



## PUBLIC NOTICE OF REGULAR MEETING

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold a virtual meeting of its regular board meeting at **3:00 p.m.** on **Wednesday, September 2, 2020**.

The public can register and participate virtually via Zoom conferencing using the following information:

Register in advance for this webinar:

[https://zoom.us/webinar/register/WN\\_EOmKQnT8Qf-7NnEOxPDtCA](https://zoom.us/webinar/register/WN_EOmKQnT8Qf-7NnEOxPDtCA)

After registering, you will receive a confirmation email containing information about joining the webinar.

If you need assistance with the virtual conference process or have questions or comments for the AURA Board regarding the agenda items, please contact [info@arvadaurbanrenewal.org](mailto:info@arvadaurbanrenewal.org) prior to noon on September 2, 2020. A recording of the meeting will be posted on AURA's website following the video conference call.

Agenda information is attached.

**Carrie Briscoe**

Carrie Briscoe  
AURA Project Manager/Recording Secretary

POSTED: August 28, 2020



**REGULAR MEETING OF THE AURA BOARD OF COMMISSIONERS**  
**Virtual Meeting via Zoom for the Public**  
**3:00 p.m., Wednesday, September 2, 2020**

**AGENDA**

**REGULAR MEETING – 3:00 P.M.**

1. Call to Order
2. Moment of Reflection and Pledge of Allegiance
3. Roll Call of Members
4. Approval of the Summary of Minutes
5. Public Comment of Issues not scheduled for Public Hearing – Three Minute Limit
6. Public Hearing – None
7. Study Session
8. Old Business
  - A. Gas Station Demolition Contract (9205 Ralston Road)
  - B. RESOLUTION AR-20-08: A Resolution Of The Arvada Urban Renewal Authority Approving The Disposition And Development Agreement With Mile High Development, LLC
  - C. Garrison Street Paseo – Chris Sutterfield, Studio Insite and Bill Orchard, Arvada Gardeners
9. New Business
  - A. Proposed 2021 Budget – Lisa Yagi – Assistant Finance Director, City of Arvada
10. Development Update
11. Public Comment – Five Minute Limit
12. Comments from Commissioners
13. Committee Reports
14. Staff Reports
15. Executive Session
16. Adjournment

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**SUMMARY OF MINUTES OF REGULAR MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, AUGUST 05, 2020  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

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**REGULAR MEETING**

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**1. Call to Order** – Chair Alan Parker called the meeting to order at 3:00 p.m.

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**2. Moment of Reflection and Pledge of Allegiance**

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**3. Roll Call of Commissioners:** Chair Alan Parker, Vice Chair Sue Dolan, Treasurer Tony Cline, Commissioners Paul Bunyard, Fred Jacobsen, Tim Steinhaus, Marc Williams.

AURA staff present: Maureen Phair, Executive Director; Carrie Briscoe, Project Manager, Corey Hoffmann, Legal Counsel; Peggy Salazar, Administrative Specialist

Also present: Bill Ray, Principal of WR Communications; Mike Fogarty, Founder & Owner of Choice Market; Richard Sapkin, Principal of Edgemark; City of Arvada Staff: John Firouzi, Mobility and Planning Innovations Engineer; Emily Sexton, Parks and Urban Design Manager; Adam Lind, Transportation Planner; and one guest.

**4. Approval of the Summary of Minutes**

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The Summary of Minutes of the AURA Board meeting on July 01, 2020 stand approved with changes.

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**5. Public Comment on Issues Not Scheduled for Public Hearing – Three Minute Limit**

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None

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**6. Public Hearing**

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None

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**7. Study Session**

A. Community Outreach and Research Discussion - Bill Ray, WR Communications

Maureen Phair, Executive Director stated that she contacted Bill Ray, WR Communications due to the Board's request about implementing a citizen's survey regarding AURA projects.

Bill Ray, WR Communications provided a presentation about the most effective way to proceed with a citizen survey. Mr. Ray discussed the cost, various types of surveys and motivating factors about the implementation of surveys.

After a lengthy discussion the Board of Commissioners stated they would review the presentation and determine if there is viable need to proceed implementing a citizen's survey.

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**8. Old Business**

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A. Tabernacle Church – Mike Fogarty, Founder and CEO, Choice Market

Richard Sapkin, Principal of Edgemark who purchased the Tabernacle Church building located at 5690 Yukon Street, introduced Mike Fogarty, Founder and CEO, Choice Market. Mr. Sapkin emphasized that due to COVID-19 there has been a shift in how to provide product therefore a new hybrid concept is more appealing to the current development. Mr. Fogarty stated that providing full packaged fresh prepared meals and popular goods has

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proven to meet the needs of communities that encompass this concept.

After a lengthy discussion the Board of Commissioners directed Maureen Phair to proceed with financial assistance to the developer specifically for interior and exterior building improvements.

- B. Garrison Street Paseo – City of Arvada Staff: John Firouzi, Mobility and Planning Innovations Engineer; Emily Sexton, Parks and Urban Design Manager; Adam Lind, Transportation Planner

John Firouzi, Mobility and Planning Innovations Engineer; Emily Sexton, Parks and Urban Design Manager; and Adam Lind, Transportation Planner; presented innovative ideas to enhance the Garrison Street Paseo along with the connectivity of Ralston Central Park, retail and surrounding neighborhoods. The City of Arvada staff reported that they are currently working on a project study for safer pedestrian corridors, crosswalks and to offer more inviting and esthetic improvements. The City staff also emphasized the need for signage, activation of community development, place-making and improvement of linear park options located in development areas within the City.

After a lengthy discussion the Board of Commissioners directed Maureen Phair to proceed by incorporating the community gardens with Garrison Street Paseo improvements.

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**9. New Business**

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None

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**10. Development Update**

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Maureen Phair, Executive Director, provided the following development updates:

Olde Town Residences – TC Denver Development, Inc. plans on meeting with City Council on August 17<sup>th</sup> for Phase II.

Gas Station – Xcel Energy plans to disconnect and remove the electrical transformer and gas this month. Anticipate the completion of the demolition in September.

Ralston Creek Village (Berkeley Town Homes) – Jim Loftus, James Drever with Loftus Development and AURA staff met with several developers for residential development. Loftus Development received a Letter of Intent (LOI) for the development of townhomes at the former Berkeley townhomes project site.

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**11. Public Comment – Five Minute Limit**

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None

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**12. Comments from Commissioners**

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None

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**13. Committee Reports**

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Commissioner Steinhaus attended the Olde Town Arvada Business Improvement District (BID) virtual meetings. He stated that the BID committee is pleased with the Olde Town Wadsworth Boulevard street closure allowing restaurant seating.

Chair Parker stated that the Arvada Economic Development Association worked in partnership with the City and submitted the Emergency Business Grants to qualified Arvada Businesses.

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**14. Staff Reports**

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Maureen Phair, Executive Director, provided an update:

Ms. Phair reported AURA received reimbursement for the Emergency Business Loan Fund.

Ms. Phair stated the Flash Report is in the Board packet.

Corey Hoffmann reported that the Aurora Urban Renewal Authority lost its court case with the Arapahoe County Assessor regarding property valuations. Corey Hoffmann, Legal Counsel and AURA staff plans to meet on August 13<sup>th</sup> with the Jefferson County Assessor about the valuation of AURA property.

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**15. Executive Session**

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Corey Hoffmann, Legal Counsel, stated the need for an Executive Session for the purpose of Instructions to Negotiators, Pursuant to CRS 24-6-402(4) (e) related to the Affordable Housing DDA.

Commissioner Jacobsen moved to go into Executive Session for the reasons stated by Legal Counsel.

The following votes were cast on the Motion:

Voting yes: Bunyard, Cline, Dolan, Jacobsen, Parker, Steinhaus and Williams

**The Motion was approved.**

The AURA Board convened into the Executive Session at 6:02 p.m. and reconvened into the Regular Meeting at 6:27 pm

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**16. Adjournment**

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Chair Parker adjourned the meeting at 6:27 p.m.

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Alan Parker, Chair

ATTEST:

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Maureen Phair, Executive Director

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Carrie Briscoe, Recording Secretary

## **ARVADA URBAN RENEWAL AUTHORITY AGENDA INFORMATION SHEET**

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**Agenda No.:** Item 8A, Old Business  
**Meeting Date:** September 2, 2020  
**Title:** Gas Station Demolition Contract (9205 Ralston Road)

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**ACTION PROPOSED:** Approval

### **INFORMATION ABOUT THE ITEM:**

#### Background:

The Universal Gas Station and Pennetta's Auto Repair building (Gas Station) located at 9205 Ralston Road is located within the former Arvada Square which is part of the larger Ralston Fields Urban Renewal Area. It is also part of the Ralston Creek North master plan currently being redeveloped by Loftus Development. Phase one of this development was the construction of The Shops at Ralston Creek that was completed at the end of 2018. For-sale townhomes, market-rate apartments, and small-footprint retail and plaza have been proposed for future phases of this development.

AURA purchased the Gas Station on March 25, 2020 with the intent of it being demolished in order for the parcel to be incorporated into the larger development master plan. The underground storage tanks are currently being removed per the original purchase and sale agreement with the former owner. The next step to clearing this site will be the demolition of the gas station building and canopies.

#### Demolition Proposals:

AURA solicited bids from three demolition firms and received three bids. AURA staff reviewed the three bids and determined that the proposal from Alpine Demolition and Recycling, LLC was the most qualified.

Alpine's proposal generally includes:

- Permits to perform demolition – CDPHE, City of Arvada
- Dust control
- Demolition of the building; canopies; site paving inside property lines; and concrete walls, floor slabs and lids.
- Removal of ancillary facilities including metal storage container, fencing, and utility lines
- Recycling of clean concrete

- Loading and transportation of debris to an approved facility

**Total Lump Sum Price: \$30,142**

An asbestos survey was completed in May 2020 and it was found that asbestos is not present in the building or canopies.

The proposal and contract are included with this cover sheet.

**FINANCIAL IMPACT:**

The Ralston Fields Urban Renewal Area budget has adequate funds to cover this expense of \$30,142.

**STAFF RECOMMENDATION:**

Approval

**SUGGESTED MOTIONS:**

I move that the AURA Board approve the Alpine Demolition and Recycling, LLC proposal and the Executive Director be authorized to enter into the contract.



## AGREEMENT AND GENERAL CONDITIONS

### BETWEEN

### OWNER AND CONTRACTOR

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#### AGREEMENT

Made on this day August 7, 2020 **BETWEEN** Alpine Demolition & Recycling, LLC, 5990 Kipling Parkway, Arvada, Colorado 80002, the Contractor, and Arvada Urban Renewal Authority, 5601 Olde Wadsworth Blvd, Suite 210, Arvada, CO 80002. For services regarding the demolition of the following described project:

**Former Pennetta's Auto Repair – Structure Demolition**  
**9205 West 58<sup>th</sup> Avenue**  
**Arvada, CO 80002**

**SCOPE OF WORK:** See attached Proposal and Scope of Work Dated August 4, 2020 to include the base scope of work and **Alternate No. 1:** Cut and cap the water and sewer lines.

The Owner and Contractor agree and set forth below:

#### ARTICLE 1

##### **Definitions and Extent of Agreement**

1.1 Extent of Agreement: This Agreement represents the entire agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the Demolition Plans, if any and may be amended only by written instrument signed by both Owner and Contractor.



1.2 Definitions: The project is the total demolition and recycling of the project to be demolished of which the Work is a part. The Work comprises of the completed demolition required by the Demolition Plans, if any and as further described by the Scope of Work contained herein or attached hereto. The term day shall mean calendar day unless otherwise specifically designated.

## **ARTICLE 2**

### **Contractor's Responsibility**

2.1 The Contractor shall provide all construction supervision, inspection, labor materials, tools construction equipment and other items necessary for the execution and completion of the Work.

2.2 The Contractor will pay all permit fees, sales tax, use tax, gross receipts tax and similar taxes related to the Work.

2.3 The Contractor will pay for all shipping, handling, disposal and delivery charges associated with the Work.

2.4 The Contractor will provide adequate protection of the public and workers during the demolition.

2.5 The Contractor shall at all times keep the premises free from the accumulation of waste materials or rubbish caused by their operations. At the completion of the Work, he shall remove all of this waste material and rubbish from and around the Project as well as his tools, construction, equipment, machinery and surplus materials.

2.6 The Contractor will give all notices and comply with all the laws and ordinances legally enacted at the date of execution of the Agreement, which govern the proper execution of the Work.

2.7 The Contractor shall take necessary precautions for the safety of his employees on the Work, and shall comply with all applicable provisions of federal, state, and municipal safety laws to prevent accidents or injury to persons on, or about or adjacent to the Project site. He shall erect and properly maintain, at all times, as required by the conditions and progress of Work, necessary safeguards for the protection of Workmen and the public. It is understood and agreed, however that the Contractor shall have no responsibility for the elimination or abatement of safety hazards created or otherwise resulting from Work at the job site carried on by other persons or firms directly employed by the Owner as separate Contractors, and the Owner agrees to cause any such separate Contractors to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations for the elimination or abatement of any such safety hazards at the job site.

2.8 The Contractor will cooperate and coordinate with the Owner, other subcontractors and other trades to assure a quality project that will be completed on time and on budget.

2.9 The Contractor will secure required certificates of inspection, testing or approvals with regard to the Work and deliver them to the Owner and or assigns.

### **ARTICLE 3**

#### **Owner's Responsibilities**

3.1 The Owner shall provide full information regarding requirements for the Project.

3.2 The Owner shall designate a representative who shall be fully aquatinted with the Project and has authority to approve changes in the Scope of the Project, render decisions promptly, and furnish information expeditiously and in time to meet the dates set forth in this Agreement.

3.3 The Owner shall provide insurance for the Project if deemed necessary to protect the Owners from property loss.

3.4 The Owner shall provide the Contractor access to the Project.

### **ARTICLE 4**

#### **Subcontract**

4.1 All portions of the Work that the Contractor does not perform with his own forces shall be performed under subcontracts.

4.2 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any Work in connection with the Project. The term Sub contractor does not include any separate contractor employed by the Owner or the separate contractors' subcontractors.

4.3 No contractual relationships shall exist between the Owner and any Subcontractor. The Contractor shall be responsible for the management of the Subcontractors in the performance of their Work.

### **ARTICLE 5**

#### **Contract Time Schedule**

5.1 The Work to be performed under this Agreement shall be commenced within about 14 days from receipt of demolition permit from the State of Colorado, and a subsequent demolition permit from the City of Arvada. The Work performed under this Agreement shall be substantially completed on or about 25 working days from the start of the work.

5.2 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or by any other separate contractor employed by the Owner, or by changes ordered in the Project, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonable anticipated, unavoidable casualties or any causes beyond the Contractors control or a delay authorized by the Owner then the Date of Completion of the Work shall be extended by Change Order for the period caused by such delay.

5.3 If the project is shut down due to owner's responsibility, Alpine has the ability to charge \$500.00 per day for each day we are not working.

## **ARTICLE 6**

### **Lump Sum Price**

6.1 The Lump Sum Price for the Work required by the Demolition drawing if any and as further described in the Scope of Work contained herein is or attached herein.

**The LUMP SUM PRICE: \$ 30,142.00**

**In Dollars: Thirty Thousand One Hundred Forty Two Dollars and no/100**

6.2 The Lump Sum Price is based upon laws, codes and regulations in existence at the date of its establishment and upon criteria, and the Scope of Work contained herein as set forth in this Agreement.

6.3 The Lump Sum will be modified for changes in the Project by written Change order signed by both the Owner and the Contractor.

6.4 Allowances included in the Lump Sum Price are set forth below: ALTERNATE #1: Cut and cap the water service line 5' out from the meter pit, leaving the meter pit in place and to cut and cap the sanitary sewer line inside the property line. Add: \$ 4,200.00

## **ARTICLE 7**

### **Changes in the Project**

7.1 The Owner, without invalidating this agreement, may order Changes in the Project within the general Scope of this Agreement consisting of additions, deletions, or other revisions and Lump Sum Price and the Contract Time Schedule shall be adjusted accordingly. All such Changes in the Project shall be authorized by the Change Order.

7.2 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions as indicted by the Demolition Drawings, if any, Scope of Work or Owner-furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for by this Agreement, be encountered, the Lump Sum Price and the Contract Time Schedule shall be equitably adjusted by Change Order upon claim by either party made within a reasonable time after the first observance of the conditions and before any extra work on account of such conditions is actually performed.

## **ARTICLE 8**

### **Payments to the Contractor**

8.1 On or before the 20th day of each month after Work has commenced, the Contractor shall submit to the Owner an Application for Payment in such detail as may be required by the Owner based on the Work completed by the Contractor for the period ending on the 25<sup>th</sup> day of the month. With each application, Contractor shall provide Owner with current lien waiver forms for itself and any subcontractors.

8.2 Within 30 days after his receipt of each monthly Application for Payment, the Owner shall pay to the Contractor the appropriate amounts for which Application for Payment is made therein. This payment request shall deduct the aggregate amounts previously paid by the Owner.

8.3 Payments made to the Contractor by the Owner shall be delivered to the Contractor at 5990 Kipling Street, #200 Arvada, Colorado 80004.

8.4 No Progress Payment, nor any partial, or entire use of the Project by the Owner and or assigns shall constitute an acceptance of any Work not in accordance with the Demolition drawings, if any, or the Scope of Work.

8.5 In the event of a dispute related to this Agreement the prevailing party shall be entitled to recover all court costs, lay and expert witness fees, deposition costs, reasonable attorneys' fees (including time spent solely for attorney consultation) and attorney charges for travel time in addition to any other remedy afforded by the court.

## **ARTICLE 9**

### **Insurance**

9.1 The Contractor shall purchase and maintain Liability Insurance such that will protect him from claims set forth below which may arise out of or result from the Contractors operations under this Agreement whether such operations be by himself or by anyone directly or indirectly employed him, or by anyone directly or indirectly employed by him, or by anyone for whose acts or any of them may be liable.

9.2 The Owner shall be responsible for purchasing and maintaining his own liability insurance.

9.3 The Owner shall be responsible for purchasing and maintaining his own property insurance upon the entire Project for the full cost of the replacement at the time of any loss.

9.4 Contractor will maintain and all times during performance of the Work the insurance shown on the attached certificates of insurance and Owner shall be named as an additional insured on all liability insurance policies. Contractor's insurance is primary and non-contributing to any coverage maintained by Owner.

9.5 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. In claims against any person or entity indemnified under this Article 9.5 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 10**

### **Termination of the Agreement and Owners Right to Perform Contractors Obligations**

10.1 If the Contractor fails to perform any of his obligations under this Agreement, including any obligation he assumes to perform Work with his own forces, the Owner may, after seven (7) days' written notice, during which period the Contractor fails to perform such obligation, may make good such deficiencies. The Lump Sum Price, if any shall be reduced by the cost to the Owner of making good such deficiencies.

10.2 If the Project is stopped for a period of thirty (30) days under and order of any court or other public authority having jurisdiction, or as a result of an act of government or if the Project should be stopped for a period of thirty (30) days by the Contractor for the Owner's failure to make payment thereon, then the Contractor may upon seven (7) days' written notice to the Owner, terminate this agreement and recover from the Owner payment for all the Work executed, the Contractors Fee earned to date, and for any proven loss sustained upon any materials, equipment tools, construction equipment and machinery, including reasonable profit and damages.

## **ARTICLE 11**

### **Assignment and Governing Law**

11.1 Neither the Owner nor the Contractor shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

11.2 This Agreement shall be governed by the law in effect at the location of this Project.

## Signature Page

**IN WITNESS WHEREOF**, Owner and Contractors have executed this Agreement for themselves, their heirs, executors, successors, administrators and assigns, on the day and year first above written:

Contractor:

Alpine Demolition Inc. A

Colorado Corporation

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

Printed:\_\_\_\_\_

Attach Corporate Seal

Owner:

**Arvada Urban Renewal Authority**

**5601 Olde Wadsworth Blvd**

**Suite 210**

**Arvada, CO 80002**

**(303) 551-5821**

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

Printed:\_\_\_\_\_

Attach Corporate Seal



**City of Arvada**  
8101 Ralston Road  
Arvada, Colorado 80002  
Cell; 303-551-5821  
Via email: [cbriscore@arvada.org](mailto:cbriscore@arvada.org)

**August 4, 2020**

**ATTN: Carrie Briscoe**

**RE: Former Pennetta's Auto Repair - Structure Demolition Proposal - REVISED 200804**  
9205 West 58<sup>th</sup> Avenue  
Arvada, Colorado  
*Alpine Bid # AB-2006-174*

Thank you for the opportunity to provide you pricing for the above-mentioned project. Alpine Demolition Inc. is pleased to provide you a detailed proposal for the demolition scope of work as described, through email conversations.

**SCOPE OF DEMOLITION WORK:**

Complete demolition of the former Pennetta's Auto Repair Facility and site pavement within the property lines. The structure is a metal framed building with metal siding. The foundation is assumed to be a spread footing with stem walls, if caissons exist, they will be removed to two (2) foot below the existing grade elevation. Also includes the removal of the metal canopies and islands.

*For the purpose of this proposal Alpine is assuming all structures do not have any Asbestos Containing Materials (ACM).*

**Inclusions:**

- One Mobilization/Demobilization
- Supervision, Labor and Equipment.
- Personal Protective Equipment for Alpine personnel.
- Colorado Department of Public Health and Environment (CDPHE) Demolition Permit.
- City or County Demolition Permit.
- Water Hydrant Permit for dust control.
- Demolition of the building and canopy structures by mechanical means.
- Removal of metal storage structure and fence.
- Removal of all concrete walls, floor slabs and lids, to be recycled as clean concrete.
- Removal of the site paving inside of the property lines.
- Excavations will be left in a sloped/flared condition.
- Remove and recycle ferrous and non-ferrous metals.
- Loading, transporting clean demolition debris to an approved recycling facility.

5790 West 56th Ave. Unit C. Arvada, Colorado 80002 O: 303-421-3366 F: 303-940-0868  
[www.alpinedemolition.com](http://www.alpinedemolition.com)





- Tipping fees.
- All recycled materials and salvage items will become property of Alpine Demolition, Inc.

Clarifications:

The following items are Owner, Owner's Representative and/or General Contractor responsibilities:

- A. Owner/General Contractor to provide staging area for equipment and materials near scope of work area.
- B. Owner/General Contractor to provide site security and fencing.
- C. Owner/General Contractor to provide temporary sanitary facilities.
- D. Owner/General Contractor to provide an "Asbestos Survey" for all structures at the site.
- E. Pricing includes all insurance and license fees.
- F. Pricing based on normal working hours, Monday - Friday, 07:00AM - 05:30PM.

Exclusions:

- Asbestos Survey or Abatement.
- Testing or removal of hazardous/contaminated materials not listed in the above inclusions.
- Removal of underground storage tanks, piping and other associated equipment.
- Importing fill material, placing or compacting.
- Re-vegetation of disturbed land areas.
- Utility isolation, capping or relocation (see Alternate No.1).
- Testing, removal or disposal of contaminated or hazardous materials.
- Storm Water Control, plan, permit or installation.
- Vehicle tracking pads/silt fence (to be provided and maintained by others if required).
- Removal of on-site underground utilities.
- Removal of concrete with vapor barrier, insulation, or asbestos mastic waterproofing.
- Work outside of the property lines or in Public Right of Ways.
- Build-back or patching.
- Saw cuts.

**THE PRICE FOR THE ABOVE REFERENCED DEMOLITION WORK IS: \$ 25,942.00**

Twenty-Five Thousand Nine Hundred Forty-Two Dollars and no/100

**ALTERNATE NO. 1**

To cut and cap the water service line 5' out from the meter pit, leaving the meter pit in place and to cut and cap the sanitary sewer line inside the property line.

**ADD: - - - - - \$ 4,200.00**

Four Thousand Two Hundred Dollars and no/100

We thank you for the opportunity to provide you pricing, if we can assist you in any other way or if you need additional information please contact me directly. Thank you again and we look forward to working together with you to make this a safe and successful project.

5790 West 56th Ave. Unit C. Arvada, Colorado 80002 O: 303-421-3366 F: 303-940-0868

[www.alpinedemolition.com](http://www.alpinedemolition.com)



Sincerely,  
**Alpine Demolition and Recycling, LLC.**

A handwritten signature in blue ink, appearing to read "Curt Creager", is written over a light gray rectangular background.

Curt Creager  
Operations Manager - Cell: (303) 901-7729

## **ARVADA URBAN RENEWAL AUTHORITY**

### **AGENDA INFORMATION SHEET**

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**Agenda No.:** 8B, Old Business

**Meeting Date:** September 2, 2020

**Titles:** Disposition and Development Agreement between Arvada Urban Renewal Authority and Mile High Development

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**ACTION PROPOSED:** Approve the DDA between AURA and Mile High Development

#### **BACKGROUND:**

Mile High Development (MHD) intends to develop a 110 unit affordable housing project in southeast Arvada on two parcels of land. Specifically, the building will be constructed on the parcel AURA recently purchased from the City (Central Stores) with resident parking located on the IRG owned parcel located across the street. MHD will need to secure tax credits from Colorado Housing and Finance Authority (CHFA) in order to help finance the development. MHD must show that they control the two parcels of land prior to applying to CHFA for the tax credits.

The 1.9 acre parcel owned by IRG will need to be acquired for parking. IRG acquired the site when they purchased the former Arvada Plaza shopping center in 2007 for the purposes of redevelopment. IRG sold ten acres to Walmart in 2017, sold a parcel for the Autozone, and kept a 1.9 acre parcel for future development. IRG allowed Walmart to place a covenant on the remaining acres that allows Walmart to park, load and unload on the parcel – this covenant is problematic and will need to be removed in order to allow development to occur and prior to applying to CHFA for tax credits. The resolution of this covenant has delayed the application for tax credits one year, from August 2020 to August 2021.

To facilitate the development of affordable housing on the two parcels of land there are three agreements:

- A Purchase and Sale Agreement
  - Between IRG and Mile High Development
  - For the purchase of the 1.9 acre site for \$1million
  - Signed on March 18, 2020
  - There are two amendments to the P&SA, the last one to delay the due diligence phase to October 30<sup>th</sup> to allow time to resolve Walmart's covenant on parcel
- Assignment and Assumption of Purchase and Sale
  - Between AURA, MHD and IRG
  - AURA agrees to purchase the IRG property on or before 3/1/21 if CHFA does not award the tax credits in 2020 with MHD repaying AURA upon receipt of tax credits
  - AURA Board reviewed in Executive Session on March 4 and approved on March 18
- Disposition and Development Agreement
  - Between AURA and MHD
  - To facilitate the construction of 110 affordable housing units

## **INFORMATION ABOUT THE ITEM:**

### **IRG Parcel:**

IRG will delay the closing of the property through one round of CHFA awards. If CHFA awards the project on the first round, MHD will close on the property. If CHFA does not award the project on the first round, then AURA will close on the property.

- Buyer – Mile High Development (MHD)
- Back up Buyer - AURA
- Price - \$1,000,000
- Earnest Money:
  - \$50,000 to be held in escrow (AURA to loan the \$50k deposit to MHD)
- CHFA Award:
  - Applications for tax credits are due on August 1, 2021
  - Award tax credits 3 – 6 months following applications
  - If CHFA hasn't awarded the credits by February 1, 2024, the deal terminates
- Closing:
  - \$100 per day carrying cost will be added beginning January 1, 2021 and payable at closing (total possible cost from 1/1 – 3/1 = \$9,000)
  - AURA will close 45 days following CHFA's denial of tax or no later than 3/1/2021

### **Central Stores Parcel:**

AURA recently acquired the Central Stores property from the City of Arvada.

### **AURA Responsibility:**

- Replat the property – divide the Central Stores site from the Community Garden
- Prepare the property for development, including removing the improvements both above and underground and any environmental remediation, remediation not to exceed \$500,000
- Donate the property to MHD after they are awarded CHFA's tax credits

### **MHD Responsibility:**

- Earnest Money - \$10,000 to be held in escrow
- Apply for and obtain the necessary tax credits from CHFA
- Develop approximately 100 units of work force affordable housing with appropriate levels of parking
- Closing - 60 days following CHFA's award of tax credits

### **Joint Responsibility:**

- AURA and MHD will jointly apply to the Planning Commission and City Council for a Conditional Use Permit (CUP) to allow residential in a Mixed-Use Urban, the CUP must be granted by June 1, 2021, prior to the CHFA application deadline.

**FINANCIAL IMPACT:**

**AURA Costs:**

• Replat City Stores Site from Community Garden	\$ 7,000
• Phase I and Phase II Environmental	20,000
• Remediation & Demolition (approx.)	<u>500,000</u>
	\$527,000

Note: AURA will purchase the IRG property for \$1,000,000 but will be reimbursed by MHD upon receipt of tax credits from CHFA.

If MHD is not awarded tax credits by CHFA by February 1, 2024 then the deal terminates and AURA will own both parcels, including the IRG parcel for \$1,000,000. AURA will then market the properties to developers.

**COMMUNITY BENEFIT:** There is a shortage of workforce housing in Arvada, this project will bring 110 quality residential units to help house some of Arvada’s workforce. Not only will this benefit our residents, but it will help Arvada’s employers find and maintain employees. Having quality affordable housing will help maintain an essential workforce nearby.

**STAFF RECOMMENDATION:** Approval of the Disposition and Development Agreement between Arvada Urban Renewal Authority and Mile High Development

**SUGGESTED MOTION:** I move that Disposition and Development Agreement between Arvada Urban Renewal Authority and Mile High Development be approved.

**RESOLUTION AR-20-08**

**A RESOLUTION OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING  
THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH MILE HIGH  
DEVELOPMENT, LLC**

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

Section 1. The Authority hereby approves the Disposition and Development Agreement between Mile High Development, LLC and the Authority, attached hereto as **Exhibit A** and incorporated herein by this reference, and authorizes the Chairman of the Authority to execute the Agreement on behalf of the Authority.

DATED this \_\_\_\_ of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Alan Parker, Chair

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Corey Y. Hoffmann, Legal Counsel

## Exhibit A

### DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”), dated as of May 29, 2020 (the “**Effective Date**”), is entered into by and between ARVADA URBAN RENEWAL AUTHORITY a body corporate and politic of the State of Colorado (the “**Authority Authority**”), and Mile High Development, LLC, a Colorado limited liability company (“**Mile High**”).

### RECITALS

A. IRG Arvada, LLC, a Delaware limited liability company (“IRG”) is the fee simple owner of, among other things, certain real property located at 9250 Ralston Road, Arvada, Colorado 80002 and legally described as set forth on Exhibit A attached to this Agreement and made a part hereof (the “IRG Parcel”).

B. Prior to entering into this Agreement, Mile High and IRG have entered into that certain Purchase and Sale Agreement pursuant to which IRG has agreed to sell the IRG Parcel to Mile High and Mile High has agreed to purchase the IRG Parcel from IRG (the “IRG Contract”) in accordance with the terms and conditions of the IRG Contract.

C. Pursuant to the Colorado Urban Renewal Law , C.R.S. § 31-25-101, *et seq.* (the “Act”), and the Ralston Fields Urban Renewal Plan (the “Plan”), the Authority may finance undertakings pursuant to the Plan by any method authorized under the Act or any other applicable law, including, without limitation, issuance of notes, bonds and other obligations in an amount sufficient to finance all or part of the Plan; borrowing of funds and creation of indebtedness; advancement of reimbursement agreements; agreements with public or private entities; and loans, advances and grants from any other available sources.

D. Prior to entering into this Agreement, Authority, Mile High and IRG have entered into that certain Assignment and Assumption of Purchase and Sale Agreement (the “Assignment Agreement”) pursuant to which (i) Authority has agreed to take an assignment of Mile High’s rights under the IRG Contract, (ii) Authority has agreed to assume Mile High’s duties and obligations under the IRG Contract and (iii) Authority has agreed to purchase the IRG Parcel, upon the happening of certain events as more particularly described in the Assignment Agreement.

E. The City of Arvada (the “City”) owns a 1.12 acre parcel of land on the southeast corner of Ralston Road and Garrison Street (the “Stores Parcel”). The Stores Parcel is currently used for storage by the City. The City declared the Stores Parcel as surplus, giving the City Manager of the City the authority to sell it.

F. The Stores Parcel has been replatted in order to separate it from the Community Garden parcel located to the south of the Stores Parcel. The Authority purchased the replatted Stores Parcel from the City prior to the Effective Date.

G. Authority has agreed to prepare the Stores Parcel for development, which includes removing the existing structure, remediating any environmental contamination or condition to a level that permits the proposed affordable housing residential development of the Stores Parcel and obtaining a no further action letter from the applicable governmental authorities for the same; provided however, the Authority may determine that such remediation is not financially feasible as set forth below if the cost of such remediation exceeds Five Hundred Thousand Dollars (\$500,000.00) (“Remediation Work”).

H. Mile High intends to develop an affordable housing project (the “Project”) on the Stores Parcel and on the IRG Parcel. In order to develop the Project, Mile High must apply to the Colorado Housing and Finance Authority (“CHFA”) for an award of low income housing tax credits with respect to the Project (the “Tax Credits”) Because of the time frame it will take to obtain the CUP (as defined below) and to correct certain title matters related to the IRG Parcel, Mile High will not submit a Tax Credit application to CHFA until August 1, 2021.

I. CHFA will determine whether to grant or deny Mile High’s application for the Tax Credits. For purposes of this Agreement, “CHFA Tax Credit Decision Date” means the date on which CHFA has made a determination either to grant or to deny Mile High’s request for an award of Tax Credits with respect to the Project.

J. Authority has previously purchased the Stores Parcel from the City and has agreed to sell the Stores Parcel to Mile High, and to take other actions to help facilitate Mile High’s development of the Project, in accordance with the terms and conditions of this Agreement.

K. The Parties have agreed to enter into this Agreement, the IRG Contract and the Assignment Agreement to accomplish the Project in accordance with the Urban Renewal Plan and the Act, and because Mile High is the contract purchaser of the IRG Parcel, the Authority finds and determines that it is in the public interest to assemble the Stores Parcel with the IRG Parcel in order to accomplish the Project pursuant to C.R.S. § 31-25-106 of the Act.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. Purchase and Sale of the Stores Parcel.**

A. Stores Parcel. Prior to the Effective Date, Authority purchased the Stores Parcel from the City and currently owns the Stores Parcel. Authority agrees to sell the Stores Parcel to Mile High, and Mile High agrees to purchase the Property from Authority, all on the terms, covenants and conditions set forth in this Agreement. The “**Stores Parcel**” includes the following:

1. Land. The land, consisting of approximately 1.12 acres, located at the southeast corner of Ralston Road and Garrison Street, Arvada, Colorado 80002 and legally described as set forth on Exhibit A attached to this Agreement and made a part



hereof, together with all of Authority's right, title and interest in and to all easements, utility reservations, mineral rights, rights of way, strips of land, tenements, hereditaments, privileges, licenses, appurtenances, reversions, and remainders in any way belonging, remaining, or appertaining thereto (collectively, the "**Land**");

2. Improvements. All of Authority's right, title and interest in and to the buildings and other structures and improvements now situated on the Land, including, without limitation, fixtures and equipment, elevators, heating, air conditioning, plumbing, mechanical, electrical, drainage, security, life safety and fire alarm systems, and their component parts (collectively, the "**Improvements**");

3. Personal Property. All of Authority's right, title and interest in and to the fixtures, furnishings, equipment, appliances, machinery, tools and other personal property of every kind and character currently attached to, located on, or used in connection with the ownership, management, maintenance, and operation of the Improvements and the Land (collectively, the "**Personal Property**"); and

4. Intangible Property. To the extent assignable, all of Authority's right, title and interest in and to (i) all development rights, entitlements, and other intangible property related to the Land, the Improvements, or the Personal Property, (ii) all guaranties and warranties issued to Authority with respect to the Improvements or the Personal Property, and (iii) any reports, studies, surveys, and other comparable analyses, depictions, or examinations of the Land or the Improvements, or pertaining to the Land, the Improvements, or the Personal Property, or the use, ownership, management, or operation thereof (collectively, the "**Intangible Property**").

B. IRG Parcel. Pursuant to the terms and conditions of the IRG Contract and the Assignment Agreement, Authority has agreed to purchase the IRG Parcel in the event that CHFA does not grant Mile High the Tax Credits on the CHFA Tax Credit Decision Date and upon other circumstances. If Mile High has not been awarded the Tax Credits on or before the CHFA Tax Credits Decision Date, then Authority shall purchase the IRG Parcel within forty five (45) days after the CHFA Tax Credits Decision Date, as more fully provided in, and pursuant to the terms and conditions of the IRG Contract and the Assignment Agreement; provided, however, given the delay in the submittal of the Tax Credit application by Mile High to CHFA as referenced above, the Authority agrees that it will purchase the IRG Parcel on or before March 1, 2021 notwithstanding anything to the contrary contained in this Agreement or the Assignment Agreement. In the event that Authority purchases the IRG Parcel under the IRG Contract and the Assignment Agreement and/or hereunder, Authority shall retain ownership of the IRG Parcel until it sells the same to Mile High pursuant to the terms and conditions of this Agreement and in such event, Authority shall not alter, or permit the alteration of, the condition of title to, or the physical condition, of the IRG Parcel after Authority purchases the same until Authority conveys the same to Mile High as provided hereunder. In the event that Authority purchases the IRG Parcel as provided above, Authority agrees to sell the IRG Parcel to Mile High simultaneously with Authority's sale of the Stores Parcel to Mile High in accordance with the terms and conditions of this Agreement. For purposes of

this Agreement, the Stores Parcel and the IRG Parcel together shall be hereinafter collectively referred to as the “Property” as the circumstances may warrant.

**2. Purchase Price for the Stores Parcel.**

The purchase price for the Stores Parcel shall be the promises of Mile High set forth in this Agreement to develop the Project in conjunction with the IRG Parcel (the “Stores Parcel Purchase Price”). The purchase price for the IRG Parcel, if Authority sells the same to Mile High hereunder, shall be One Million Dollars (\$1,000,000.00) (the “IRG Parcel Purchase Price”). The Stores Parcel Purchase Price and the IRG Parcel Purchase Price, if applicable, shall be hereinafter collectively referred to as the “Purchase Price”).

**3. Payment of Purchase Price.**

The Purchase Price shall be paid to Authority by Mile High as follows:

A. Escrow. Within three (3) business days following the Effective Date, an escrow (the “**Escrow**”) will be opened with Land Title Guarantee Company, 3033 East 1st Avenue, Suite 600, Denver, Colorado 80206, phone: (303) 870-8824, Attention: Luke Davidson, E-mail: *LDavidson@ltgc.com* (the “**Escrow Agent**”), by delivery to the Escrow Agent of a copy of this Agreement executed by Authority and Mile High. If the Escrow Agent requires any supplemental or additional instructions, then Authority and Mile High shall promptly provide the same, consistent with the provisions of this Agreement.

B. Deposit. On the later of (x) ten (10) business days after the approval of the CUP (as defined below) or (y) June 1, 2021, Mile High shall deposit with the Escrow Agent the sum of Ten Thousand Dollars (\$10,000.00) (the “**Deposit**”). The Deposit shall be held by Escrow Agent in an interest-bearing account until disbursed in accordance with this Agreement. In the event Mile High terminates this Agreement before the expiration of the Review Period (as defined in Paragraph 5.A), the Deposit shall be returned to Mile High. Upon the expiration of the Review Period, if this Agreement has not been previously terminated, the Deposit shall become non-refundable to Mile High (except in the case of (i) a default by Authority under this Agreement, (ii) a failure to satisfy any Mile High Closing Condition (as defined in Paragraph 6), which failure is not waived by Mile High, or (iii) any other circumstance set forth in this Agreement, which circumstance entitles Mile High to recover the Deposit). Pursuant to the terms of the IRG Contract, Mile High has agreed to deposit the amount of Fifty Thousand Dollars (\$50,000.00) as a deposit under the IRG Contract (the “**IRG Deposit**”). To facilitate the development of the Project by Mile High, Authority has funded the IRG Deposit on Mile High’s behalf under the IRG Contract, which funding of the IRG Deposit by Authority shall be deemed to be a loan of such amount to Mile High by Authority (the “**IRG Deposit Loan**”). The IRG Deposit Loan shall be non-recourse and shall not accrue any interest. In the event that Authority purchases the IRG Parcel pursuant to the terms and conditions of the IRG Contract, this Agreement and the Assignment Agreement, then the assignment of Mile High’s rights under the IRG Contract that is effected by the Assignment Agreement shall constitute the repayment of the IRG Deposit Loan by Mile High to Authority and Mile High shall have no further obligation or responsibility to repay the IRG Deposit Loan. In the event that Mile High purchases the IRG Parcel pursuant to the terms of the IRG Contract, then Mile High shall repay the IRG Deposit

Loan to Authority upon the closing of Mile High's purchase of the IRG Parcel under the IRG Contract, without any interest owing thereon.

C. Balance of Purchase Price. On the Closing Date (as defined in Paragraph 8.A), (i) the Deposit shall be applied towards the Purchase Price, and (ii) Mile High shall pay the balance of the Purchase Price (plus or minus Mile High's share of closing costs, prorations, and other charges or amounts payable pursuant to this Agreement) to Authority in immediately available funds through the Escrow; provided, however, if the purchase only includes the Stores Parcel, then Mile High will receive a refund at Closing of the portion of the Deposit that is in excess of the Stores Parcel Purchase Price.

#### 4. Title.

A. Title Policy. On the Closing Date, Authority shall cause good and marketable title to the Property to be conveyed to Mile High by special warranty deed (the "**Deed**"), subject only to the following exceptions to title (the "**Permitted Exceptions**"):

(i) A lien to secure payment of real estate taxes and assessments related thereto, for the year in which the Closing (as defined in Paragraph 8.A) occurs and subsequent years, not yet due and payable; and

(ii) Such other exceptions to title as may be approved by Mile High (or as are deemed approved by Mile High) pursuant to the provisions of Paragraph 4.B.

On the Closing Date, Authority shall cause Land Title Guarantee Company (the "**Title Company**") to issue to Mile High an ALTA extended coverage owner's policy of title insurance (the "**Owner's Policy**"), in the face amount of the Purchase Price, showing title to the Property vested of record in Mile High, subject only to the Permitted Exceptions.

#### B. Title Documents and Survey.

(i) Within five (5) business days after the opening of the Escrow, (a) Mile High shall order, and promptly after Mile High's receipt thereof shall deliver to Authority, a preliminary title commitment (the "**Title Commitment**") and copies of all title exception documents shown thereon (the "**Title Documents**"), and (b) Authority shall deliver to Mile High a copy of the most current survey of the Land, if any, in Authority's possession (the "**Original Survey**"). If Mile High wishes to order a new survey or have the Original Survey updated or re-certified, then Mile High shall be responsible for paying all costs in connection therewith.

(ii) Within ninety (90) days after Mile High's receipt of the Title Commitment, the Title Documents, and the Original Survey, Mile High shall furnish to Authority a written list of any objections to matters shown on the Title Commitment, in the Title Documents, or on the Original Survey (a "**Disapproval Notice**"), stating the items to which Mile High objects (the "**Title Objections**"). Mile High does not need to send a Disapproval Notice with respect to any mortgage liens, tax liens, judgment liens, mechanics' liens or similar monetary liens encumbering the Property, to the extent created by or on behalf of Authority (collectively, "**Mandatory Cure Items**"), and in no

event shall any Mandatory Cure Items be considered Permitted Exceptions. If Mile High fails to timely send a Disapproval Notice to Authority as set forth herein, then the condition in this Paragraph 4.B shall be deemed satisfied, and Mile High shall be deemed to have accepted all matters contained in the Title Commitment, the Title Documents, and the Original Survey (other than the Mandatory Cure Items).

(iii) If Mile High timely sends a Disapproval Notice to Authority, then Authority shall have fourteen (14) days after its receipt of such Disapproval Notice to either (a) furnish written notice to Mile High indicating which Title Objections Authority is unable or unwilling to remove or correct (a “**No Cure Notice**”), or (b) make arrangements or take steps to ensure that the Title Objections are removed or corrected on or before the Closing Date. If Authority fails to timely send a No Cure Notice to Mile High as set forth herein, then Authority shall be deemed to have rejected Mile High’s request to make arrangements or take steps to remove or correct any of the Title Objections (other than the Mandatory Cure Items).

(iv) If Authority timely sends a No Cure Notice to Mile High (or if Authority is deemed to have rejected Mile High’s requests by failing to timely send a No Cure Notice), then Mile High shall have ten (10) days after its receipt of the No Cure Notice (or, if Authority fails to timely send a No Cure Notice, then Mile High shall have twenty-five (25) days after Mile High’s delivery of the Disapproval Notice to Authority) to notify Authority in writing (a “**No Cure Response Notice**”) either (a) that Mile High wishes to terminate this Agreement (in which event the Deposit shall be returned to Mile High, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement), or (b) that Mile High waives those Title Objections that Authority is unable or unwilling to remove or correct. If Mile High fails to timely send a No Cure Response Notice to Authority as set forth herein, then Mile High shall be deemed to have waived those Title Objections listed in the Disapproval Notice that Authority is unable or unwilling to remove or correct.

## **5. Property Review.**

A. Review Period. Mile High shall have nine (9) months following the Effective Date (the “**Review Period**”) to perform such inspections, investigations, examinations, tests, inquiries, studies, and document reviews (collectively, “**Inspections**”) relating to the Stores Parcel (including a Phase I Environmental Site Assessment, but specifically excluding any Environmental/Soil Testing (as defined in Paragraph 5.D), except in conformance with the provisions of Paragraph 5.D) and to review the Property Information (as defined in Paragraph 5.C) as Mile High deems appropriate, in order to decide whether the Stores Parcel and the IRG Parcel are acceptable to Mile High. All costs and expenses of such Inspections shall be borne solely by Mile High. Mile High’s obligation to purchase the Property shall be subject to Mile High’s approval of the Property, in Mile High’s sole discretion, during the Review Period. If Mile High sends written notice to Authority, before the expiration of the Review Period, stating that the Property is acceptable to Mile High (a “**Property Approval Notice**”), then Mile High shall be deemed to have accepted the Property in its “AS-IS” condition (subject to the provisions of Paragraph 12), the Deposit shall become non-refundable to Mile High (except in the case of (i) a default by Authority under this Agreement, (ii) a failure to satisfy any Mile High

Closing Condition, which failure is not waived by Mile High, or (iii) any other circumstance set forth in this Agreement, which circumstance entitles Mile High to recover the Deposit), and the parties shall proceed under the remaining terms of this Agreement. If Mile High sends written notice to Authority, before the expiration of the Review Period, stating that the Property, or any portion thereof, is not acceptable to Mile High (for any reason or no reason), or if Mile High fails to send an Approval Notice before the expiration of the Review Period, then this Agreement shall terminate, the Deposit shall be returned to Mile High as set forth in Paragraph 3.B, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement.

B. Stores Parcel Inspection. Promptly following the opening of the Escrow, Authority shall provide access to the Stores Parcel to Mile High and Mile High's agents and consultants, during normal business hours, for the purpose of enabling them to conduct any Inspections that Mile High may wish to perform under Paragraph 5.A. In conducting their Inspections, Mile High and its agents and representatives: (i) shall not interfere with the operation, use, or maintenance of the Stores Parcel; (ii) shall not damage any part of the Stores Parcel or any personal property owned or held by Authority or any third party; (iii) shall promptly pay when due the costs of all Inspections done with regard to the Stores Parcel, and shall not permit any liens to attach to the Stores Parcel by reason of the exercise of their rights hereunder; and (iv) shall fully restore the Stores Parcel to the condition that existed before any such Inspections were undertaken; provided, however, that Mile High shall not be responsible for any cleanup or remediation of any hazardous substances that may be discovered on the Stores Parcel during Mile High's Inspections, so long as such conditions are not created by Mile High (or Mile High's agents or consultants).

C. Review of Property Information. Within five (5) business days after the Effective Date, Authority shall deliver to Mile High hard copies or electronic copies of those documents and items relating to the Stores Parcel that Authority has in its possession or under its control, as listed on Exhibit B attached hereto, excluding any documents that are proprietary or confidential (collectively, the "**Property Information**"). If Authority fails to timely deliver any of the Property Information to Mile High, then, within ten (10) business days after the Effective Date, Mile High shall send written notice to Authority, indicating which Property Information Mile High still requires. If this Agreement is terminated for any reason, Mile High shall promptly return to Authority the Property Information and copies of any other third-party reports prepared by or on behalf of Mile High with respect to the Stores Parcel. The obligations of Mile High pursuant to the foregoing sentence shall survive the termination of this Agreement.

D. Environmental/Soil Testing.

(i) Notwithstanding anything to the contrary contained herein, prior to conducting any environmental or soil testing or analysis on or about the Stores Parcel (other than a Phase I Environmental Site Assessment as set forth in Paragraph 5.A), including, without limitation, any boring, sampling, or any other inspection procedures (collectively, "**Environmental/Soil Testing**"), Mile High shall supply its proposed scope of work (the "**Proposal**") to Authority setting forth, (a) the nature of the Environmental/Soil Testing contemplated, including the locations and number of samples to be obtained, and (b) the anticipated dates that any on-site Environmental/Soil Testing

or other activities will take place. Mile High shall not proceed with any Environmental/Soil Testing without Authority's express prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed). Upon its receipt of the Proposal, Authority will review, comment on, and approve (or disapprove) the Proposal in a timely manner.

(ii) Upon the approval of the Proposal by Authority, Mile High shall conduct the Environmental/Soil Testing at the times set forth in the Proposal and in a manner that does not unreasonably interfere with the activities of Authority.

(iii) Upon completion of the Environmental/Soil Testing, Mile High shall restore the Stores Parcel to substantially the same condition as existed on the Effective Date; provided, however, that Mile High shall not be responsible for any cleanup or remediation of any hazardous substances that may be discovered on the Property during any Environmental/Soil Testing, so long as such conditions are not created by Mile High (or Mile High's agents or consultants).

(iv) If Mile High terminates this Agreement Mile High shall furnish to Authority copies of any and all reports received by Mile High or prepared by or on behalf of Mile High relating in any manner to the environmental, geotechnical, and/or soils condition of the Stores Parcel.

(v) In the event that the Environmental/Soil Testing includes any subsurface or surface investigations, Mile High acknowledges and agrees that, for purposes of disposal under any applicable laws, (i) Mile High is the owner and generator of any and all residual soil, water, or other environmental media collected or produced in connection with Mile High's investigations, and (ii) Mile High shall be solely responsible for the lawful disposal of any such materials collected or produced in connection with Mile High's investigations. Mile High shall make reasonable efforts to use techniques and practices to minimize the volume of soil, water, or other environmental media collected or produced during Mile High's investigations.

E. No Representation or Warranty By Authority. Mile High acknowledges that much of the Property Information was prepared by third parties other than Authority, and in some instances may have been prepared prior to Authority's ownership of the Property. Mile High further acknowledges and agrees that, except for the specific representations and warranties of Authority set forth in this Agreement, (i) neither Authority nor any of its agents, employees, or contractors has made any warranty or representation regarding the truth, accuracy, or completeness of the Property Information or the sources thereof, (ii) Mile High shall not rely on the truth or completeness of the Property Information in making its decision to purchase the Property, and (iii) Authority has not undertaken any independent investigation or inquiry as to the truth, accuracy, or completeness of the Property Information and is providing the Property Information or making the Property Information available to Mile High solely as an accommodation to Mile High.

F. Insurance. Prior to entering upon the Stores Parcel, Mile High shall, at its sole cost and expense, procure and keep in force and effect, during the entire term of this Agreement,

a comprehensive general liability insurance policy, including insurance against assumed or contractual liability under this Agreement, with respect to all of Mile High's activities in, on, or about the Stores Parcel. The limits of such policy with respect to personal liability and property damage shall be not less than One Million Dollars (\$1,000,000) per occurrence. Authority shall be listed as an additional named insured on such insurance policy, and a copy of such policy (or a certificate thereof) shall be delivered to Authority prior to Mile High's entry upon the Stores Parcel. The insurer under such policy shall agree not to cancel, materially change, or fail to renew the coverage provided by such policy without first giving Authority at least ten (10) days' advance written notice.

G. Indemnification. Mile High shall indemnify, defend and hold Authority (as hereinafter defined) and its respective managers, members, partners, stockholders, directors, officers, employees, agents, spouses, legal representatives, successors, and assigns harmless from and against any and all claims, judgments, damages, penalties, fines, costs, losses, liabilities, and expenses (including, without limitation, attorneys' fees and costs) arising from or in any way connected to Mile High's Inspections, including the Environmental/Soil Testing; provided, however, that Mile High shall not be responsible for any cleanup or remediation of any hazardous substances that may be discovered on the Stores Parcel during Mile High's Inspections or during any Environmental/Soil Testing, so long as such conditions are not created by Mile High (or Mile High's agents or consultants). Mile High's indemnity obligation hereunder shall survive the termination of this Agreement.

H. Assumption of Risk. Authority does not assume any risk, liability, or responsibility or duty of care as to Mile High or its employees, agents, or contractors when they are on the Stores Parcel to conduct any Inspections or Environmental/Soil Testing. Mile High acknowledges and agrees that Mile High and its employees, agents, and contractors enter the Property and conduct their Inspections thereof and any Environmental/Soil Testing thereon at their own risk. Notwithstanding the foregoing, the provisions of this Paragraph 5.H shall not be deemed a disclaimer of any liability that arises directly from Authority's negligence or willful misconduct.

## **6. Conditions Precedent to Mile High's Obligation**

The obligation of Mile High to buy the Property, or the applicable portion thereof, shall be subject to timely satisfaction or waiver of the following conditions precedent (collectively, the "**Mile High Closing Conditions**"):

A. Mile High's approval (or deemed approval) of the condition of title to the Stores Parcel, in accordance with Paragraph 4.B.

B. Mile High's approval (or deemed approval) of the Stores Parcel within the Review Period, in accordance with Paragraph 5.A.

C. The truth and accuracy, in all material respects, of each representation and warranty of Authority contained herein as if made on and as of the Closing Date.

D. The Title Company shall have issued (or shall have committed itself to issuing) the Owner's Policy, subject only to the Permitted Exceptions.

- E. CHFA shall have agreed to issue the Tax Credits to Mile High.
- F. The Stores Parcel is currently zoned to allow the Project to be developed as a 100% affordable housing project with no other uses required.
- G. The Stores Parcel is currently zoned to allow the Property and the Project to be developed as a 4 story building containing approximately 110 units of affordable rental housing apartments with rental rates ranging from 30%-80% of the area median income (AMI) and without the requirement to build any commercial space in the Project.
- H. The City is required to grant a Conditional Use Permit for Mile High to utilize the IRG site for parking for approximately 175 cars.
- I. After Mile High has (i) received a Tax Credit allocation from CHFA, and (ii) closed on the financing of the proposed Project, including a construction loan, permanent loan, state and federal tax credit equity financing, and other financing/incentives from governmental sources, including but not limited to, CHFA, Jefferson County Housing Authority, Jefferson County Economic Council, State of Colorado Division of Housing, the City, Authority, and HUD and any other applicable governmental sources.

If any Mile High Closing Condition is not satisfied on or before the scheduled Closing Date, then Mile High may, by written notice to Authority, either (i) waive such unsatisfied Mile High Closing Condition and proceed to Closing, or (ii) terminate this Agreement, in which event the Deposit shall be returned to Mile High, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement.

#### **7. Conditions Precedent to Authority's Obligation to Close.**

The obligation of Authority to sell the Property shall be subject to timely satisfaction or waiver of the following conditions precedent (collectively, the “**Authority Closing Conditions**”):

- A. Mile High's timely delivery to the Escrow Agent of the Deposit, the balance of the Purchase Price, and any other funds required of Mile High under this Agreement.
- B. The truth and accuracy, in all material respects, of each representation and warranty of Mile High contained herein as if made on and as of the Closing Date.
- C. Mile High shall not then be in default of any covenant or agreement to be performed by Mile High under this Agreement.

If any Authority Closing Condition is not satisfied on or before the scheduled Closing Date, then Authority may, by written notice to Mile High, either (i) waive such unsatisfied Authority Closing Condition and proceed to Closing, or (ii) terminate this Agreement (in which event the Deposit shall be retained by Authority as liquidated damages (as set forth in



Paragraph 14), and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement).

## **8. Closing.**

The purchase and sale of the Property provided herein shall be consummated at a closing (the “**Closing**”), which shall be held on the Closing Date at the offices of the Escrow Agent, or at such other time and place as Authority and Mile High may agree upon. As used herein, the “**Closing Date**” means the date that is sixty (60) days after the later of (x) the date that CHFA has awarded the Tax Credits to Mile High and (y) the date that Mile High receives building permits issued by the City permitting the construction of the Project on the Property; provided, however, if CHFA has not awarded the Tax Credits to Mile High on or before February 1, 2024, then either Mile High or Authority may terminate this Agreement in which event the Deposit shall be returned to Mile High and the parties shall be relieved of all liability or obligation under this Agreement. At the Closing, the Authority shall return the Deposit to Mile High, and each of Authority and Mile High shall deliver to the other party such documents as are typical and customary for transactions involving properties of similar size, type, and location as the Property, and as may be necessary or appropriate to consummate the transactions contemplated in this Agreement, including, without limitation, the following:

- (i) The Deed, in the customary form then used in the county in which the Property is located.
- (ii) An Assignment and Assumption Intangible Property, in the form of Exhibit C attached hereto.
- (iii) A customary affidavit of non-foreign status, to be signed by Authority, confirming that Authority is not a “foreign person” and is not subject to withholding within the meaning of Section 1445 of the Internal Revenue Code.
- (iv) Such disclosures and reports as may be required by applicable state and local law in connection with the conveyance of real property.
- (v) Such other documents, certificates, and instruments as are reasonably necessary to effectuate the transaction described herein and to enable the Title Company to issue the Owner’s Policy effective as of the Closing Date, subject only to the Permitted Exceptions.

## **9. Closing Costs and Prorations.**

A. Authority shall pay one-half ( $\frac{1}{2}$ ) of the escrow fees, the cost of the Owner’s Policy, together with the costs to cure or endorse over any Title Objections that Authority has agreed to remove or correct pursuant to Paragraph 4.B, and any other costs of Authority hereunder. Mile High shall pay one-half ( $\frac{1}{2}$ ) of the escrow fees, the costs of any special title endorsements requested by Mile High or by Mile High’s lender (but not including the costs to cure or endorse over any Title Objections that Authority has agreed to remove or correct

pursuant to Paragraph 4.B), any documentary fees, or similar governmental charges applicable to the transfer of the Property to Mile High, the cost of recording the Deed (and, if applicable, a deed of trust in favor of Mile High's lender), all costs associated with Mile High's loan and/or lender (if applicable), all costs associated with applying for and obtaining the Tax Credits from CHFA, and any other costs of Mile High hereunder. Each of Authority and Mile High shall pay its own attorneys' fees. Operating expenses, utility charges, and income (if any) from the Property shall be prorated as of 12:01 a.m. on the Closing Date.

B. Real property taxes shall be prorated as of the Closing Date based upon the most recent assessment and mill levy available. Mile High and Authority agree to prorate as of the Closing Date any taxes assessed against the Property by a supplemental bill levied by reason of any event occurring prior to the Closing. It is the intent of the parties that all property taxes attributable to the period prior to the Closing Date be the responsibility of Authority and that all property taxes attributable to the period on or after the Closing Date (including any increase in property taxes resulting from the sale of the Property to Mile High) be the responsibility of Mile High.

#### **10. Representations and Warranties by Authority.**

Effective as of the date of this Agreement and as of the Closing Date, Authority hereby represents and warrants to Mile High, which representations and warranties shall be accurate and true in all material respects on the Closing Date as if made on the Closing Date, and acknowledges that Mile High is relying upon such representations and warranties in purchasing the Property, as follows:

A. Authority is an urban renewal authority that is properly organized and in good standing under the laws of the State of Colorado. Authority has full power and authority to execute and deliver this Agreement and all of Authority's closing documents, to engage in the transactions contemplated by this Agreement, and to perform and observe all of Authority's obligations under this Agreement.

B. Authority and the persons signing this Agreement for Authority have the authority and power to sign this Agreement, to perform all of Authority's obligations under this Agreement, and to sign and deliver all of the documents required to be signed and delivered by Authority, without the consent or approval of any other Person.

C. This Agreement has been duly executed and delivered by Authority and is a legal, valid, and binding instrument, enforceable against Authority in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

D. Authority is not a "foreign person" and is not subject to withholding within the meaning of Section 1445 of the Internal Revenue Code. On or before the Closing Date,

Authority shall execute and deliver to Mile High, through the Escrow, a customary affidavit of non-foreign status, in form reasonably acceptable to Mile High.

E. Authority has not received written notice of any litigation or administrative agency or governmental proceeding pending with respect to the Property or Authority, which proceeding would materially and adversely affect the value of the Property or Authority's ability to consummate the transactions contemplated by this Agreement.

F. Authority has received no written notice alleging the Property's non-compliance with any governmental laws or regulations.

G. To the knowledge of Authority (without any duty of investigation or inquiry), except as disclosed in the environmental reports that Authority will furnish to Mile High as part of the Property Information, (i) there are no underground storage tanks located on or under the Stores Parcel, and (ii) there are no hazardous substances located on or under the Stores Parcel.

#### **11. Representations and Warranties by Mile High.**

Effective as of the date of this Agreement and as of the Closing Date, Mile High hereby represents and warrants to Authority, which representations and warranties shall be accurate and true in all material respects on the Closing Date as if made on the Closing Date, and acknowledges that Authority is relying upon such representations and warranties in selling the Property, as follows:

A. Mile High is a limited liability company, duly organized, validly existing, and in good standing under the laws of the state of Colorado. Mile High has full power and authority to execute and deliver this Agreement and all of Mile High's closing documents, to engage in the transactions contemplated by this Agreement, and to perform and observe all of Mile High's obligations under this Agreement.

B. Mile High and the persons signing this Agreement for Mile High have the authority and power to sign this Agreement, to perform all of Mile High's obligations under this Agreement, and to sign and deliver all of the documents required to be signed and delivered by Mile High, without the consent or approval of any other Person.

C. This Agreement has been duly executed and delivered by Mile High and is a legal, valid, and binding instrument, enforceable against Mile High in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

#### **12. Condemnation.**

If, prior to the Closing Date, any portion of the Stores Parcel or the means of ingress or egress thereon is taken by eminent domain (or is the subject of a pending or contemplated taking which has not been consummated), including, without limitation, any land donation or public space requirements or encumbrances on the Stores Parcel requiring contributions by Authority,

then Authority shall promptly notify Mile High of such fact. Mile High shall then have the option to terminate this Agreement upon written notice to Authority given not later than twenty (20) days after receipt of Authority's notice. If Mile High elects to terminate this Agreement, then the Deposit shall be returned to Mile High, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement. If Mile High does not elect to terminate this Agreement, then Authority shall assign and turn over to Mile High, and Mile High shall be entitled to receive and keep, all awards for the taking by eminent domain, and Mile High shall be obligated to proceed to Closing with no reduction in the applicable portion of the Purchase Price.

**13. Authority's Default.**

If Authority is in breach or default of this Agreement or fails to close the transaction for the purchase and sale of the Property when required by this Agreement, then Mile High, as its sole and exclusive remedy hereunder, may elect either to:

A. Terminate this Agreement (in which event the Deposit shall be returned to Mile High, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement); or

B. Specifically enforce the Authority's obligation to convey the Property.

**14. Mile High's Default Prior to Closing; Liquidated Damages.**

If the conditions to Mile High's obligation to purchase the Property, or the applicable portion thereof are satisfied and Mile High thereafter fails to close the transaction for purchase of the Property, or the applicable portion thereof, when required by this Agreement, then the Deposit shall be retained by Authority as liquidated damages as Authority's sole and exclusive remedy for Mile High's breach or default, whereupon this Agreement shall terminate and the parties shall have no further obligations to each other, except for such provisions that specifically survive the termination of this Agreement. Authority and Mile High acknowledge that it would be extremely impractical and difficult to ascertain actual damages that would be suffered by Authority if Mile High fails to consummate the purchase of the Property as and when contemplated by this Agreement.

**15. Possession.**

Possession of the Property, subject to the Permitted Exceptions, shall be delivered to Mile High at the Closing.

**16. Sale "As-Is, Where-Is".**

Mile High represents that it is a knowledgeable and experienced Mile High of real estate and that, in purchasing the Stores Parcel except for the specific representations and warranties of Authority set forth in this Agreement, Mile High shall rely solely on (A) its own expertise and that of its consultants, and (B) its own knowledge of the Stores Parcel based on its Inspections of the Stores Parcel. Mile High has conducted or will conduct such Inspections of the Stores Parcel, including the physical and environmental conditions thereof, as Mile High has deemed or

will deem necessary, and Mile High shall rely upon such independent Inspections of the Stores Parcel. Upon Closing, Mile High shall assume the risk that adverse matters and physical and environmental conditions may not have been revealed by Mile High's Inspections and/or Environmental/Soil Testing. Mile High acknowledges and agrees that upon Closing, except for the specific representations and warranties of Authority set forth in this Agreement, Authority shall sell and convey the Stores Parcel to Mile High, and Mile High shall accept the Stores Parcel, in its "AS-IS, WHERE-IS," condition, WITH ALL FAULTS, subject to any and all defects. The terms and conditions of this Paragraph 16 shall expressly survive the Closing or earlier termination of this Agreement. Except for the specific representations and warranties of Authority set forth in this Agreement, Authority is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Stores Parcel furnished by Authority, any real estate broker, contractor, agent, employee, servant, or other person. Mile High acknowledges that the Purchase Price reflects the "As Is, Where Is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property.

**17. Confidentiality.**

A. Mile High acknowledges and agrees that any and all information, whether written or verbal, regarding the physical condition or environmental status of the Stores Parcel, furnished to Mile High by Authority or by any employee, agent, environmental consultant, or attorney of Authority (any of the foregoing, a "**Authority Party**"), (i) shall be considered the sole and exclusive property of Authority (ii) except as provided in this Paragraph 17, is considered and will be kept confidential by Mile High, and (iii) will not, without the prior written consent of Authority (such consent not to be unreasonably withheld, conditioned, or delayed), be discussed with or furnished to any third party, other than those employees, attorneys, consultants, lenders, or agents of Mile High who are essential to completing the transactions contemplated by this Agreement. With respect to any reports furnished to Mile High by Authority or by any Authority Party (including the Property Information), Mile High specifically acknowledges that (a) Authority makes no representations or warranties of any kind whatsoever with respect to the truth, accuracy, or completeness of any such reports; (b) such reports are not intended to be relied upon by Mile High or as a substitute for complete and thorough Inspections of the Property by Mile High; and (c) Mile High assumes all risks of relying upon such reports.

B. Mile High acknowledges and agrees that any and all information obtained by Mile High relating to Mile High's Inspections of the Stores Parcel, including the results of the Inspections or the Environmental/Soil Testing, shall be deemed confidential and subject to the terms of this Agreement as if supplied to Mile High by Authority hereunder.

C. Mile High acknowledges and agrees that, in the event Mile High does not proceed with its proposed purchase of the Stores Parcel, any and all information regarding the physical condition or the environmental status of the Stores Parcel furnished to Mile High, to employees or agents of Mile High, or to other acceptable third parties under this Agreement shall be promptly turned over to Authority as directed in writing by Authority's counsel.

**18. Miscellaneous.**

A. Final and Entire Agreement; Integration. This Agreement is the final, entire and exclusive agreement between the parties and supersedes any and all prior agreements, negotiations, and communications, oral or written. No representation, promise, inducement, or statement of intention has been made by any of the parties not embodied in this Agreement or in the documents referred to herein, and no party shall be bound by or liable for any alleged representation, promise, inducement, or statement of intention not set forth or referred to in this Agreement. No supplement, modification, or amendment to this Agreement shall be binding or effective unless executed in writing by both Authority and Mile High, and by no other means.

B. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective shareholders, partners, directors, officers, heirs, beneficiaries, successors, representatives, and assigns.

C. Assignment. No party to this Agreement may assign its rights or delegate its duties hereunder without the prior written consent of all parties to this Agreement; provided, however, that either Authority or Mile High may assign its rights or delegate its duties hereunder to an Affiliate of such party, No such assignment shall relieve the party assigning its rights of its obligations hereunder, unless the other party hereto specifically consents thereto in writing.

D. Notices. Any notice, demand, consent, approval, or document that any party is required or may desire to give or deliver to the other party shall be given in writing by (i) personal delivery; (ii) certified mail, return receipt requested, postage prepaid; (iii) a national overnight courier service that provides written evidence of delivery; or (iv) electronic mail transmission and addressed as follows:

To Authority:                      Arvada Urban Renewal Authority  
5601 Olde Wadsworth Boulevard, Suite 210  
Arvada, Colorado 80002  
Attention: Executive Director

With a copy to:                      Arvada City Attorney's office  
8101 Ralston Road  
Arvada, Colorado 80001  
Attention: AURA legal counsel

To Mile High:                      Mile High Development, LLC  
2000 S. Colorado Blvd., Annex Suite 315, Denver, CO  
80222  
Attention: George L. Thorn  
E-mail: gthorn@milehighdevelopment.com  
Phone: 303-808-4500

with a copy to: Daniel M. Minzer, Esq.  
970 South Fillmore Way  
Denver, Colorado 80209  
E-mail: [dan@dminzerlaw.com](mailto:dan@dminzerlaw.com)  
Phone: (720) 599-1100

Any party may change its notice address by giving written notice of such change in accordance with this paragraph. All notices hereunder shall be deemed given: (a) if delivered personally, when delivered; (b) if sent by certified mail, return receipt requested, postage prepaid, on the third day after deposit in the U.S. mail; (c) if sent by overnight courier, on the first business day after delivery to the courier; and (d) if sent by electronic mail, on the date of transmission if sent on a business day before 5:00 p.m. Eastern time, or on the next business day, if sent on a day other than a business day or if sent after 5:00 p.m. MST; provided that a hard copy of any notice sent by electronic mail must also be sent by either a nationally recognized overnight courier or by U.S. mail, first class, postage prepaid.

E. Attorneys' Fees. Notwithstanding any other provision of this Agreement to the contrary, in the event any suit, action or proceeding is instituted by any party in connection with the breach, enforcement or interpretation of this Agreement, the prevailing party therein shall be entitled to the award of reasonable attorneys' fees and related costs, in addition to whatever other relief may be awarded to the prevailing party.

F. Brokers. Mile High represents and warrants to Authority, and Authority represents and warrants to Mile High, that no broker has been engaged by such party in connection with the transactions contemplated by this Agreement. Each party shall indemnify, protect, defend, and hold harmless the other party, including reasonable attorneys' fees, in respect of any breach of the foregoing representation and warranty, and such indemnity shall survive the Closing or earlier termination of this Agreement.

G. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement shall in no way affect the validity of any other provision of this Agreement. In the event that any provision of this Agreement is contrary to any present or future statute, law, ordinance, or regulation, the latter shall prevail, but in any such event the provisions of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

H. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado. In the event of any legal action arising from this Agreement, the parties agree that venue shall be proper in any state or federal court located in Jefferson County, Colorado.

I. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of such provision or any other provision hereof. No waiver shall be binding unless executed in writing by the party making the waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition.

J. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. Any party shall be entitled to sign and transmit electronic signatures to this Agreement (whether by facsimile, .pdf, or electronic mail transmission), and any such signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature to this Agreement agrees to promptly execute and deliver to the other parties, upon request, an original signed Agreement.

K. Review; Interpretation. Each party to this Agreement has carefully reviewed this Agreement, is familiar with the terms and conditions herein, and was advised by legal counsel of its own choice with respect thereto. This Agreement is the product of negotiation among the parties hereto and is not to be interpreted or construed strictly for or against any party hereto.

L. Headings; Constructions. The headings which have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words “herein,” “hereof,” “hereunder,” and other similar compounds of the word “here,” when used in this Agreement, shall refer to this entire Agreement and not to any particular provision or paragraph. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

M. Nonliability. In the event any party to this Agreement is a corporation or limited liability company, none of the directors, managers, shareholders, members, officers, employees, or other agents of such corporation or limited liability company shall have any personal liability or obligation hereunder. Neither party shall not seek to assert any claim or enforce any of its rights hereunder against any such directors, managers, shareholders, members, officers, employees, or other agents, whether disclosed or undisclosed.

N. Survival. All of the representations, warranties, and covenants and agreements set forth herein shall survive the closing of the transaction and the delivery of the Deed for a period of one (1) year.

O. Independent Counsel. Each party to this Agreement represents, warrants, and acknowledges that (i) such party has carefully reviewed and understands this Agreement, (ii) such party has been advised to seek its own independent legal counsel with respect to this Agreement and the transactions contemplated hereby, (iii) such party has sought the advice of independent counsel of its own choosing or has knowingly and voluntarily declined the opportunity to obtain such counsel, and (iv) such party signs this Agreement freely, knowingly and voluntarily. Mile High further represents and warrants to Authority that (a) Mile High is not in a significantly disparate bargaining position in relation to Authority, and (b) Mile High is purchasing the Property for business, commercial, investment, or other similar purposes.

P. Time of Essence. Time is of the essence with respect to all matters contained in this Agreement.



Q. Limitation of Damages. Notwithstanding anything to the contrary contained herein, neither Authority nor Mile High shall be liable for any consequential, punitive, or other such damages for any failure to close, breach, or default under this Agreement.

R. Exchange Cooperation. Authority and Mile High agree to cooperate with each other in accomplishing a tax-deferred exchange for either party under Section 1031 of the Internal Revenue Code, which shall include the signing of reasonably necessary exchange documents; provided, however, that (i) neither party shall incur any additional liability or financial obligations as a consequence of such exchange, (ii) such exchange shall not delay the Closing Date, and (iii) neither party shall be required to take title to any property as part of an exchange, other than Mile High receiving title to the Property described herein. This Agreement is not subject to or contingent upon either party's ability to effectuate a tax-deferred exchange. In the event any exchange contemplated by either party should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.

S. Further Acts. The parties agree to cooperate with each other to effectuate this Agreement. In addition to the acts recited in this Agreement to be performed by Authority and Mile High, Authority and Mile High agree to perform or cause to be performed, before or after the Closing, any and all such further acts (including the execution of additional documents) as may be reasonably necessary or appropriate to accomplish the intent and purposes of this Agreement and to consummate the transactions contemplated hereby.

**19. Entitlement Approvals.**

A. AURA hereby confirms, and covenants that the City has verified that, the Stores Parcel is currently zoned to permit, as a use by right, without the need for a conditional use permit or other special approval, the construction of an affordable housing project up to a maximum height of fifty (50) feet. In order for the IRG Parcel to be used as a surface parking lot as part of the Project, the City needs to issue a Conditional Use Permit (“CUP”). Authority and Mile High will jointly apply to the City Council of the City for a CUP that will authorize and allow the IRG Parcel to be used as a surface parking lot in connection with the Project so that such CUP would be granted by August 3, 2020.

B. Mile High shall submit proposed elevations and a site plan to the Authority on or before April 1, 2021. The Authority shall promptly approve or reject such proposed elevations and site plan in writing, and in any event the Authority shall approve the site plan and elevations on or before June 1, 2021. Once the elevations and site plan are approved, no further approval by the Authority shall be required except for any material change site plan or elevations Mile High and the Authority have previously agreed on a site plan for the Project. No further approval by the Authority shall be required except for any material change to such site plan or elevations. If Mile High desires to make any material change in the previously approved site plan or elevations, Mile High shall submit the proposed changes to the Authority for approval, which approval shall not be unreasonably withheld or delayed. The schedule for review of any additional reviews or submittals required by the City shall be governed by City of Arvada Municipal Code, and the City’s ordinances and procedures. Approval by the Authority shall not be deemed to be approval by the City, nor shall the Authority’s review be substituted for the City’s.

**20. Authority’s Development Responsibilities.**

Authority has replatted the Stores Parcel in order to separate the Stores Parcel from the Community Garden located to the south of the Stores Parcel. Authority covenants that it purchased and is the current fee simple owner of the Stores Parcel. Authority, at its expense, will prepare the Stores Parcel for development, which includes (i) removing the existing structure (“Demolition”), (ii) remediating any environmental contamination or condition to a level that permits the proposed affordable housing residential development of the Stores Parcel (“Remediation”), and (iii) obtaining a no further action letter from the applicable governmental authorities for the Stores Parcel (“NFA”); provided such NFA may contain a requirement for the installation of a vapor barrier on the Stores Parcel but may not contain any conditions that restrict, impair or prohibit the construction of an affordable housing project on the Stores Parcel or the Property. On or before August 1, 2021 the Authority will perform and complete the Demolition and Remediation on the Stores Parcel as provided above. On or before the earlier of

(i) Closing hereunder, or (ii) November 1, 2021, the Authority shall obtain the NFA and deliver the same to Mile High. Notwithstanding the foregoing, if the Authority reasonably determines, based on proposals from third party remediation consultants and contractors, that the cost of such remediation will exceed Five Hundred Thousand Dollars (\$500,000.00), then in such event the Authority may elect not to proceed with the Remediation of the Stores Parcel and in such event, Mile High may determine not to proceed with (i) the purchase of the Stores Parcel and (ii) the Project in accordance with this Agreement.

## **21. Mile High's Post-Closing Development Responsibilities.**

A. Covenants to Commence and Complete Construction. Mile High shall commence construction of the Project, as evidenced by the issuance of a building permit or other development permit issued by the City for the Project on or before the date that is eighteen (18) months after the Closing hereunder (the "Commencement Deadline"), and shall substantially complete construction of the Project, as evidenced by the issuance of a temporary or permanent Certificate of Occupancy for the Project, on or before the date that is two (2) years after the date that Mile High actually commenced construction of the Project (the "Completion Deadline"); provided, however, the Commencement Deadline and the Completion Deadline shall be extended for the period of time equal to the period of any delay caused by the City and/or the Authority in issuing any approvals required for the Project, as well as the period of any delays caused by any "Force Majeure" events. For purposes of this Agreement, a delay caused by a Force Majeure event is a delay which is caused by or results from causes beyond the reasonable control of Mile High, including but not limited to fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, disease, epidemic, pandemic, quarantine, acts of God or acts of governments, including without limitation, acts or failures to act of the City and/or the Authority. If Mile High is unable to meet any deadline set forth herein as a result of a force majeure event, then such deadline shall be extended for a period of time equal to the period of time during which Mile High is delayed due to the force majeure event.

B. Authority's Repurchase Option. Subject to the terms and conditions of this Section 21, if Mile High does not (i) commence construction of the Project by the Commencement Deadline (as it may be extended pursuant to Section 21A above) or (ii) substantially complete construction of the Project by the Completion Deadline (as the same may be extended pursuant to Section 21A above), then the Authority shall have the option to repurchase the Property from Mile High as more fully provided herein (the "Repurchase Option"). The Repurchase Option may be exercised by the Authority within thirty (30) days after the Commencement Deadline (as the same has been extended hereunder) with respect to a failure of Mile High to commence construction by such date, or within thirty (30) days after the Completion Deadline (as the same has been extended hereunder) with respect to a failure of Mile High to substantially complete construction of the Project by such date (the "Repurchase Deadline"). Notwithstanding anything to the contrary contained in this Agreement, as a condition precedent to the Authority's right to exercise the Repurchase Option, (i) the Authority must first deliver a written notice to Mile High notifying Mile High that it has failed to timely commence or substantially complete construction of the Project by the deadlines set forth above

(the “Default Notice”) and (ii) Mile High shall have failed to cure such failure within ninety (90) days after the later of (x) the date that such Default Notice is delivered to Mile High or (y) the deadline that the parties may agree as the correct Commencement Deadline or Completion Deadline, as provided below. If Mile High believes that either the Commencement Deadline or the Completion Deadline has been extended as provided herein to a date that is different than the deadline set forth in the Default Notice, because such deadline has been extended due to a force majeure event or otherwise, Mile High shall so notify the Authority within thirty (30) days after Mile High’s receipt of the Default Notice and the parties shall work together in good faith for a period of thirty (30) days thereafter to agree on the correct deadline for the Commencement Deadline of the Completion Deadline. If the parties are not able to agree on the deadline for either the Commencement Deadline or the Completion Deadline then they will appoint an arbitrator to determine such deadline, which arbitrator shall determine the correct deadline within ninety (90) days after his appointment by the parties.

C. Repurchase Price. The purchase price payable by Authority with respect to an exercise of the Repurchase Option shall be equal to the sum of (1) the purchase price paid by Mile High for the Property on the Closing Date, plus (2) the costs and expenses actually incurred by Mile High for the hard and soft costs (including without limitation, the costs of the preparation of the CHFA Tax Credit application, application fees to AURA and/or the City, architectural fees, the costs of consultants engaged to prepare and submit the CHFA Tax Credit application, and design and permit fees and costs paid to Xcel Energy related to the Project) related to the construction of any improvements constructed by or on behalf Mile High, as of the date the Repurchase Option is exercised related to the Property, as evidenced by invoices and other documentation as may be reasonably requested by Authority, which amount shall in any event, include, and be no less than, the then outstanding balance of all loans made to Mile High in connection with the purchase and development of the Property regardless of whether such loans are secured by a lien on the Property, (the “Reimbursable Expenses”) (subsections (1) and (2) of this Section 21C are collectively referred to herein as the “Repurchase Price”). Subject to the terms of this Section 21, Authority may exercise the Repurchase Option by providing written notice of such exercise to Mile High no later than the Repurchase Deadline with respect to. If Authority does not timely exercise the Repurchase Option, the Repurchase Option shall immediately and automatically expire without further action of Mile High or Authority.

D. Repurchase Mechanics.

- (i) Effect of Exercise. If Authority timely and properly gives notice of its exercise of the Repurchase Option pursuant to Section 21B above, Authority and Mile High agree to consummate the transactions necessary to complete Authority’s repurchase of the Property subject to the terms and conditions of this Section 21.
- (ii) Title. Within 10 days after Authority’s timely notice of its exercise of the Repurchase Option, Authority shall obtain a title insurance commitment issued by Land Title Guarantee Company (the “Title Company”) showing the status of the record title to the Property (the “Title Commitment”) together with copies of all recorded documents referred to in the Title Commitment. The Title Commitment shall commit to

insure title to the Property in favor of Authority in the amount of the Repurchase Price, under an owner's policy (extended coverage) in the ALTA form then in general use in Colorado, subject only to: (i) those matters of record to which title to the Property was subject when the special warranty deed for the Property was delivered by Authority to Mile High on the Closing Date provided the same continue to affect the Property; and (ii) all other matters identified in the Title Commitment as encumbering the Property, other than any liens to secure loans obtained by Mile High in connection with the purchase and/or development of the Property (collectively, the "Permitted Exceptions"). Authority shall be responsible for obtaining an owner's policy pursuant to the Title Commitment, including the payment of the premium therefor, including, without limitation deletion of the standard preprinted exceptions. Mile High shall not have any obligation to cure any title matters reflected in the Title Commitment or objected to by the Authority. If the condition of title to the Property as reflected in the Title Commitment is not acceptable to the Authority, then the Authority shall have the option to either (a) waive any such objections to title and close on the purchase of the Property subject to such title matters, or (b) terminate the Repurchase Option and not purchase the Property, in which event the Repurchase Option shall thereupon be void and of no further force or effect and the Authority shall have no further right to purchase the Property. If Authority exercises the Repurchase Option with regard to the Property, the Authority will be liable and responsible for all costs necessary to convey the Property to Authority free and clear of all liens and encumbrances, including inchoate liens, other than the liens securing the loans obtained by Mile High in connection with the purchase and/or development of the Property, which loans shall be repaid at Closing from the proceeds of the Repurchase Price paid by the Authority at Closing.

- (iii) Closing. The closing of Authority's repurchase of the Property pursuant to the Repurchase Option (the "Repurchase Closing") shall take place at 10:00 a.m. at the offices of the Title Company (or at such other place as Authority may designate) on the 30<sup>th</sup> day after Mile High's receipt of timely notice from Authority under Section 21B above exercising the Repurchase Option. Notwithstanding anything contained herein to the contrary, as provided herein, Authority may rescind and terminate its exercise of the Repurchase Option at any time prior to the Repurchase Closing upon written notice to Mile High in which event, the terms and provisions of the Repurchase Option will automatically and immediately terminate without further action of the parties, and Authority shall, upon Mile High's written request, promptly sign and record a release of the Repurchase Option.
- (iv) Closing Conditions. The following shall occur at the Repurchase Closing, each being a condition precedent to the other conditions and all being considered occurring simultaneously:

- a. Authority shall pay to Mile High, in cash or other funds immediately available, the Repurchase Price, reduced by the amount of real property taxes and other assessments of any governmental, quasi-governmental or private entity which are attributable to the Property for the period from January 1 of the year of the Repurchase Closing through the date of the Repurchase Closing. Such prorations shall be based upon the most current assessed valuation and levy. The adjustment of real property taxes and other assessments made at the Repurchase Closing will be considered a final settlement.
- b. Mile High shall deliver to Authority a special warranty deed for the Property subject only to the Permitted Exceptions and any title reflected in the Title Commitment, except that any lien for taxes or assessments shall be limited to those attributable to the year of the Repurchase Closing and subsequent years. Such special warranty deed shall expressly state that the Property, and all improvements thereon, are conveyed in an “as is” condition, without warranty or representation.
- c. Mile High shall further deliver all architectural, engineering and other design plans, drawings and other work product generated by Mile High or Mile High's consultants that exist as of the date of the Authority's exercise of the Repurchase Option regarding the Property; provided, however, such documents shall not include any financial or other proprietary documents or information of Mile High related to the Project and/or the Tax Credits.
- d. Authority and Mile High will execute and deliver such other documents and take such other actions as may be necessary to accomplish the Repurchase Closing and carry out their obligations under this Agreement.
- e. Authority will pay all of the closing costs charged by Title Company, all recording and documentary fees, and all other closing costs and expenses collected by the Title Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**Authority:**

**ARVADA URBAN RENEWAL AUTHORITY**  
a body corporate and politic of the State of Colorado

By: \_\_\_\_\_  
Name:  
Title:

**Mile High:**

**MILE HIGH DEVELOPMENT, LLC,**  
a Colorado limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A**

**LEGAL DESCRIPTION OF LAND**

[To be inserted]



## **Exhibit B**

### **PROPERTY INFORMATION**

1. Copies of all site plans, building plans, architectural/building drawings, and/or approved civil engineering drawings related to the Stores Parcel and in Authority's possession.
2. Copies of all environmental site assessment reports, engineering reports, and physical condition reports related to the Stores Parcel and in Authority's possession.
3. A copy of the Original Survey.
4. Copies of any operating contracts, service contracts, management agreements, and other comparable agreements affecting the Stores Parcel and in Authority's possession (including any amendments thereto).

## **Exhibit C**

### **FORM OF ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY**

#### **ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY**

This Assignment and Assumption of Intangible Property (this “Assignment”) is made and entered into as of \_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”), by and between Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado (“Authority”), and Mile High Development, LLC a Colorado limited liability company (“Mile High”).

#### **RECITALS**

A. On or about the date hereof, Authority is selling to Mile High certain real property located in Arvada, Colorado, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “Property”).

B. Authority also possesses an interest in various (i) development rights, entitlements, and other intangible property related to the Property, (ii) guaranties and warranties issued to Authority with respect to the Property, and (iii) reports, studies, surveys, and other comparable analyses, depictions, or examinations of the Property, or the use, ownership, management, or operation thereof (collectively, the “Intangible Property”).

C. Authority desires to transfer, assign, and convey to Mile High all of Authority’s right, title, and interest in and to the Intangible Property, and Mile High desires to accept such transfer, assignment, and conveyance, subject to the terms and conditions contained in this Assignment.

#### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Mile High covenant and agree as follows:

1. Assignment of Intangible Property. Effective as of the Effective Date, (a) Authority hereby transfers, assigns, and conveys to Mile High all of Authority’s right, title, and interest in and to the Intangible Property, and (b) Mile High hereby accepts the transfer, assignment, and conveyance of all of Authority’s right, title, and interest in and to the Intangible Property.

2. Assumption of Intangible Property. Mile High hereby assumes and agrees to pay all sums, and perform, fulfill, and comply with all covenants and obligations that are to be paid, performed, fulfilled, and complied with by Authority with respect to the Intangible Property, from and after the Effective Date.

3. Authority’s Indemnification of Mile High. Authority shall and does hereby indemnify Mile High against, and agrees to hold Mile High harmless from and against, all

claims, judgments, damages, penalties, fines, costs, losses, liabilities, and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with the Intangible Property, to the extent based upon or arising out of any event or circumstance occurring or alleged to have occurred prior to the Effective Date.

4. Mile High's Indemnification of Authority. Mile High shall and does hereby indemnify Authority against, and agrees to hold Authority harmless from and against, all claims, judgments, damages, penalties, fines, costs, losses, liabilities, and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with the Intangible Property, to the extent based upon or arising out of any event or circumstance occurring or alleged to have occurred on or after the Effective Date.

5. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest, and assigns.

6. Counterparts. This Assignment may be executed by the parties in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank; Signatures on the following page]*

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

**Authority:**

**ARVADA URBAN RENEWAL AUTHORITY**  
a body corporate and politic of the State of Colorado

By: \_\_\_\_\_  
Name:  
Title:

**Mile High:**

**MILE HIGH DEVELOPMENT, LLC,**  
a Colorado limited liability company

By: \_\_\_\_\_  
Name:  
Title: