff Parker
Board Attorney

**NORTHGLENN URBAN RENEWAL AUTHORITY
IMPROVEMENT REIMBURSEMENT AGREEMENT
(MALLEY HEIGHTS)**

THIS NORTHGLENN URBAN RENEWAL AUTHORITY IMPROVEMENT REIMBURSEMENT AGREEMENT (the "Agreement") is made and executed this ____ day of _____, 2017, (the "Effective Date") by and between the NORTHGLENN URBAN RENEWAL AUTHORITY, a Colorado Urban Renewal Authority ("NURA"), and EVERGREEN MARKETPLACE, LLC, a Colorado limited liability company ("Owner") (individually a "Party" or collectively the "Parties").

W I T N E S S E T H

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

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

WHEREAS, Owner owns property in the Malley Heights Shopping Center with a legal description as set forth in **Exhibit A** (the "Property"), which is within the NURA boundaries, and which provides an important economic base for the City of Northglenn (the "City");

WHEREAS, NURA desires to assist Owner in improving and maintaining the viability of the Property by providing an incentive for Owner to upgrade the Property;

WHEREAS, the Incentive is intended to improve and promote the viability of all businesses located within the Property, increase business to the Property in general, and improve the public appearance of the Property, by protecting against its deterioration;

WHEREAS, the Incentive will further the public purpose of NURA as set forth in C.R.S. § 31-25-102; and

WHEREAS, NURA desires to reimburse Owner for its expenditures by paying up to Two Hundred Fifty Thousand Dollars (\$250,000.00) to Owner as reimbursement for the cost of certain improvements Owner will make to the Property as described in **Exhibit B** (the "Improvements"), which reimbursement to Owner shall be made pursuant to the terms set forth in this Agreement.

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

I. REIMBURSEMENT

A. NURA agrees to reimburse Owner the lesser of (i) Two Hundred Fifty Thousand Dollars (\$250,000.00) or (ii) one-half of the actual direct costs paid by Owner for the Improvements ("Actual Direct Costs"), subject to the following conditions:

1. The Improvements shall be constructed in compliance with all applicable laws, rules and regulations, including without limitation, local building codes, rules and regulations (collectively, the "Laws");
2. All required approvals of any governmental authority with jurisdiction over the Improvements shall be obtained by Owner prior to construction of the Improvements; provided, however, NURA shall cooperate with Owner in obtaining all of such necessary governmental approvals and applicable building permits (collectively, the "Approvals"); and
3. Owner shall provide NURA with an architect's certification, itemized detailed invoices or other financial documentation that to NURA's reasonable satisfaction confirm the Actual Direct Costs, including invoices from contractors performing work on the Improvements and suppliers supplying materials for the Improvements.

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

B. Reimbursement to Owner shall be made as follows:

1. Upon completion of the Improvements to NURA's satisfaction and delivery of evidence of payment of all costs associated with the Improvements, NURA shall pay to Owner an initial payment of One Hundred Twenty Five Thousand Dollars (\$125,000.00) for the Actual Direct Costs incurred by Owner (the "Initial Payment").
2. On the one-year anniversary of the Initial Payment, NURA shall pay to Owner a second payment of One Hundred Twenty Five Thousand Dollars (\$125,000.00) for the Actual Direct Costs incurred by Owner.
3. The payments in Sections I(B)(1) and I(B)(2) shall not exceed the lesser of (i) an aggregate total of Two Hundred Fifty Thousand Dollars (\$250,000.00), or (ii) one-half of the total Actual Direct Costs.

4. Owner shall complete the Improvements and deliver an invoice to NURA on or before DECEMBER 31, 2018 (“Completion Deadline”). Owner may apply to NURA for a six-month extension of the Completion Deadline should Owner’s construction be delayed by events out of its control (force majeure). Failure by Owner to complete the Improvements and deliver an invoice to NURA by the Completion Deadline shall void all NURA payment Obligations set forth herein.

II. INDEMNIFICATION

Owner agrees to indemnify and hold harmless NURA and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Owner, any subcontractor of Owner, or any officer, employee, representative, or agent of Owner, or which arise out of any worker's compensation claim of any employee of Owner or of any employee of any subcontractor of Owner.

III. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado.

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

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

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

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

If to NURA: Northglenn Urban Renewal Authority
Attn: Debbie Tuttle
11701 Community Center Drive
Northglenn, CO 80233

Copies to: Hayes, Phillips, Hoffmann & Carberry, PC
Attn: Jeff Parker
511 16th Street, Suite 610
Denver, Colorado 80202

If to Owner: Evergreen Marketplace, LLC
c/o J & B Building Company
8933 East Union Avenue, Suite 216
Greenwood Village, CO 80111

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

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

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

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other. NURA may withhold its consent to an assignment of this Agreement in its sole discretion; provided that if a request for an assignment is made due the conveyance of ownership of the Property, NURA shall not unreasonably withhold its consent.

I. Termination for Bankruptcy. In the event that one party becomes insolvent or bankrupt, permanently ceases doing business, makes an assignment for the benefit of its creditors, commits an act of bankruptcy, commences any bankruptcy proceedings or other proceedings in the nature of bankruptcy proceedings, or has commenced against it any bankruptcy proceedings or other proceedings in the nature of bankruptcy proceedings that are not dismissed within sixty (60) days, then the other party shall have the right to terminate this Agreement immediately upon its notice.

J. Governmental Immunity. NURA, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity

Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to NURA and its officers or employees.

K. Rights and Remedies. The rights and remedies under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit NURA's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

L. Subject to Annual Appropriations. Any financial obligations of NURA not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of NURA hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

M. Dispute Resolution. If a dispute concerning NURA's payment obligation arises and if the dispute is not settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation before resorting to litigation or other dispute resolution procedures. The Parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each Party for its own legal representation in connection with the mediation). If the dispute is not resolved within sixty (60) days after commencing mediation, the Parties may pursue litigation or any other available dispute resolution procedure.

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

[Remainder of page intentionally blank. Signatures on following page.]

EXHIBIT A
[Legal Description of Property]

Parcel A:

Lot 2, a Resubdivision of Part of Block 1, Webster Lake Subdivision First Filing, Amended, City of Northglenn, County of Adams, State of Colorado.

Parcel B:

A non-exclusive easement for roadways, walkways, ingress and egress and parking of motor vehicles created by Grant of Cross Access Easements and Declaration of Common Area Maintenance Agreement by the between Malley Heights Partners, L.P. a Colorado Limited Partnership and County of Adams, Colorado, recorded June 27, 1995 in Book 4536 at Page 675 over the following described property:

Lot 1, a Resubdivision of Part of Block 1, Webster Lake Subdivision First Filing Amended, City of Northglenn, County of Adams, State of Colorado.

Parcel C:

A non-exclusive easement for roadways, walkways, ingress and egress and parking of motor vehicles created by a Grant of Easements and Declaration of Restrictions recorded June 26, 1975 in Book 2002 at Page 321, as amended by instrument recorded October 19, 1977 in Book 2182 at Page 824 over the following described property:

Block 1, Webster Lake Subdivision First Filing Amended, County of Adams, State of Colorado.

EXHIBIT B
[Description of Improvements]

Exhibit B - Improvements

MAILEY HEIGHTS						
INITIAL CONSTRUCTION BUDGET						
UPDATED TO	11/27/2017					
ARCHITECTURAL		\$	34,400			DESIGN, CONSTRUCTION DRAWINGS, CONSTRUCTION ADMIN.
ENGINEERING		\$	20,000			STRUCTURAL ENGINEERING, ELECTRICAL, PLUMBING (IF NEEDED)
PERMITTING		\$	2,500			BUILDING AND SIGNAGE PERMITS/INSURANCE/FEES/TAXES
GENERAL CONDITIONS		\$	30,000			SITE CONDITIONS, JOB SERVICES, DEBRIS REMOVAL, CONSTRUCTION FACILITIES, FENCING
TOTAL CONSTRUCTION MANAGEMENT		\$	86,900			
SITework/LANDSCAPING		\$	10,000			LANDSCAPING AT GRANT STREET FRONTAGE AND SW CORNER OF BLDG
DEMOLITION		\$	20,000			DEMO WALKS IN SELECT LOCATIONS, DECOMMISSION OLD CONDUIT AT REAR OF BLDG
HAZARDOUS MATERIALS ABATEMENT						NOT ANTICIPATED
CONCRETE		\$	50,000			REPLACE SOME WALKS, CONCRETE WORK FOR NEW TOWERS
MASONRY		\$	10,000			NEW ARCHITECTURAL LOW WALLS AT ENTRANCE TO EVENTS CENTER
STEEL/METALS		\$	30,000			PARAPET WALL STRUCTURAL STEEL, METAL CAP FLASHING ON ENTIRE @ \$15/LF* 1030FT
ROUGH CARPENTRY						ANY WOOD FRAMING OF NEW PARAPET (NOT LIKELY)
FINISH CARPENTRY/MILLWORK						NONE ANTICIPATED
ROOF/THERMAL SYSTEMS		\$	5,000			ROOF WORK ASSOCIATED WITH PENETRATIONS FOR PARAPET WALLS
DOOR/WINDOWS						GLASS STOREFRONT WORK - AS YET UNDETERMINED
FINISHES		\$	450,000			NEW STUCCO/ARCHITECTURAL PANELS/FASCIA MATERIALS/AWININGS
AWININGS		\$	46,000			23 @ \$2000
NEW CONCRETE PANELING		\$	94,000			NICHINA PANELS AS PER PREV. ESTIMATES 4,255 SF FRONT, EST. 2,000 SF REAR @ \$15/SF
WOOD PLANK CONCRETE PANELING		\$	60,000			NICHINA PANELS AS PER PREV. ESTIMATES 1,340SF FRONT, EST. 2,000 SF REAR @ \$18/SF
NEW 2' PARAPET		\$	125,000			ESTIMATE ABOUT 600 FEET OF PARAPET RAISED 2'
NEW TOWERS		\$	125,000			BASED ON PREVIOUS ESTIMATES - 5 NEW TOWERS @ \$25,000
PLUMBING		\$	5,000			POSSIBLE MOVEMENT OF EXISTING GAS LINES AT REAR OF BUILDING
HVAC						NOT LIKELY, BUT THERE COULD BE SOME MODIFICATIONS AT PARAPET
FIRE SPRINKLER						NONE ANTICIPATED
ELECTRICAL		\$	75,000			MOVING OF ELECTRICAL CONDUIT/WIRING FOR NEW LIGHTING/BUILDING AND POLE LIGHTING
SIGNAGE		\$	40,000			NEW BUILDING SIGN PACKAGES FOR TENANTS (EZ PAVN, BOOST MOBILE EXCEPTED)
PAVING		\$	25,000			REPAVING AROUND WORK AREAS, REAR OF BUILDING, WEST SIDE
TOTAL HARD COSTS		\$	720,000			
TOTAL CONST MGMT AND HARD COSTS		\$	806,900			
CONSTRUCTION CONTINGENCY		\$	72,000			10% OF HARD COSTS
CONTRACTORS' FEES		\$	72,000			10% OF HARD COSTS
TOTAL PROJECT BUDGET		\$	950,900			
PROJECT SIZE SF			39,485			SQUARE FEET OF SHOPPING CENTER
PROJECT BUDGET/SF		\$	24.08			