



## **PUBLIC NOTICE OF REGULAR MEETING AND PUBLIC HEARING**

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold its regular board meeting and public hearing online utilizing Zoom webinar technology at **3:00 p.m. on Wednesday, April 7, 2021.**

The public can register for the Zoom meeting as follows:

Register in advance for this webinar:

[https://zoom.us/webinar/register/WN\\_vki\\_Kdd5SIWddjwESYRLVA](https://zoom.us/webinar/register/WN_vki_Kdd5SIWddjwESYRLVA)

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 April 7, 2021. 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: April 2, 2021



**REGULAR MEETING OF THE AURA BOARD OF COMMISSIONERS**  
**5601 Olde Wadsworth Boulevard, Ste. 210, Arvada, Colorado**  
**3:00 p.m., Wednesday, April 7, 2021**

**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
  - A. Resolution AR-21-03                      A Resolution Amending the Arvada Urban Renewal Authority Budget for Fiscal Year 2020
7. Study Session
  - A. Olde Town Street Closures      Ryan Stachelski, City of Arvada  
Director of Community and Economic Development
8. Old Business
  - A. Resolution AR-21-04                      A Resolution of the Board of Commissioners of the Arvada Urban Renewal Authority Approving the Amended and Restated Disposition and Development Agreement between the Authority and Ralston Creek North, LLC
  - B. Resolution AR-21-05                      A Resolution of the Board of Commissioners of the Arvada Urban Renewal Authority Approving an Intergovernmental Agreement by and between the City of Arvada and the Arvada Urban Renewal Authority to Complete the #.04 Denver Tramway Streetcar Site Development Project
9. New Business
  - A. Arvada Place Apartments              Jesse Truman, 57<sup>th</sup> Apartments, LLC
  - B. 7611 Grandview Avenue              Cody Bohall, Property Owner and  
CEO/President of Studio 8.18 Engineering
10. Development Update
11. Public Comment – Five Minute Limit
12. Comments from Commissioners

13. Committee Reports

14. Staff Reports

15. Executive Session

A. Instructions to Negotiators, Pursuant to CRS 24-6-402(4)(e) Relating to Potential Projects

16. Adjournment

---

**SUMMARY OF MINUTES OF REGULAR MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, March 03, 2021  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

Page 1

---

**REGULAR MEETING**

---

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

---

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

---

3. **Roll Call of Commissioners**

Those Present: 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: one guest.

---

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

---

The Summary of Minutes of the February 03, 2021, AURA Board Meeting stand approved.

---

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

---

None

---

6. **Public Hearing**

---

None

---

7. **Study Session**

---

None

---

8. **Old Business**

---

A. Resolution AR-21-02 Ninth Amendment to an Employment Agreement by and Between the Arvada Urban Renewal Authority and Maureen C. Phair as Secretary and Executive Director.

Commissioner Jacobsen moved to approve Resolution AR-21-02, a Resolution of the Ninth Amendment to an Employment Agreement by and Between the Arvada Urban Renewal Authority and Maureen C. Phair as Secretary and Executive Director.

The following votes were cast on the Motion:

Those voting Yes: Bunyard, Dolan, Jacobsen, Parker, Steinhaus, Williams

Those abstained: Treasurer Cline

**The Motion was Approved.**

---

9. **New Business**

---

None

---

---

**SUMMARY OF MINUTES OF REGULAR MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, March 03, 2021  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

**Page 2**

---

**10. Development Update**

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

Ralston Creek Village (development of former Safeway site) - Berkeley Homes held its closing and is breaking ground on March 22. This project will consist of two phases: Phase I units are scheduled for a 2nd quarter of 2022 completion and Phase II units are planned to be completed in 3<sup>rd</sup> quarter of 2023.

Garrison Street Paseo – The technical survey was completed. The AURA staff met with City Department’s for their design input and incorporated their ideas into the plan. A virtual neighborhood meeting is tentatively scheduled for April 22.

“Wee Cottages” - A tour will be arranged at Riverdale Ranch located at 12688 Ulster Street, Thornton for the Board of Commissioners.

---

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

None

---

**12. Comments from Commissioners**

Commissioner Williams noted the passing of Jed Ladd. A virtual celebration of his life is scheduled for Saturday, March 13, at 2 pm. He noted that Jed Ladd was a true asset to the Arvada community and will be greatly missed. Commissioner Williams reported on the two houses located at 7315 - 7318 Grandview Avenue, in which the City Council and Board of Adjustment were issued an appeal based on the Board of Adjustment decision. That said, the District Court reaffirmed the decision of the Board of Adjustment.

Commissioner Dolan shared her condolence for the loss of Jed Ladd. She also stated that she appreciated the project updates.

Commissioner Jacobsen noted that Jed Ladd was his employee for over 20 years and is distressed by his passing. He asked about the Memorandum of Understanding (MOU) between AURA and the City of Arvada regarding the Trolley Car project. Ms. Phair reported that she will bring the MOU to the AURA Board for approval in April.

Commissioner Steinhaus stated that he was sorry to hear about Jed Ladd. He asked if there will be any formality for the Berkeley Homes groundbreaking. Ms. Phair replied that there are no plans at this time. Commissioner Steinhaus reported that he talked to the designer about the platform and structure for the Trolley and the designer said it may take months to implement the project.

Chair Parker shared that he was sad to hear about the loss of Jed Ladd.

---

**13. Committee Reports**

Commissioner Bunyard stated that he attended an Arvada Economic Development Association (AEDA) meeting this month and there was a presentation on the Gross Reservoir regarding the water rights in Arvada.

---

**SUMMARY OF MINUTES OF REGULAR MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, March 03, 2021  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

**Page 3**

---

Commissioner Steinhaus – The City of Arvada provided a presentation to the Olde Town Business District Committee on the designs for a 5-year road closure in Olde Town Arvada.

Commissioner Williams – Noted about the possibilities of a 5-year closure in Olde Town Arvada.

---

**14. Staff Reports**

---

Maureen Phair, Executive Director, provided the following staff report updates:

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

Ms. Phair reported that the Kipling Ridge Metro District bonds were paid today.

Ms. Phair stated that she spoke to the City's Public Information Officer (PIO) and asked for two pages in the City's Arvada Report May/June Issue. The issue will include the map of AURA Development Project areas.

Ms. Phair noted that a Special Meeting is scheduled for next Wednesday, March 10. The meeting will be in Executive Session to review the revised and restated DDA for Loftus Development.

Ms. Phair reported that Eli Feret was selected by the City Council as AURA's newly appointed Board of Commissioner.

Ms. Phair asked for RSVPs to attend the dinner held on April 7 to show appreciation for Commissioner Jacobsen's years of service and dedication.

Corey Hoffmann, Legal Counsel, had nothing to report.

---

**15. Executive Session**

---

A. Instructions to Negotiators, Pursuant to CRS 24-6-402(4) (e) Relating to Potential Projects

Corey Hoffmann, Legal Counsel, stated the need for an Executive Session for Instructions to Negotiators, Pursuant to CRS 24-6-402(4) (e) Relating to Potential Projects.

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

The following votes were cast on the Motion:

Those voting Yes: Bunyard, Cline, Dolan, Jacobsen, Parker, Steinhaus, Williams

**The Motion was Approved.**

The AURA Board convened into the Executive Session at 3:27 p.m. and reconvened into the Regular Meeting at 4:02 pm

---

**SUMMARY OF MINUTES OF REGULAR MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, March 03, 2021  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

---

Page 4

---

**16. Adjournment**

---

Chair Parker adjourned the meeting at 4:02 p.m.

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

ATTEST:

\_\_\_\_\_  
Maureen Phair, Executive Director

\_\_\_\_\_  
Carrie Briscoe, Recording Secretary

---

**SUMMARY OF MINUTES OF SPECIAL MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, March 10, 2021  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

---

Page 1

---

**SPECIAL MEETING**

---

1. **Call to Order** – Chair Alan Parker called the meeting to order at 3:00 p.m.
  2. **Moment of Reflection and Pledge of Allegiance**
  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; Hilary Graham, Legal Counsel; Carrie Briscoe, Project Manager, Peggy Salazar, Administrative Specialist

**Also present:** one guest

---

4. **Old Business**

---

None

---

5. **New Business**

---

None

---

6. **Executive Session**

---

A. Instructions to Negotiators, Pursuant to CRS 24-6-402(4) (e) Ralston Creek North

Hilary Graham, 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 Ralston Creek North

Commissioner Steinhaus moved 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, Williams

**The Motion was approved.**

The AURA Board convened into Executive Session at 3:03 p.m. and reconvened into the Special Meeting at 3:37 p.m.

**Special Meeting**

Maureen Phair, Executive Director asked for RSVPs for Commissioner Jacobsen's dinner to be held on April 7.

Chair Parker stated that he appreciated all the hard work that was presented in Executive Session.

Ms. Phair acknowledged Hilary Graham, Legal Counsel for writing the contract to proceed with Ralston Creek North project.

---

**SUMMARY OF MINUTES OF SPECIAL MEETING  
ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
WEDNESDAY, March 10, 2021  
5601 OLDE WADSWORTH BLVD., SUITE 210, ARVADA, CO 80002**

**Page 2**

---

Commissioner Steinhaus asked Ms. Phair about the Berkeley Townhome groundbreaking. Ms. Phair noted that the groundbreaking will be held on March 29.

Ms. Phair asked the Board of Commissioners if they were interested in touring the Wee Cottages located in Adams County.

---

**8. Adjournment**

---

The meeting was adjourned by Chair Parker at 3:43 p.m.

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

ATTEST:

\_\_\_\_\_  
Maureen Phair, Executive Director

\_\_\_\_\_  
Carrie Briscoe, Recording Secretary

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

---

**Agenda No.:** 6.A.  
**Meeting Date:** April 7, 2021  
**Titles:** Budget Amendment for Fiscal Year 2020

---

**ACTION PROPOSED:** Approval

**INFORMATION ABOUT THE ITEM:** Our revenues and expenses for 2020 were higher than we budgeted and we need to amend the 2020 budget to account for these increases.

- Northwest Arvada URA – property tax receipts were \$2,675,000 higher than budgeted. These revenues are passed onto the developer to pay the bonds; as a result the expenses were \$2,675,000 higher as well.
- Jefferson Center URA – property tax receipts were \$1,640,000 higher than budgeted and similar to Northwest, the expense increased by the same amount. NW Arvada’s funds are transferred into Jefferson Center, they have the same bank account, which when combined makes the total increase \$4,315,000.
- Ralston Fields URA – we need to account for an additional \$4,500,000 in expenses. This amount is made up of the gas station purchase along with funding part of the Ralston Road Streetscape.

**FINANCIAL IMPACT:** The increases in Northwest and JCMD are revenue neutral, and there are adequate funds in the Ralston Field Fund to address the increase in expenses.

**STAFF RECOMMENDATION:** Approval

**SUGGESTED MOTION:** I move that Resolution AR-21-03, a Resolution Amending the Arvada Urban Renewal Authority Budget for Fiscal Year 2020 be approved.

## RESOLUTION AR-21-03

### A RESOLUTION AMENDING THE ARVADA URBAN RENEWAL AUTHORITY BUDGET FOR FISCAL YEAR 2020

WHEREAS, the Arvada Urban Renewal Authority (AURA) previously approved and appropriated its budget for fiscal year 2020 on November 6, 2019, by passage of Resolutions AR-19-08 and AR-19-09, respectively, based upon projections of expected expenditures and revenues as of that date;

WHEREAS, expenditures and revenues will exceed AURA's 2020 approved budget;

WHEREAS, notice of AURA's consideration of the amended 2020 budget at this meeting was timely published pursuant to the requirements of State law;

WHEREAS, AURA held a properly noticed public hearing on April 7, 2021, at which time the public was invited to attend, give comment on or object to the proposed amended budget; and

WHEREAS, AURA wishes to amend its budget to reflect actual expenditures and revenues for fiscal year 2020.

NOW THEREFORE BE IT RESOLVED BY THE ARVADA URBAN RENEWAL AUTHORITY, ARVADA, COLORADO, THAT:

Section 1. Resolution AR-19-08, a resolution approving the 2020 AURA budget, and Resolution AR-19-09, a resolution appropriating the 2020 AURA budget, are hereby amended as follows:

- A. The Northwest Arvada Budget is amended by increasing the amount appropriated to \$13,100,000 from \$10,425,000.
- B. The Jefferson Center Budget is amended by increasing the amount appropriated to \$15,822,000 from \$11,602,000.
- C. The Ralston Fields Budget is amended by increasing the amount appropriated to \$8,390,000 from \$3,890,000.

Section 2. Any provision of Resolutions AR-19-08 or AR-19-09 that may be inconsistent with this Resolution AR-21-03, is hereby amended to conform to the extent necessary with the provisions hereof.

Section 3. This Resolution shall be effective upon its passage by the AURA Board of Commissioners.

INTRODUCED AND ADOPTED this 7th day of April, 2021.

ATTEST:

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

\_\_\_\_\_  
Maureen Phair, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Date

**AURA GENERAL FUND**  
**2020 Budget**  
**Fund 80 - Division 1284**

<b>OBJECT DESCRIPTION</b>	<b>2018 ACTUAL</b>	<b>2019 BUDGET</b>	<b>2020 BUDGET</b>
46102 Interest - Investments	\$ 26,126	\$ 40,000	\$ 40,000
47184 Transfer to AURA from JC (Power Plant)	450,683	145,000	475,000
47185 Transfer to AURA from Ralston Fields	1,221,107	1,500,000	-
47187 Transfer to AURA from Northwest (Candelas)	-	372,000	413,000
47188 Transfer to AURA from Olde Town Station	337,883	204,000	305,000
47189 Transfer to AURA from Village Commons	184,564	142,655	406,655
Recovered Costs	2,452	-	-
<b>TOTAL REVENUE</b>	<b>2,222,815</b>	<b>2,403,655</b>	<b>1,639,655</b>
51101 Salaries and Wages	346,213	271,737	276,850
51102 Overtime	-	2,000	2,000
51103 Group Insurance	46,152	42,822	44,244
51105 Retirement	34,599	30,762	30,957
51106 Medicare	4,932	3,883	4,101
51107 Temporary Wages	-	500	500
51108 Workers Compensation Insurance	101	101	1,264
51112 Car Allowance	8,004	6,000	6,000
51131 Dental	2,580	2,420	2,468
51132 Long-Term Disability	974	1,093	1,198
51133 Life Insurance	1,278	928	1,183
53001 Services and Charges	5,918	1,000	1,000
53002 Training and Meetings	28,626	30,000	30,000
53004 Printing and Binding	625	2,000	2,000
53011 Memberships, Dues, Subscriptions, Donations, Advertising, Promotions	8,744	20,000	20,000
53016 Risk Management Services	1,137	726	775
53017 Mileage Reimbursement	-	500	500
53018 Property Insurance	3,136	334	167
53019 General Liability - Insurance	919	1,531	1,683
53091 Natural Gas	2,376	-	-
53094 Phone	1,691	-	-
53095 Cell Phone/PDA	807	-	-
54001 Supplies and Expenses	1,648	5,000	5,000
54003 Postage	65	750	750
54006 Computer Hardware/Software	2,562	-	-
54008 Computer Replacement	5,018	2,608	2,660
54009 Computer Maintenance	5,624	3,146	3,720
54013 Small Equipment	2,013	2,040	2,040
55001 Professional Services	143,389	350,000	60,000
55004 Leases	58,273	70,000	72,000
58106 Repair and Maintenance - Equipment	-	1,000	1,000
<b>TOTAL EXPENSES</b>	<b>717,404</b>	<b>852,881</b>	<b>574,060</b>
<b>NET INCOME/(LOSS)</b>	<b>1,505,411</b>	<b>1,550,774</b>	<b>1,065,595</b>
Fund Balance Beginning	7,608,289	9,113,700	10,664,474
Fund Balance Ending	\$ 9,113,700	\$ 10,664,474	\$ 11,730,069

**JEFFERSON CENTER - (POWER PLANT)**  
**2020 Budget**  
**Fund 84 - Division 1206**

OBJECT	DESCRIPTION	2018 ACTUAL	2019 BUDGET	2020 BUDGET	2020 REVISED BUDGET	BUDGET NOTES
41102	Property Tax Increment	\$ 2,058,088	\$ 1,750,000	\$1,750,000	\$ 3,390,000	Property tax
46102	Interest - Investments	-	-	-	-	Investment interest
47187	Transfer from Northwest (Candelas)	8,339,250	8,718,000	9,852,000	12,432,000	Transfer from Northwest (Candelas)
<b>TOTAL REVENUE</b>		<b>10,397,338</b>	<b>10,468,000</b>	<b>11,602,000</b>	<b>15,822,000</b>	
53014	Contract Services	-	1,200	1,200	1,200	Bank fees
55001	Professional Services	39,775	40,000	40,000	40,000	Jefferson County Treasurer fees
55003	Contract Incentives	9,906,880	10,281,800	11,405,800	15,305,800	JC payment JC admin fee \$75,000, City's 4.3 mills
59180	Transfer to AURA	450,683	145,000	155,000	475,000	\$80,000
<b>TOTAL EXPENSES</b>		<b>10,397,338</b>	<b>10,468,000</b>	<b>11,602,000</b>	<b>15,822,000</b>	
NET INCOME/(LOSS)		-	-	-	-	
Fund Balance Beginning		-	-	-	-	
Fund Balance Ending		\$ -	\$ -	\$ -	\$ -	

**NORTHWEST ARVADA - (CANDELAS)**  
**2020 Budget**  
**Fund 87 - Division 1208**

OBJECT	DESCRIPTION	2018 ACTUAL	2019 BUDGET	2020 BUDGET	2020 REVISED BUDGET	BUDGET NOTES
41102	Property Tax Increment	\$ 8,466,244	\$ 9,200,000	\$10,425,000	\$ 13,100,000	Property tax - 10% increase over 2019
46102	Interest - Investments	-	-	-	-	Investment interest
<b>TOTAL REVENUE</b>		<b>8,466,244</b>	<b>9,200,000</b>	<b>10,425,000</b>	<b>13,100,000</b>	
55003	Contract Incentives	-	-	-	95,000	
55001	Professional Services	126,994	110,000	160,000	160,000	Jefferson County Treasurer fees JC admin. fee \$75,000; City's 4.3 mills
59180	Transfer to AURA	-	372,000	413,000	413,000	\$338,000
59184	Transfer to JCMD	8,339,250	8,718,000	9,852,000	12,432,000	JC transfer for developments
<b>TOTAL EXPENSES</b>		<b>8,466,244</b>	<b>9,200,000</b>	<b>10,425,000</b>	<b>13,100,000</b>	
NET INCOME/(LOSS)		-	-	-	-	
Fund Balance Beginning		-	-	-	-	
Fund Balance Ending		\$ -	\$ -	\$ -	\$ -	

**RALSTON FIELDS**  
**2020 Budget**  
**Fund 85 - Divison 1207**

OBJECT	DESCRIPTION	2018 ACTUAL	2019 BUDGET	2020 PROPOSED BUDGET	2020 REVISED BUDGET	BUDGET NOTES
41102	Property Tax Increment	\$ 1,249,592	\$ 1,200,000	\$ 1,500,000	\$ 2,150,000	Increase property tax for Gateway
42202	Public Improvement Fee	2,233,721	2,050,000	2,050,000	2,200,000	Target - \$750,000, Walmart - \$1,200,000, Ralston Creek \$100,000
46102	Interest - Investments	31,620	40,000	40,000	40,000	Investment interest
46503	Recovered Costs	-	300,000	300,000	-	- Sale of Ralston Road Café
<b>TOTAL REVENUE</b>		<b>3,514,933</b>	<b>3,590,000</b>	<b>3,890,000</b>	<b>4,390,000</b>	
53091-95	Utilities	21,324	20,000	20,000	20,000	Electricity (lights) and stormwater Arvada Square properties
53014	Contract Services	-	-	200,000	275,000	Environmental - \$150,000, Envionmental Legal - \$20,000, Consulting -\$30,000
55001	Professional Services	18,744	25,000	30,000	30,000	Jefferson County treasurer fees
55003	Contract Incentives	1,765,993	1,640,000	1,640,000	2,650,000	Arvada Ridge \$720,000 + Wheat Ridge \$100,000 per year (2008-2026) + Walmart \$720,000 (60% of \$1,200,000)+Ralston Creek \$100,000 (100% of 3 bldgs PIF)
56001	Principal	-	250,000	457,110	457,110	Arvada Square note
56002	Interest	237,500	150,000	142,890	142,890	Arvada Square note
58103	Repair and Maintenance -Land	3,124	5,000	15,000	15,000	Maintenance - \$5,000, Fence - \$7,000, General - \$3,000
58202	Capital Improvement (CIP)	247,142	-	-	1,800,000	Arvada Square demolition, Ralston Road Streetscape
58203	Land	-	-	-	3,000,000	Purchase of gas station
58180	Transfer to AURA	1,221,106	1,500,000	1,385,000	-	Operating transfer (fund balance transferred to AURA GF)
<b>TOTAL EXPENSES</b>		<b>3,514,933</b>	<b>3,590,000</b>	<b>3,890,000</b>	<b>8,390,000</b>	
<b>NET INCOME/(LOSS)</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>(4,000,000)</b>	
Fund Balance Beginning		-	-	6,670,000	6,670,000	
Fund Balance Ending		\$ -	\$ -	\$ -	\$ 2,670,000	

**OLDE TOWN ARVADA**  
**2020 Budget**  
**Fund 88- Divison 1209**

OBJECT	DESCRIPTION	2018 ACTUAL	2019 BUDGET	2020 BUDGET	BUDGET NOTES
41102	Property Tax Increment	\$ 248,832	\$ 480,000	\$ 600,000	Park Place and Solana
41302	Sales Tax	290,900	204,000	290,000	Sales tax over the base
46102	Interest - Investments	-	-	-	Investment interest
<b>TOTAL REVENUE</b>		<b>539,732</b>	<b>684,000</b>	<b>890,000</b>	
53014	Contract Services	-	-	50,000	Consulting for potential project
55001	Professional Services	-	-	10,000	
55003	Contact Incentives	198,000	480,000	515,000	Park Place - \$125,000, Solana - \$390,000
58103	Repair and Maintenance	-	-	10,000	
59180	Transfer to AURA	337,883	204,000	305,000	Operating transfer
<b>TOTAL EXPENSES</b>		<b>535,883</b>	<b>684,000</b>	<b>890,000</b>	
<b>NET INCOME/(LOSS)</b>		<b>3,849</b>	<b>-</b>	<b>-</b>	
Fund Balance Beginning		-	-	-	
Fund Balance Ending		\$ 3,849	\$ -	\$ -	

**VILLAGE COMMONS**  
**2020 Budget**  
**Fund 89 - Divison 1210**

<b>OBJECT</b>	<b>DESCRIPTION</b>	<b>2018 ACTUAL</b>	<b>2019 BUDGET</b>	<b>2020 BUDGET</b>
41102	Property Tax Increment	\$ 166,894	\$ 166,000	\$ 385,000
41302	Sales Tax	188,517	150,000	200,000
41602	Lodging Tax	108,484	99,000	100,000
46102	Interest - Investments	-	-	-
	<b>TOTAL REVENUE</b>	<b>463,895</b>	<b>415,000</b>	<b>685,000</b>
55001	Professional Services	2,597	5,000	10,000
55003	Contract Incentives	108,484	99,000	100,000
56001	Principal	138,741	140,822	142,934
56002	Interest	29,509	27,523	25,411
59180	Transfer to AURA	184,564	142,655	406,655
	<b>TOTAL EXPENSES</b>	<b>463,895</b>	<b>415,000</b>	<b>685,000</b>
	NET INCOME/(LOSS)	-	-	-
	Fund Balance Beginning	-	-	-
	Fund Balance Ending	\$ -	\$ -	\$ -

# PUBLIC NOTICES

Public Notices call Sheree 303.566.4088

legals@coloradocommunitymedia.com

## Legals City and County

### PUBLIC NOTICE

**Resolution 21-037 A** Resolution Accepting an Annexation Petition Concerning Lazy Susan, Generally Located at 16790 and 16770 W. 63rd Place. Finding Said Petition Substantially Compliant with C.R.S. 31-12-107(1), and Setting a Public Hearing for April 5, 2021, 6:15 P.M. for City Council to Determine Whether the Area Meets the Requirements of C.R.S. 31-12-104 and 105, and is Considered Eligible for Annexation.

Legal Notice No. 410170  
First Publication: March 4, 2021  
Second Publication: March 11, 2021  
Third Publication: March 18, 2021  
Last Publication: March 25, 2021  
Publisher: Jeffco Transcript  
and the Arvada Press

**ANNEXATION PETITION ACCEPTANCE**  
The following resolution can be viewed in its entirety in electronic form by going to [www.arvada.org/legalnotices](http://www.arvada.org/legalnotices) and clicking on Current Legal Notices. The full text version is also available in printed form in the City Clerk's office. Contact 720.898.7550 if you have questions.

### Public Notice

#### ARVADA URBAN RENEWAL AUTHORITY NOTICE OF PUBLIC HEARING FOR FINAL BUDGET AMENDMENT FOR FISCAL YEAR 2020

The Arvada Urban Renewal Authority Board of Commissioners will hold a virtual Public Hearing via Zoom Webinar to consider a Final Amendment to its 2020 Budget on Wednesday, April 7, 2021 at 3:00 p.m. If you are interested in participating in the virtual meeting, please email [info@arvadaurbanrenewal.org](mailto:info@arvadaurbanrenewal.org) before noon on April 7, 2021 to receive meeting registration information.

The proposed Final Amendment to the 2020

Budget is available for inspection by any interested election during normal business hours at the Arvada Urban Renewal Authority office at 5601 Olde Wadsworth Boulevard, Suite 210, Arvada, CO.

Any interested elector of the City of Arvada, Colorado, may file, or register with the Arvada Urban Renewal Authority any objections to the proposed Final Amendment to the 2020 Budget at any time prior to its final approval scheduled for April 7, 2021.

**ARVADA URBAN RENEWAL AUTHORITY**  
Maureen Phair, Executive Director  
5601 Olde Wadsworth Boulevard, Suite 210  
Arvada, Colorado 80002  
Legal Notice No. 410310  
First Publication: March 25, 2021

Last Publication: March 25, 2021  
Publisher: Jeffco Transcript

### PUBLIC NOTICE

Public comment is open on the City of Arvada's draft ADA Transition Plan. Comments must be received by March 26, 2021. Visit [www.arvada.org/access-arvada](http://www.arvada.org/access-arvada) or call 720-898-7367 to provide comment.

Legal Notice No. 410264  
First Publication: March 18, 2021  
Last Publication: March 25, 2021  
Publisher: Jeffco Transcript  
###

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

---

**Agenda No.:** Item 8. A.  
**Meeting Date:** April 7, 2021  
**Title:** Ninth Amendment to the Disposition and Development Agreement  
Ralston Creek North Amended and Restated Disposition and Development Agreement

---

**ACTION PROPOSED:** Approval of the Amended and Restated DDA and the Ninth Amendment to the DDA between AURA and Ralston Creek North

### **BACKGROUND:**

AURA entered into a DDA with Ralston Creek North, LLC. (RCN) a partnership between Jim Loftus of Loftus Development and J Drever of Mapleton Asset Management in 2015, to develop a mixed-use project on the 16-acre site referred to as Ralston Creek North. The site consists of the former Arvada Square, Independence Center, Safeway, Ralston Road Café and most recently the gas station. All of these structures have been abated and razed.

This mixed-use project fulfills the goals identified in the Ralston Fields Urban Renewal Plan, the City of Arvada's Comprehensive Plan, the Arvada Triangle Outline Development Plan, the Arvada Triangle Design Guidelines and the Ralston Creek Streetscape Design Guidelines.

The developer, AURA staff, and EPS have been working together reviewing the development pro forma, evaluating the project gap, and identifying sources to fund the financial shortfall. Staff and RCN negotiated a term sheet, which the AURA Board reviewed and approved in December. With the Board's approval, Staff negotiated an Amended and Restated Disposition and Development Agreement (DDA) with RCN.

### Brief Site History

- 2014 – Selected Buckingham Partners
- 2015 – Selected RCN
- 2017 – Partner with Carmel Partners to construct market rate apartments
- 2018 – Partner with Price Development Group to construct market rate apartments
- 2018 – Reconsider Development Options
  - What does the market want – met with residential and commercial brokers
  - What does Council want – met with Mayor and Councilman Marriott
- 2018 – Partner with Berkeley Homes to construct for-sale townhomes
- 2018 – Partner with Alliance Residential to construct Age Restricted Apartments
- 2019 – Dry Cleaning Contamination Discovered

- 2019 – Both Alliance and Berkeley cancelled their contracts to develop
- 2019 – Board created new vision for the development
- 2020 – RCN submitted a new site plan that embraced the new vision
- 2020 – AURA purchased the gas station
- 2020 – Berkeley returned to develop the 47 townhomes, groundbreaking in March 2021
- 2020 – RCN committed to self-develop the project with the exception of the townhomes

#### 2019 - Board's Vision and Direction for the Development

- For-sale housing
- Sense of place
  - Local/Regional sit down restaurant with outdoor patio, ice cream and/or coffee
  - Active plaza for community to gather
- Connect to Ralston Central Park
- Improve appearance and access to Ralston Creek
  - Don't turn back on creek
- Pedestrian oriented – front porches and wide sidewalks
- No sea of parking
- “Bring us something that excites us”

#### **COMMUNITY BENEFIT:**

This project will replace an aging shopping center and gas station surrounded by a sea of surface parking and limited landscaping with a vibrant mixed-use heavily landscaped neighborhood. It will provide both for-sale and rental housing, and a place for the neighborhood to gather, play and linger.

In addition to constructing the project, the development will also provide the following public improvements:

- Cleanup of the environmental contamination on site and within the structures – including asbestos, dry cleaning contamination in the groundwater, and removing the underground gas tanks
- Demolition and disposal of 80,000 square feet of buildings and acres of asphalt
- Replacing the aging infrastructure – water, sewer, gas, storm detention
- Undergrounding overhead electrical lines
- Resolving the flood plain/way issues on the site
- Constructing the new east/west street through the development connecting Garrison to Ralston Road
- Installing the Ralston Creek streetscape and signage

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

AURA entered into a Disposition and Development Agreement with Ralston Creek North, LLC (RCN) in 2015 to redevelop the 16 acre site known as Ralston Creek. We need to amend and restate this agreement to reflect the development that has occurred and to clarify the new development plan for the remaining acres. Specifically, the Ninth Amendment and Amended and Revised DDA will: Acknowledge completed milestones from original 2015 DDA (Ninth Amendment):

- Developer paid \$2 million for the 16 acres

- Shops at Ralston Creek has been constructed
- Berkeley Homes purchased the Safeway and Ralston Road Café sites and is developing 47 townhomes and is
- Developer paid \$300,000 for the former Ralston Road Cafe

Clarify new development plan for remaining eastern acres (Amended and Revised DDA):

- Approximately 27 for-sale townhomes to be constructed by a third party
- 186 market rate apartments within two buildings with garden level parking
- 5,500 square feet of restaurant and shop space surrounding an active plaza

RCN’s Responsibilities – develop the Board’s vision: Create the following mixed use development:

*Connection:*

- Pedestrian friendly with wide sidewalks and tree lined streets that connect Ralston Central Park to Independence Street.
- A new multi-modal path that runs along the south side of Ralston Creek.
- Installation of the Ralston Creek Streetscape along Ralston and Garrison Streets.
- Ralston Creek embraced and improved.

*Housing:*

- 27 for-sale townhomes will alley loaded garages and front porches. RCN will work with a third party developer to construct the townhomes; all sales proceeds will be put in escrow to help finance the apartments and restaurant plaza.
- 186 apartments homes in two buildings wrapped with townhome style units, four sided architecture fronting the creek. Provide garden level parking to efficiently utilize the land and reduce surface parking.

*Restaurant Plaza:*

- Restaurant plaza anchored by a local or regional restaurant with a large outdoor patio and a small multi-tenant building to the north. Food trucks can be accommodated.
- Active plaza for the community to gather, play and enjoy the restaurants.

*Estimated Cost of Development:*

27 townhomes	\$ 10 million
186 apartments	\$ 60 million
Restaurant Plaza	<u>\$ 3.5 million</u>
	\$73.5 million

- Developer to secure the debt and equity required to develop the project outlined above.
- Developer paid the Authority \$1,097,300 for the site in May 2017.

AURA’s Responsibilities: Assist with the extraordinary cost of structured parking that reduces the amount of surface parking and enables additional development on the site. Assist with the cost to construct the restaurant plaza to lower the rental rates to encourage local and regional restaurants to inhabit the space, where there is a ten year requirement to keep local/regional restaurants on the site.

AURA will provide this assistance by:

- Transferring Arvada Square and gas station properties to RCN upon receipt of construction permits – Developer paid the Authority \$1,097,300 in 2017.

- Funding the environmental abatement and demolition of Arvada Square and the gas station, including the dry cleaning contamination
- Contributing \$14,993,989 to RCN, in an escrow account on the following schedule:
  - \$13 million when the developer has obtained a construction loan, no earlier than January 1, 2022.
  - \$1,993,989 no later than January 31, 2023

Threshold Agreement: Both parties agree that upon sale of the apartments and/or the restaurant plaza within five years of completion, EPS will be contracted to analyze all project cash flows, including without limitation construction costs, net operating income, townhome land sales revenue, AURA’s contributions, including the monetary value of the environmental remediation and any cash contributions, and developer’s revenue generated by the sale. EPS will determine the unlevered IRR of the sale. Under a windfall sales scenario, the following will occur:

Multi-Family            An unlevered IRR below 10.5% allows developer to keep all sales proceeds. An unlevered IRR above 10.5% will allow AURA to be repaid for a portion of its initial investment. Proceeds above 10.5% will be split between developer and AURA at 70% and 30% respectively.

Commercial            An unlevered IRR below 11.5% allows developer to keep all sales proceeds. An unlevered IRR above 11.5% will allow AURA to be repaid for a portion of its initial investment. Proceeds above 11.5% will be split between developer and AURA at 70% and 30% respectively.

Schedule of Performance: The full schedule is attached to this document. The key milestone dates:

Commencement of Construction	March 15, 2022
Completion of Construction	March 15, 2024

**FINANCIAL IMPACT:**

The Ralston Fields Urban Renewal Area sunsets in 2028, and due to the amount of time remaining from project completion to 2028, AURA is not able to provide the traditional TIF revenue sharing scenario. The Ralston Field’s fund will have enough resources over the next seven years to finance AURA’s \$14,993,989 participation in the development, but in order to upfront the funds while meeting AURA’s other obligations, AURA will need to obtain a short term loan. The City of Arvada has agreed to loan AURA \$10 million at 3% interest for three years. The total interest cost is \$943,838.

This project is estimated to generate \$2.4 million in property tax and \$417,000 in sales tax over the remaining six years of the URA. Below is a summary of AURA’s net participation.

Equity Contribution	\$14,993,989
Loan Interest	943,838
Property Tax Receipts	(2,431,890)
Sales Tax Receipts	( 416,634)
	\$13,089,303

**STAFF RECOMMENDATION:**

Approval

**SUGGESTED MOTION:**

I move that Resolution AR-21-04, A Resolution of the Board of Commissioner of the Arvada Urban Renewal Authority Approving the Ninth Amendment to the Disposition and Development Agreement between AURA and Ralston Creek North AND Approving the Amended and Restated Disposition and Development Agreement between the Authority and Ralston Creek North, LLC.

**RESOLUTION AR-21-04**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE NINTH AMENDMENT TO RALSTON CREEK NORTH DISPOSITION AND DEVELOPMENT AGREEMENT AND APPROVING THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AUTHORITY AND RALSTON CREEK NORTH, LLC**

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

Section 1. The Ninth Amendment to Ralston Creek North Disposition and Development Agreement between the Arvada Urban Renewal Authority and Ralston Creek North, LLC attached hereto as **Exhibit A**, is hereby approved, and the Chairman is authorized to execute the Agreement on behalf of the Authority.

Section 2. The Amended and Restated Disposition and Development Agreement between the Arvada Urban Renewal Authority and Ralston Creek North, LLC, attached hereto as **Exhibit B**, is hereby approved, and the Chairman is authorized to execute the Agreement on behalf of the Authority.

DATED this 7<sup>th</sup> day of April, 2021.

---

Alan Parker, Chair

---

Recording Secretary

APPROVED AS TO FORM

---

Corey Y. Hoffmann, Legal Counsel

## EXHIBIT A

### Ninth Amendment to Ralston Creek North Disposition and Development Agreement

#### WITNESSETH

**Whereas**, the Arvada Urban Renewal Authority (the “Authority”) and Ralston Creek North, LLC (“RCN” and “Original Redeveloper”) entered into a Disposition and Development Agreement on or about November 4, 2015, for the redevelopment of certain property located within the Ralston Fields Urban Renewal Project Area for a mixed-use development (hereafter, the “Project”), which DDA was subsequently amended by the First Amendment to the DDA on or about October 20, 2016, by the Second Amendment to the DDA on or about March 2, 2017, by the Third Amendment to the DDA on or about May 3, 2017, by the Fourth Amendment to the DDA on or about October 4, 2017, by the Fifth Amendment to the DDA on or about October 3, 2018, by the Sixth Amendment to the DDA on or about November 7, 2018, by the Seventh Amendment to the DDA on or about March 6, 2019, and by the Eighth Amendment to the DDA on or about September 4, 2019 (collectively, the “Original DDA”) (each a “Party” and collectively the “Parties”);

**Whereas**, the plans for development of the Property have further evolved since adoption of the original DDA in 2015 such that the Property as a whole is now thought of in five phases: the Phase 1 Property (The Shops at Ralston Creek); the Phase 2 or Townhome Property (as defined in the Sixth Amendment to the DDA and the Townhome Assignment described below); the Phase 3 Property and the Phase 4 and 5 Property; all as shown on the map attached hereto and incorporated herein as **Exhibit A**;

**Whereas**, the Original Redeveloper has sold the Townhome Property to BH Ralston, LLC (“Berkeley”) and pursuant to that certain Assignment and Assumption of DDA, dated February 22, 2021 (“Townhome Assignment”), Original Redeveloper assigned to Berkeley and Berkeley assumed the obligations under the DDA with respect to Phase 2, the Townhome Property;

**Whereas**, the Authority and Original Redeveloper are entering into an Amended and Restated Disposition and Development Agreement (the “Amended DDA”) to provide for the rights and obligations associated with the development of the Phases 3, 4 and 5 of the Property; and

**Whereas**, the Authority, Original Redeveloper and Berkeley now wish to amend the Original DDA to reflect their mutual understanding and agreement on all such matters described herein (hereafter, the “Ninth Amendment”).

**In consideration of the following promises, covenants, agreements and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged and confessed, it is THEREFORE AGREED BY THE PARTIES AS FOLLOWS:**

1. Simultaneously herewith, the Authority and Original Redeveloper are entering into the Amended DDA. The Amended DDA is intended to set forth the rights and obligations of the Authority and Original Developer with respect to Phases 3, 4 and 5 of the Property. The Authority and Original Redeveloper confirm and agree that the Original DDA is terminated and shall be of no further force and effect with respect to Phases 3, 4 or 5 of the Property.

2. As set forth in the Sixth Amendment referenced above, the Authority and the Original Redeveloper hereby reconfirm and agree that all obligations of Original Redeveloper relating to the Phase 1 Property have been satisfied, and Original Redeveloper, its successors and assigns shall have no further obligations under the Original DDA or the Amended DDA with respect to the Phase 1 Property.

3. As set forth in the Townhome Assignment, certain rights and obligations of Original Redeveloper relating to Phase 2, the Townhome Property, were assigned to and assumed by Berkeley. Original Redeveloper has no ongoing rights or obligations associated with Phase 2, and the Amended DDA contains no rights or obligations associated with Phase 2. The Original DDA and the Townhome Assignment shall continue to govern the rights and obligations of Berkeley and apply to the Phase 2, the Townhome Property, as set forth therein.

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

**Arvada Urban Renewal Authority**

**Ralston Creek North, LLC**

By: \_\_\_\_\_  
Alan Parker, Chairman

By: \_\_\_\_\_  
James R. Loftus, Manager

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**BH Ralston, LLC:**

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

ATTEST: \_\_\_\_\_

**EXHIBIT B**

**ARVADA URBAN RENEWAL AUTHORITY,  
(the Authority)**

**AND**

**RALSTON CREEK NORTH, LLC  
(the Redeveloper)**

**AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT  
AGREEMENT**

**DATED AS OF**

\_\_\_\_\_, 20

## Table of Contents

SECTION 1.	DEFINITIONS.....	6
SECTION 2.	PURPOSE .....	10
	2.01.....	10
	2.02.....	10
SECTION 3.	AUTHORITY’S OBLIGATIONS .....	10
	3.01.....	10
	3.02.....	11
	3.03.....	11
SECTION 4	CONVEYANCE TO REDEVELOPER; TITLE; CLOSING.....	11
	4.01 Conveyance of Property.....	11
	4.02 Condition of Title.....	11
	4.03 Types and Form of Deeds. ....	12
	4.04 Closing .....	12
	4.05 Survey.....	13
	4.06 Title Insurance.....	13
	4.07 Title Policy.....	13
	4.08 Apportionment of Current Taxes .....	13
SECTION 5.	CONDITION OF PROPERTY .....	13
	5.01 Condition.....	13
	5.02 Development Constraints.....	14
	5.03 Access to Area.....	15
	5.04 Zoning, Permits and Approvals.....	15
	5.05 Termination Rights relating to Phases. ....	15
	5.06 Easements.....	15
	5.07 Property Information.....	16
SECTION 6.	SITE PLANS AND RELATED DOCUMENTS; REVIEW PROCEDURE.....	16
	6.01 Site Plans.....	16
	6.02 Design Development Documents.....	16
	6.03 Construction Documents.....	16
	6.04 Approval; Changes.....	16
	6.05 Ancillary Documents.....	17

SECTION 7.	FINANCING AND CONSTRUCTION OF IMPROVEMENTS.....	17
7.01	Redeveloper's Financing. ....	17
7.02	Financing Alternatives .....	17
7.03	Covenants to Commence and Complete Construction.....	17
7.04	Progress Reports.....	17
7.05	Threshold Agreement.....	18
SECTION 8.	CERTIFICATE OF COMPLETION .....	18
8.01	Completion of Construction .....	18
8.02	Recordation and Notice.....	18
SECTION 9.	INSURANCE; INDEMNIFICATION .....	19
9.01	Insurance. ....	19
9.02	Indemnification. ....	19
SECTION 10.	REPRESENTATIONS AND WARRANTIES .....	19
10.01	Representations and Warranties by the Authority.....	19
10.02	Representations and Warranties by the Redeveloper. The Redeveloper represents and warrants that: .....	21
SECTION 11.	COVENANTS; RESTRICTIONS ON USE .....	21
11.01.....		22
11.02.....		22
11.03	Covenants of Authority .....	22
SECTION 12.	RESTRICTIONS ON ASSIGNMENTS AND TRANSFER .....	22
12.01	Restrictions Against Transfer of Property or Improvements and Assignment of Agreement.....	22
12.02	Freely Transferable. ....	24
12.03	Information as to Interest Holders.....	24
SECTION 13.	MORTGAGE FINANCING; RIGHTS OF MORTGAGEES.....	24
13.01	Limitation Upon Encumbrance of Property .....	24
13.02	Right to Cure. ....	24
SECTION 14.	TERMINATION .....	25
14.01	Redeveloper's Option to Terminate Prior to Closing .....	25
14.02	Authority's Option to Terminate Prior to Closing.....	25
14.03	Action to Terminate .....	26

14.04	Effect of Termination .....	26
SECTION 15.	EVENTS OF DEFAULT; REMEDIES .....	26
15.01	Events of Default by Redeveloper .....	26
15.02	Events of Default by the Authority. ....	27
15.03	Grace Periods .....	27
15.04	Remedies on Default. ....	27
15.05	Authority's Right to Re-Purchase; Phase 3 .....	28
15.06	Authority's Right of Re-Entry; Phases 4 and 5.....	28
15.07	Resale of Reacquired Property.....	28
15.08	Delays, Waivers. ....	29
15.08	Enforced Delay in Performance for Causes Beyond Control of Party.....	29
15.09	Rights and Remedies Cumulative. ....	29
15.10	Provisions Not Merged With Deed(s).....	29
SECTION 16.	MISCELLANEOUS.....	29
16.01	Severability.....	29
16.02	Notices.....	30
16.03	Conflict of Interest; Authority Representatives not Individually Liable.....	30
16.04	Estoppel Certificate .....	31
16.05	Amendments.....	31
16.06	Survival of Representations and Warranties. ....	31
16.07	Minor Changes. ....	31
16.08	Counterparts. ....	31
16.09	Titles of Sections.....	31
16.10	No Third Party Beneficiaries.....	31
16.11	Applicable Law. ....	31
16.12	Covenant of Good Faith. ....	31
16.13	Binding Effect. ....	32
16.14	Days.....	32
16.15	Further Assurances.....	32
16.16	Incorporation of Exhibits. ....	32
16.17	Authority or City Not a Partner.....	32
16.18	City Not a Party.....	32

16.19	Authority of Signatories.....	32
16.20	Jointly Drafted.....	32
16.21	Severability.....	32
16.22	Attorneys' Fees .....	32
16.23	Time of Essence. ....	33
16.24	Deemed Denial.....	33
16.25	Effect of Original Agreements .....	33
SIGNATURE PAGE .....		34
Exhibit A.....		35
Exhibit B.....		36
Exhibit C.....		37
Exhibit D.....		38
Exhibit E.....		39

**AMENDED AND RESTATED DISPOSITION  
AND DEVELOPMENT AGREEMENT**

This Amended and Restated Disposition and Development Agreement (the "Amended Agreement") is made as of \_\_\_\_\_ between the ARVADA URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the "Authority"), whose address is 5601 Olde Wadsworth Boulevard, Suite 210, Arvada, Colorado 80002, and RALSTON CREEK NORTH, LLC, a Colorado limited liability company, whose address is 2595 Canyon Blvd., Suite 200, Boulder, CO 80302 and its permitted assigns (the "Redeveloper") (each a "Party" and together, the "Parties").

SECTION 1. DEFINITIONS.

In this Amended Agreement, unless a different meaning clearly appears from the context:

- (a) "Act" means the provisions of C.R.S. § 31-25-101, *et. seq.*, referred to as the "Urban Renewal Law." The Parties understand and agree that nothing herein is intended to apply the provisions of House Bill 15-1348 unless and until the conditions described in House Bill 15-1348 become applicable to the undertakings and activities described herein.
- (b) "Amended Agreement" means this Amended and Restated Disposition and Development Agreement; references to Sections or Exhibits are to this Amended Agreement unless otherwise qualified;
- (c) "Area" means that portion of the Ralston Fields Urban Renewal Plan that consists of the eastern parcel of approximately 7.040 acres as shown on **Exhibit A**, including appurtenant and neighboring streets, roads, sidewalks, and public ways that will be developed in Phases 3 through 5, as referenced herein.
- (d) "Authority" or "AURA" means the Arvada Urban Renewal Authority or any successor or assign;
- (e) "Certificate of Completion" means the certificate, in the form attached as **Exhibit B** and described in Section 8;
- (f) "City" means the City of Arvada, Colorado;
- (g) "Closing" means the happening of the event or events described in Section 4.04;
- (h) "Closing Date" or "Closing Dates" means the date or dates that the Closing(s) occurs as designated in Section 4.04 and the Schedule of Performance;
- (i) "Conditional Use Permit" or "CUP" means a conditional use permit issued by the City of Arvada to Redeveloper allowing the planned residential uses for Phases 3 and 4;

- (j) "Commencement of Phase 3 Construction" means the time at which the third-party developer, after receiving title from RCN following a Closing, obtains building permits for the townhome development;
- (k) "Commencement of Phase 4 Construction" means the time at which RCN receives building permits for approximately 186 market-rate apartment units in two buildings including garden-level parking structures;
- (l) "Commencement of Phase 5 Construction" means the time at which RCN receives building permits for approximately 5,500 square feet of restaurant/retail space in 2 buildings, surrounding a park or plaza;
- (m) "Commitment or Commitments" means the title insurance commitment or commitments for the respective Phase or Phases, including updates of any commitment, as described in Section 4.06;
- (n) "Completion of Phase 3 Construction" means the City has issued certificates of occupancy for all of the townhomes constructed on Phase 3;
- (o) "Completion of Phase 4 Construction" means the City has issued certificates of occupancy for approximately 186 market-rate apartment units and certificates of completion for both garden-level parking structures;
- (p) "Completion of Phase 5 Construction" means the City has issued certificates of completion for approximately 5,500 square feet of restaurant/retail space in two buildings and completion to the Authority's satisfaction of the surrounding a park or plaza, but completion does not require tenant finish or certificates of occupancy for the restaurant/retail space;
- (q) "Construction Documents" means the approved building plans, specifications and construction documents described in Section 6.03 and Exhibit C;
- (r) "Deeds" means the deed for Phase 3 and the deed for Phases 4 and 5.
- (s) "Default" and "Event or Default" means any occurrence specified and defined in Section 15;
- (t) "Developer Assignee" means the purchaser of the Phase 3 as described in Section 10.02(d);
- (u) "Development Plan" means the Redeveloper's concept for redevelopment of the Area as described in Section 6 and in Exhibit C;
- (v) "Design Development Documents" mean Developer's plans and related design documents for the Area as described in Section 6; the Development Plan and the Design Development Documents may be the same;

- (w) "Dry Cleaner Site" means that portion of Phase 4 noted as such on Exhibit A formerly operated as a dry-cleaning business and subject to environmental remediation;
- (x) "Easements" mean those certain easements described in Section 5.06;
- (y) "Escrow Agent" means Land Title Guarantee Company;
- (z) "Gas Station Site" means that portion of Phase 5 noted as such on Exhibit A formerly operated as a gas station and subject to environmental remediation;
- (aa) "Holder" means the owner of a Mortgage;
- (bb) "Improvements" means with respect to each Phase individually and not collectively, the Improvements described generally in Exhibit A;
- (cc) "Mortgage" means one or more mortgages or deeds of trust secured by the Area and obtained by the Redeveloper or a Developer Assignee;
- (dd) "Original Agreements" means together, Disposition and Development Agreement (the "DDA," incorporated herein by this reference) on or about November 4, 2015, for the redevelopment of certain property located within the Ralston Fields Urban Renewal Project Area for a mixed-use development, which DDA has been amended by the First Amendment to the DDA on or about October 20, 2016, the Second Amendment to the DDA on or about March 2, 2017, the Third Amendment to the DDA on or about May 3, 2017, the Fourth Amendment to the DDA on or about October 4, 2017, the Fifth Amendment to the DDA on or about October 3, 2018, the Sixth Amendment to the DDA on or about November 7, 2018, and the Seventh Amendment to the DDA on or about March 6, 2019; Eight Amendment to the DDA dated September 4, 2019; and the Ninth Amendment to the DDA dated \_\_\_\_\_, 2021 (the "Ninth Amendment");
- (ee) "Permitted Exceptions" mean those exceptions to title permitted under Section 4.02;
- (ff) "Phase 1" means that portion of the Property developed as The Shops at Ralston Creek, as addressed in and closed out by the Original Agreement, specifically pursuant to the Ninth Amendment;
- (gg) "Phase 2" means that portion of the Property conveyed to BH Ralston, LLC for a townhome development, as addressed in and closed out by the Original Agreement, specifically the Ninth Amendment and that certain Assignment and Assumption of DDA, dated February 22, 2021 ("Townhome Assignment"); provided, however, certain Phase 2 obligations are preserved in the Ninth Amendment and the Townhome Assignment and survive as set forth therein;
- (hh) "Phase 3" means that portion of the Property within the Area shown on Exhibit A for development as approximately 27 townhomes by a third-party developer (Developer Assignee) requiring issuance of a conditional use permit from the City;

- (ii) “Phase 4” means that portion of the Property within the Area shown on Exhibit A, including the former Dry Cleaner Site, for development by Redeveloper as approximately 186 market-rate apartment units in two buildings, requiring issuance of a conditional use permit from the City, including garden-level parking structures;
- (jj) “Phase 5” means that portion of the Property within the Area shown on Exhibit A, including the former Gas Station Site, for development by Redeveloper as approximately 5,500 square feet of restaurant/retail space in 2 buildings, surrounding a park or plaza, with a corner building at Ralston Road and Garrison Street containing a local or regional restaurant as required by Section 12.01(g);
- (kk) “Phase” or “Phases” means one or more of Phases 3 through 5. Unless explicitly stated otherwise, this Amended Agreement does not pertain to Phases 1 or 2 of the Property;
- (ll) “Plan” and “Urban Renewal Plan” means the Ralston Fields Urban Renewal Plan, as approved by the City Council of the City of Arvada by Council Bill 3832 on October 13, 2003, as said Plan may be amended from time to time;
- (mm) “Project” and “Urban Renewal Project” shall have the meaning set forth in CRS 31-25-103(10). The parties acknowledge and agree that undertakings and activities performed within the Area pursuant to this agreement do not constitute a “Project” within the meaning of the Act for the purposes stated or implied by the terms and provisions of HB 15-1348;
- (nn) “Property” means the real property used for Phases 1 through 5, as described in Exhibit A. The Property shall not include mineral, oil and gas subsurface rights, or water, well, ditch or any other tributary or nontributary water rights;
- (oo) “Purchase Price” means the amount specified in Section 4.01 of this Amended Agreement;
- (pp) “Redeveloper” or “RCN” means Ralston Creek North, LLC, a Colorado limited liability company and also includes any permitted successors and assigns as approved by the Authority or otherwise in accordance with this Amended Agreement;
- (qq) “Redeveloper’s Financing” means the financing required by Section 7.01;
- (rr) “Schedule of Performance” means **Exhibit C**, the schedule that governs the times for performance by the parties to this Agreement;
- (ss) “Site Plans” means the Redeveloper’s concepts for redevelopment of Phases 3 through 5;
- (tt) “Survey” means a survey, or any update thereof, described in Section 4.05;

- (uu) “Title” means the title to the specific Phase of Property subject only to the Permitted Exceptions;
- (vv) “Title Company” means Land Title Guarantee Company or such other title company as the parties may mutually agree upon; and
- (ww) “Zoning” means the approved zoning for the specific Phase of the Property as described in the City’s Land Development Code and as denoted in the zoning maps of the City of Arvada, as such may from time to time be amended.

## SECTION 2. PURPOSE

2.01 The purpose of this Amended Agreement shall be the same as that of the Original Agreements as originally approved by the Parties, to wit: to further the goals and objectives of the Act and the Plan. More specifically, as a result of continued cooperation between the Parties, and because of Redeveloper’s successful efforts in Phases 1 and 2, the Authority is willing to convey property within the Area to Redeveloper (or Developer Assignee in the case of Phase 3) in exchange for Redeveloper’s assistance in the completion of Phase 3 and Redeveloper’s completion of Phases 4 and 5 in accordance with this Amended Agreement. Except as expressly preserved by the Ninth Amendment, this Amended Agreement amends, restates and supersedes in its entirety the Original Agreements by updating, approving and ratifying the various terms of the Original Agreements and by taking into consideration the conditions and developments that have occurred since the approval of the Original Agreements. The Authority has determined that the undertakings and activities described or provided for herein, and the redevelopment of the Area in particular, as described in this Amended Agreement is consistent with and conforms to the Plan and the public purposes and provisions of the Act. Accordingly, the Redeveloper and the Authority wish to enter into this Amended Agreement.

2.02 The Parties acknowledge, restate and incorporate Section 4.09 of the DDA, which contemplated the addition of parcels or lots located within or in proximity to the Area to the development. As stated in the DDA:

“The Authority and Redeveloper agree to work together to negotiate the terms and conditions of additional property acquisitions that enhance the development or are necessary for its completion. The terms and conditions of this Agreement may be amended to add additional property to the Area without constituting a change to the Plan or the Project as such terms are defined herein, it being agreed by the parties that such additional property interests are contemplated as improvements, enhancements or requirements for completing the activities and undertakings that are the subject of this Agreement.”

## SECTION 3. AUTHORITY’S OBLIGATIONS

3.01 The Authority has determined Redeveloper’s efforts and plans are consistent with and conforms to the Plan and the public purposes and provisions of the Act. Accordingly, the Authority agrees to contribute financially to Redeveloper’s completion of Phases 4 and 5 in accordance with this Amended Agreement by making a total funding contribution of in the amount of \$14,993,989.00 (the “Total Contribution”), payable to Redeveloper as follows:

3.02 The Authority shall place the Total Contribution in an escrow account (the “Escrow Account”) on the following schedule: \$13,000,000.00 shall be deposited in the Escrow Account at the Closing for Phases 4 and 5 and \$1,993,989.00 shall be deposited in the Escrow Account no later than January 31, 2023. The Total Contribution shall be released from the Escrow Account to Redeveloper according to the terms of a mutually acceptable form of escrow agreement.

3.03 The Authority agrees that the Total Contribution must be viewed as equity by Redeveloper’s construction lender for Phases 4 and 5 and agrees that the escrow agreement may contain terms necessary to reflect any requirements of Redeveloper’s construction lender relating to the same. Subject to such reasonable terms and conditions as may be agreed to by the Authority with Redeveloper’s construction lender, the Authority shall be entitled to withdraw escrowed funds upon termination of this Amended Agreement pursuant to Section 14 herein or in the event of Redeveloper’s default as described in Section 15 herein.

#### SECTION 4 CONVEYANCE TO REDEVELOPER; TITLE; CLOSING

4.01 Conveyance of Property. In accordance with the terms and conditions of this Amended Agreement, the Authority shall convey the Area to Redeveloper and Redeveloper shall take Title to the Area in two stages: the Phase 3 conveyance and the Phases 4 and 5 conveyance. In consideration of the extraordinary costs of redevelopment of the Area, the Authority agrees that it shall convey the Area to Redeveloper at a discounted price of \$1,097,300.00, and the Parties acknowledge Redeveloper’s prior contribution in the amount of \$1,097,257.00, received by the Authority on May 31, 2017, which amount shall serve as a credit toward the Purchase Price. The remaining Purchase Price shall be delivered at the Closings, divided equally between the Phase 3 conveyance and the Phases 4 and 5 conveyance. The Parties also acknowledge as part of the Purchase Price, Redeveloper’s ongoing cooperation with the Authority, other good and valuable consideration, the enhancements to the Area, and the scope of the undertakings and activities necessary to redevelop a developed urban site into the desired development envisioned by the Authority and agreed to by Redeveloper.

- (a) Closing for the Phase 3 conveyance shall occur after the Authority’s approval of a Developer Assignee and Developer Assignee’s receipt of building permits allowing Commencement of Phase 3 Construction.
- (b) Closing for the Phases 4 and 5 conveyance shall occur following Redeveloper’s receipt of a construction loan for Phase 4, but not before January 1, 2022.

4.02 Condition of Title. At the respective Closings, the Authority shall convey to the Redeveloper fee simple merchantable title to and possession of the Phase 3 and the Phases 4 and 5 free and clear of all liens, defects, encumbrances and other matters of record, except the following, which shall constitute Permitted Exceptions: (1) liens, defects or encumbrances approved in writing by the Redeveloper pursuant to Section 4.07; (2) taxes, if any, for the year of the Closing not yet due and payable; (3) the Notice of Environmental Use Restriction, and any other use restrictions, described in Section 5.02; and (4) any other item or items listed in any Commitment and all conditions disclosed in the reports referenced in Exhibit D hereto. Such title, including the

Permitted Exceptions, is sometimes called "Title" in this Amended Agreement. Title or Condition of Title shall apply separately to the Phases of the Property.

4.03 Types and Form of Deeds. Title shall each be conveyed by bargain and sale deed based on the legal descriptions contained in the subdivision plat to be prepared prior to Closing. The Permitted Exceptions for each deed shall be determined in accordance with Section 4.02 and the Parties shall otherwise agree on the final forms of the Deeds.

4.04 Closing. The Parties understand and agree that there shall be separate Closings for Phase 3 and the Phases 4 and 5. Provided that the conditions precedent recited in Section 4.01 shall have first been satisfied or waived by the Party benefiting therefrom, and if the Redeveloper is not in Default under Section 15, each Closing shall take place on or before the dates for the Closings specified in the Schedule of Performance at the office designated by the Authority, unless the Parties agree otherwise in writing. At both of the Closings, the following shall occur, each being a condition precedent to the others and all being considered as occurring simultaneously:

- (a) The Authority shall deliver the following on or before the Closing Date to the Title Company to be held in escrow and delivered to the Redeveloper at Closing. The Authority shall deliver one (1) original, unless otherwise provided below:
  - (i) The Deed for the Phase of the Property in question, duly executed and acknowledged, conveying fee simple title to the Property to the Redeveloper;
  - (ii) An affidavit, in form reasonably acceptable to Redeveloper, stating (1) the Authority's United States taxpayer identification number for federal income tax purposes; and (ii) that the Authority is not a "foreign person" with the meaning of Section 1445, et seq., of the Internal Revenue code of 1986, as amended;
  - (iii) A Colorado Form DR-1083, duly executed; and
  - (iv) An approved settlement sheet and all such other documents as may be reasonably necessary or desirable to consummate the transaction contemplated herein.
- (b) The Redeveloper shall deliver the following on or before the Closing Date to the Title Company to be held in escrow and delivered to the Authority at Closing. The Redeveloper shall deliver three (3) original, unless otherwise provided below:
  - (i) The Purchase Price;
  - (ii) An approved settlement sheet and all such other documents as may be reasonably necessary or desirable to consummate the transaction contemplated herein.
- (c) Following each respective Closing, the Title Company shall record the Deed in the real property records of Jefferson County, Colorado against the appropriate real

property. Upon recording, the Title Company shall deliver a conformed copy of the recorded documents to each party. The Redeveloper shall pay the costs of such recording, including the documentary fee. The Title Company shall deliver the original recorded documents to the appropriate party once they are available.

4.05 Survey. The Redeveloper, in accordance with the Schedule of Performance, shall obtain and pay for an ALTA survey of the Area (the "Survey") for the use by the Title Company in connection with the issuance of the Title Policy in accordance with Section 4.07. Copies of the Survey or any material revisions thereof shall be provided to the Authority and the City as soon as they become available to the Redeveloper.

4.06 Title Insurance. The Authority has obtained an ALTA commitment for title insurance issued by the Title Company and covering the Area together with copies of all documents affecting title referenced therein (collectively, the "Commitment") and has shared it with Redeveloper. Redeveloper acknowledges it has had ample opportunity to review the Commitment, has no objections, and finds it to be satisfactory. To the extent Redeveloper will require an updated Commitment prior to Closing, it shall be Redeveloper's responsibility to obtain it at its own cost.

4.07 Title Policy. At the Phase 3 and Phases 4 and 5 Closings, the Title Company shall issue or be committed to issue to Redeveloper in form acceptable to Redeveloper an ALTA Extended Coverage Owner's Policy of Title Insurance with the liability in the amount to be determined by Redeveloper subject only to the Permitted Exceptions. The Authority shall be responsible for the cost of such policy up to the appraised price of the respective Phase or Phases of the Property. Any additional coverage and any additional endorsements requested by Redeveloper beyond the usual and customary endorsements shall be at the cost of Redeveloper.

4.08 Apportionment of Current Taxes. Property taxes, if any, on the applicable Phase or Phases of the Property shall be prorated to the dates of Closing. If the amount of the current taxes is not available from the Jefferson County Assessor, the apportionment between the Authority and the Redeveloper shall be based upon the reasonable estimate of the Title Company and shall be finally pro-rated as soon as practicable after Closing.

## SECTION 5. CONDITION OF PROPERTY

5.01 Condition. Except for the obligations of the Authority described below, the Redeveloper shall accept the Area in its "as is" condition. Redeveloper has full knowledge and understanding of the conditions on the Area as described in the various reports referenced in Exhibit D to this Amended Agreement, all of which reports Redeveloper has received and reviewed at length. Redeveloper has had access to the Area, except for the Gas Station Site, since entering into the Original Agreements in 2015 and has had the right to make inspections and investigations since then, as it has deemed appropriate. The remaining obligations of the Authority relating to the condition of the Area are as follows:

- (a) The Authority shall complete and pay for demolition and clearing of the Area to accommodate Phases 3 through 5.

- (b) The Authority shall pay for and complete the environmental abatement and remediation necessary to address the Dry Cleaner Site as identified and described in the VCUP referenced in Exhibit D.

5.02 Development Constraints. The Parties acknowledge that portions of the Area are impacted by Hazardous Substances as described in the reports identified in Exhibit D. The Authority has agreed to conduct certain cleanup and remediation activities, as described below, on the Dry Cleaner Site and the Gas Station Site to address releases of Hazardous Substances on the Area, such cleanup and remediation to be in compliance with Applicable Environmental Laws. As used herein, the term “Applicable Environmental Laws” means any local, state, or federal law, rule, or regulation, pertaining to environmental regulation, contamination, cleanup, or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. § 9601, et seq.), the Resource, Conservation and Recovery Act, as amended, (42 U.S.C. § 6901, et seq.), Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613), the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 1101, et seq.), and all amendments of the foregoing, or any state superlien or environmental clean-up or disclosure statutes. In addition, the term “Hazardous Substances” means all substances and materials that are included under or regulated by any Applicable Environmental Law, together with asbestos, polychlorinated biphenyls, petroleum, and raw materials that include hazardous constituents.

- (a) As to the Dry Cleaner Site, the Authority has completed remediation and cleanup activities as described in the VCUP Partial Completion Report and No Action Determination Petition referenced in Exhibit D, is in the process of completing a Notice of Environmental Use Restriction to be recorded as an encumbrance on the Dry Cleaner Site and has requested a No Action Determination from the Colorado Department of Public Health and Environment ("CDPHE") Voluntary Cleanup Program. The Authority will complete the Notice of Environmental Use Restriction and will continue to pursue the No Action Determination. Redeveloper acknowledges that the Notice of Environmental Use Restriction, substantially in the form shown in **Exhibit E**, will be recorded as an encumbrance on the Dry Cleaner Site and that it constitutes a Permitted Exception.
- (b) As to the Gas Station Site, ongoing remediation and cleanup efforts are being conducted by Palmetto Environmental Group, LLC, on behalf of the Colorado Division of Oil and Public Safety (“OPS”) pursuant to a “state-led” cleanup under C.R.S. § 8-20.5-101, et seq., as described in the Monitoring and Remediation Report dated October 2, 2020, listed on Exhibit D. The OPS cleanup may extend beyond the Closing Date for Phase 5. The Authority has no obligation to assure completion of the OPS cleanup, however, prior to Closing on Phase 5, the Authority will provide OPS and its contractor reasonable access to the Gas Station Site for the purpose of performing remediation and cleanup activities. Redeveloper acknowledges that, even when such remediation and cleanup activities are complete, residual Hazardous Substances may remain on or within the Gas Station Site and that use restrictions may be placed on the Gas Station Site that impact Phase 5.

- (c) Redeveloper is willing to accept the risk of redeveloping the Area generally, and the Dry Cleaner and Gas Station Sites specifically, according to these existing constraints and acknowledges the Authority shall have no further obligation to mitigate or remediate, except as set forth in Sections 5.01 and 5.02.

5.03 Access to Area. The Authority hereby grants Redeveloper access to the Area for the purposes of inspecting and investigating the physical and environmental condition of the Area and the suitability thereof for Redeveloper's intended purpose (the "Inspections"). The Authority shall cooperate and provide access to personnel with knowledge of and documents (including those identified in Exhibit D) pertinent to the past use and environmental condition of the Area. The Inspections may include, without limitation, obtaining data, collecting information, conducting soils and seismic tests, conducting engineering studies, undertaking environmental surveys and audits (including without limitation, surface and subsurface test, borings, samplings and measurements) and conducting other tests and surveys reasonably required for the construction of the Improvements or reasonably related to the proposed use of the Area, all at Redeveloper's expense. The Redeveloper shall be the contracting party with any consultants retained pursuant to the Inspections, and shall deliver or have cause to be delivered, copies of all reports of any Inspections to the Authority promptly upon any Inspections report to or receipt by Redeveloper.

5.04 Zoning, Permits and Approvals. Redeveloper has familiarized itself with the current land use restrictions, codes, and zoning, which zoning is deemed adequate to accommodate the Improvements proposed by Redeveloper. Redeveloper (or Developer Assignee in the case of Phase 3) intends to request approval from the City for a Conditional Use Permit ("CUP") allowing residential uses on Phases 3 and 4 of the Property. If the CUP is denied, or the zoning, the Plan or other land use and building provisions change prior to the Closing and such change adversely impacts the Phases or the Property as whole, or Redeveloper's intended development thereof, then Redeveloper may terminate this Agreement pursuant to Section 5.05. Redeveloper shall process and obtain all building permits for the Improvements in accordance with the Schedule of Performance.

5.05 Termination Rights relating to Phases. If, prior to Commencement of Construction on Phase 3, Phase 4 and Phase 5 of the Property, Redeveloper terminates the Amended Agreement because of a condition affecting one Phase of the Property, the Authority shall have the option, in its sole and absolute discretion, to terminate this Amended Agreement without default as such applies to all of the Area. If Redeveloper has Commenced Construction on any of Phase 3, Phase 4 or Phase 5 of the Property but terminates this Agreement as to another Phase(s) because of a condition set forth in Section 14, Redeveloper shall have the right to terminate this Agreement only as to the Phase(s) on which construction has not commenced, and Redeveloper shall continue redevelopment of the Phase(s) on which Redeveloper has already Commenced Construction.

5.06 Easements. It shall be the Redeveloper's obligation to obtain necessary construction and permanent easements, if any shall be required, permitting the Improvements to be constructed on the Phases of the Area. The locations and dimensions of such easements shall be shown in the subdivision plat. The legal documents creating such easements shall be subject to review and approval by the Authority prior to execution. The Authority agrees to provide reasonable assistance to the Redeveloper in obtaining such easements, if any.

5.07 Property Information. The Authority has delivered to Redeveloper in accordance with the Schedule of Performance copies of any studies, reports, surveys, assessments, utility maps, soils, groundwater, soil gas, engineering, environmental or geotechnical studies or reports pertaining to the Property or similar documents or materials relating to the Property or any contemplated development of the Property.

## SECTION 6. SITE PLANS AND RELATED DOCUMENTS; REVIEW PROCEDURE

6.01 Site Plans. Redeveloper has submitted to the Authority concept plans for all Phases of the Property, and the Authority acknowledges and agrees that it has approved in concept Phases 4 and 5. The concept plans are shown on Exhibit A. It shall be the Redeveloper's responsibility to obtain City approvals as necessary for all Phases consistent with the concept plans. The Authority will provide such reasonable assistance as Redeveloper may request to obtain necessary City approvals. The Parties acknowledge that the Redeveloper has submitted an application for a Conditional Use Permit for Phases 3 and 4 for City Council approval and will submit a Site Plan to the City for Phases 4 and 5 approvals after receiving CUP approval. The Parties acknowledge and agree that the development of the Phases will occur in phases, and that the provisions of this Section 6 may occur separately for the details of redevelopment plans for the respective Phases. However, in the event any Phase is developed subsequent to another Phase, Redeveloper will provide for integration and consistency among the Phases. The Parties acknowledge the phased development of the Area may require modifications and changes not originally contemplated in the Design Development Documents and shall use good faith and reasonable judgment in proffering or approving adjustments or modifications to the Design Development Documents as a result of altered conditions or circumstances.

6.02 Design Development Documents. In accordance with the Schedule of Performance, the Redeveloper shall prepare and submit to the Authority and the City the Design Development Documents.

6.03 Construction Documents. In accordance with the Schedule of Performance, the Redeveloper shall submit Construction Documents to the City, with notice and copies of the same provided to the Authority.

6.04 Approval; Changes. Redeveloper shall submit to the Authority the Development Plan, the Design Development Documents and the Construction Documents for each phase in accordance with the Schedule of Performance. If such documents conform with the approved Site Plans, the Authority shall promptly approve or reject them in writing in accordance with the Schedule of Performance. The Authority's approval of the Development Plan, the Design Development Documents and the Construction Documents shall not be unreasonably withheld, conditioned or delayed. If the Authority rejects in writing the Development Plan, the Design Development Documents or the Construction Documents, it shall do so within thirty (30) days of submission and the notice of rejection shall specify the reasons for such rejection. After thirty (30) days following submission, if not rejected, the submission shall be deemed approved. If approved or deemed approved, no further approval by the Authority shall be required except for any material change in the Development Plan, the Design Development Documents or the Construction Documents, as the case may be. If the Redeveloper desires to make any material change in the approved Site Plans, the Redeveloper shall submit the proposed changes to the Authority and the

City, if appropriate, for approval. The Authority's approval of material changes to the Site Plans shall not be unreasonably withheld, conditioned or delayed.

If the Authority timely rejects in writing material changes to the Site Plans, the notice of rejection shall specify the reasons for such rejection. The schedule for review of the any reviews or submittals required by the City shall be governed by City Codes, 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 review. The construction of the Improvements shall conform with the Site Plans as approved by the Authority and the City as applicable. If the Redeveloper desires to make any changes to the Site Plans, such changes shall be governed by City Codes, ordinances and procedures.

6.05 Ancillary Documents. If any CC&Rs, Reciprocal Easement Agreements or similar documents are required to be approved prior to Closing or must be agreed to as a condition of approval of any plan by the City, the Parties covenant and agree to use their commercially reasonable best efforts to negotiate and agree to the form of such documents. In the event a Closing does not occur, or this Amended Agreement is terminated, the Parties agree to execute estoppel or release documents terminating the provisions of any such documents that burden or otherwise encumber any of the respective properties.

## SECTION 7. FINANCING AND CONSTRUCTION OF IMPROVEMENTS

7.01 Redeveloper's Financing. At the time specified in the Schedule of Performance, Redeveloper shall submit to the Authority evidence reasonably satisfactory to the Authority that Redeveloper has obtained Redeveloper's Financing in an amount sufficient to construct the Improvements in the applicable Phase. In addition, Redeveloper or the Authority, as the case may be, shall deposit the proceeds from the sale of Phase 3 to Developer Assignee into the Escrow Account.

7.02 Financing Alternatives. The Redeveloper may submit alternative plans to finance the undertaking and activities described in this Amended Agreement, provided the plan is approved by the Authority, and the limitations on the amounts available, sources, uses, duration and obligations of the Authority described in this Section 7 are provided for in such alternatives.

7.03 Covenants to Commence and Complete Construction. The Redeveloper shall undertake Commencement of Construction of the Improvements and achieve Completion of Construction within the time period specified in the Schedule of Performance. The covenants regarding such construction and completion shall be recorded contemporaneously with the Deeds and shall run with the land for the benefit of the Authority. The Certificate of Completion when issued for the Phase of the Property, or a portion thereof, shall contain a release of the foregoing covenants and a statement that compliance with the foregoing has occurred.

7.04 Progress Reports. After the Closing and until Completion of Construction, the Redeveloper shall make quarterly reports to the Authority describing the actual progress of the Redeveloper with respect to construction of the Improvements. In addition, Redeveloper shall permit a representative from the Authority to attend Redeveloper's construction meetings and shall give reasonable notice of such meetings to the Authority.

7.05 Threshold Agreement. The purpose of this Threshold Agreement is to protect the Authority's financial investment if Redeveloper sells the assets for a “windfall” return within five years of obtaining certificates of occupancy for Phase 4, and within five years of obtaining certificates of completion for Phase 5. Upon Redeveloper's sale of both Phase 4 and Phase 5, the Parties shall cooperate with the Authority's financial consultant, Economic & Planning Systems (EPS), or its successor, who shall analyze for each sale all project cash flows, including without limitation construction costs, net operating income, townhome land sales revenue, Authority contributions, including the monetary value of the environmental remediation and any cash contributions, and Redeveloper's revenue generated by the sale. EPS will determine the unlevered IRR of the sale(s). Under a windfall sales scenario, a unlevered IRR below 10.5% on Phase 4 will allow Redeveloper to keep all sales proceeds. On Phase 5, a unlevered return below 11.5% will allow Redeveloper to keep all sales proceeds.

An unlevered IRR above 10.5% on Phase 4 shall require Redeveloper to repay the Authority a portion of its initial investment in the Project. The proceeds above 10.5% shall be split between Redeveloper and the Authority at 70% and 30% respectively.

An unlevered IRR above 11.5% on Phase 5 shall require Redeveloper to repay the Authority for a portion of its initial investment in the Project. The proceeds above 11.5% shall be split between Redeveloper and the Authority at 70% and 30% respectively.

## SECTION 8. CERTIFICATE OF COMPLETION

8.01 Completion of Construction. Promptly after receipt of written notice from the Redeveloper of any Phase of Construction, the Authority will furnish the Redeveloper with a Certificate of Completion applicable thereto. A Certificate of Completion shall only be furnished for a portion of the Improvements that allows for a certificate of occupancy for completed construction on a separate platted lot of record (a “Subdivided Parcel”). No such Certificate of Completion may be furnished for less than a Subdivided Parcel. Such Certificate shall operate as conclusive satisfaction of the covenants in this Amended Agreement regarding the obligation of the Redeveloper to construct the portion of the Improvements. Upon completion of all of the Improvements, the Authority will furnish the Redeveloper or Developer Assignee with a Final Certificate of Completion, which shall operate as conclusive satisfaction of the covenants in this Amended Agreement to construct all of the Improvements, and which shall constitute a release of all such Subdivided Parcels from the terms, covenants and conditions of this Agreement, save and except Redeveloper’s duties under Section 7.05 in the case of a windfall, and the Final Certificate of Completion shall so state.

8.02 Recordation and Notice. Each Certificate of Completion shall be in such form as will enable it to be recorded. If the Authority shall refuse or fail to provide any Certificate of Completion, the Authority shall within fourteen (14) calendar days provide the Redeveloper with a written statement indicating in what respect the Redeveloper is deficient and what measures or acts will be necessary, in the reasonable opinion of the Authority, for the Redeveloper to take or perform in order to obtain such Certificate. Provided however, that issuance of the final unrestricted certificates of occupancy from the City for the Phase 3 townhomes and the Phase 4 apartments shall

be conclusive evidence of the Completion of such Phases, and issuance of certificates of completion from the City for Phase 5 retail shall be conclusive evidence of the Completion of Phase 5.

## SECTION 9. INSURANCE; INDEMNIFICATION

9.01 Insurance. At all times while the Redeveloper is engaged in preliminary work on the Area or adjacent streets and during the period from the Commencement of Construction until Completion of Construction, the Redeveloper, upon request, will provide the Authority with proof of payment of premiums and certificates of insurance showing that the Redeveloper is carrying comprehensive general liability and worker's compensation insurance in an amount not less than Two Million Dollars (\$2,000,000.00). Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice to the Authority in the event of cancellation or change in coverage and shall name the Authority as an additional insured specifying that the insurance shall be treated as primary insurance.

9.02 Indemnification. The Redeveloper shall defend, indemnify, assume all responsibility for and hold the Authority, its officers and employees harmless from all claims or suits for and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), that are caused by any of the Redeveloper's construction activities under this Amended Agreement or while making the Inspection on any of the Area then owned by the Authority, whether such activities are undertaken by the Redeveloper or anyone directly or indirectly employed or under contract to the Redeveloper and whether such damage shall accrue or be discovered before or after termination of this Amended Agreement. Such indemnification shall not cover any claims, demands, liabilities, liens, judgments, costs or expenses, including, without limitation, reasonable attorneys' fees and disbursements which are attributable to: (i) preexisting adverse conditions affecting the Area, including conditions of environmental contamination, unless the conditions are disclosed by reports in Exhibit D, (ii) the negligence or willful and wanton conduct of the Authority or the City, or (iii) Redeveloper's discovery of any information not reasonably discoverable during the Inspection that is determined to have a negative impact on the Authority, the City or the Property (including, without limitation, any claims arising out of, resulting from or incurred in connection with the discovery of any Hazardous Substances on or about the Area). Such indemnification shall survive the Closing or termination of the Amended Agreement.

## SECTION 10. REPRESENTATIONS AND WARRANTIES

10.01 Representations and Warranties by the Authority. The Authority represents and warrants that:

- (a) The Authority is an urban renewal authority duly organized and existing under applicable law. The Authority has the power to enter into and has taken all actions required to authorize this Amended Agreement and to carry out its obligations hereunder;
- (b) This Amended Agreement and the documents to be delivered by the Authority hereunder are valid and binding obligations of the Authority, enforceable by and against the Authority in accordance with their terms;

- (c) There are no actions, suits, litigation or proceeding, including condemnation proceedings, pending or, to the Authority's actual knowledge, threatened which would or might materially adversely affect the Area or affecting the right, authority or posers of the Authority or its officials with respect to the Project or the obligations of the Authority pursuant to this Agreement, in any court or before any governmental authority, domestic or foreign. Nothing herein shall be deemed a waiver, forbearance, limitation, restriction or delegation by the Authority of its right or authority to lawfully exercise its power of eminent domain with respect to the Area.
- (d) Except as disclosed by the reports referenced in Exhibit D hereto, the Authority has received no notice of any violation of any applicable federal, state or local laws, rules or ordinances affecting the Area or the use, occupancy or ownership thereof, including, without limitation, violation of the zoning, building, health, toxic and hazardous waste, environmental and other laws, codes, ordinances, regulation, order and requirements of any city, county, state, federal or any other governmental authority having jurisdiction.
- (e) The Authority knows of no special assessments, use or occupancy restriction (except those generally applicable throughout the tax district in which the various properties are located), or traffic impact fees or charges or restriction under unrecorded agreements;
- (f) Except as disclosed to Redeveloper pursuant to Section 5 and Exhibit D hereof, the Authority has no knowledge of the presence of Hazardous Substances on or beneath the Area in excess of the legally actionable levels;
- (g) There are currently no other contracts between the Authority and any third party for the sale of any portion of the Area pending, nor do there exist any rights of first refusal or options between the Authority and any third party to purchase any portion of the Area;
- (h) The Authority will use its best commercial efforts to provide complete copies of all documents that it is required to make available to Redeveloper pursuant to this Amended Agreement. The Authority has no knowledge of any error, misrepresentation or inconsistency in any of the documents it has delivered or will deliver pursuant to this Amended Agreement, and all material facts known to the Authority adversely affecting the Area have been, to the best of the Authority's ability, disclosed to Redeveloper; and
- (i) The execution and delivery of this Amended Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Amended Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Authority or to the Authority's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Authority is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or

instruments or to accelerate the maturity of any indebtedness or other obligation of the Authority.

10.02 Representations and Warranties by the Redeveloper. The Redeveloper represents and warrants that:

- (a) The Redeveloper (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado; (ii) is qualified to do business wherever such qualification is required by law; and (iii) has the right, power, legal capacity and the authority to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto. The execution and delivery of this Amended Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Amended Agreement and such documents and such performance and observance are valid and binding upon the Redeveloper;
- (b) The execution and delivery of this Amended Agreement the documents required hereunder and the consummation of the transaction contemplated by this Amended Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Redeveloper or the Redeveloper's governing documents; (ii) result in the breach of any of the terms or provisions of, or constitute a default under, any agreement or other instrument to which the Redeveloper is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the Redeveloper;
- (c) There are no actions, suits, litigation, or governmental investigations or proceedings pending or, to the Redeveloper's actual knowledge, threatened which would or might materially adversely affect the right, authority or powers of Redeveloper to carry out its obligations under this Amended Agreement, in any court or before any governmental authority, domestic or foreign; and
- (d) The Redeveloper has or will identify a Developer Assignee, subject to approval by the Authority, having the necessary financial and legal ability to perform the obligations related to Phase 3 as set forth in this Amended Agreement. The Authority agrees that if Redeveloper determines that it is advantageous (for tax purposes or otherwise) for Authority to convey Phase 3 directly to Developer Assignee and deposit the proceeds in the Escrow Account, the Authority will do so; provided, however, Redeveloper's right to the proceeds depends on Redeveloper fulfilling its role as master developer by effectively marketing the property, vetting and recommending potential developer assignees.

## SECTION 11. COVENANTS; RESTRICTIONS ON USE

11.01 The Redeveloper agrees the Deeds shall require that the Redeveloper and its successors and assigns:

- (a) Devote the Area to the uses specified in this Amended Agreement and the Urban Renewal Plan as the same exists at the Closings; and
- (b) Not discriminate upon the basis of race, color, religion, sex or national origin in the sale, lease or rental or in the use or occupancy of the Area or any of the Improvements located or to be erected thereon.

11.02 It is understood and agreed, and the Deeds shall so expressly provide, that the covenants provided in this Section 11.01 shall be covenants running with the land for the benefit of, and enforceable by, the Authority and its successor public bodies. It is further intended and agreed that the covenants provided in Sections 11.01 shall remain in effect from the date of the Deed until October 31, 2028.

11.03 Covenants of Authority. Until the Closings provided in this Amended Agreement, the Authority shall make no material adverse change to the physical condition of any portion of the Area then owned by the Authority and cause no material waste to occur thereon. In addition, the Authority shall pay or cause to be paid all charges, bills, and invoices for utilities, labor, goods, materials and services of any kind related to the any portion of the Area then owned by the Authority that were not contracted for by Redeveloper during such period. The risk of loss or damage to the any portion of the Area then owned by the Authority by fire or other casualty or cause beyond the Authority's control (collectively, "Damage") in advance of the Closing Date shall be borne by the Authority. In the event of material Damage, as determined by Redeveloper in Redeveloper's reasonable discretion and acting in good faith, Redeveloper shall have the option to terminate this Amended Agreement, in which event this Amended Agreement shall terminate and the Parties shall be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof.

## SECTION 12. RESTRICTIONS ON ASSIGNMENTS AND TRANSFER

12.01 Restrictions Against Transfer of Property or Improvements and Assignment of Agreement.

The Redeveloper agrees that:

- (a) Redeveloper shall not make, create, or suffer to be made or created, any transfer or assignment of this Amended Agreement without the prior written approval of the Authority, which approval shall not be unreasonably withheld, conditioned or delayed. For the purposes of this Amended Agreement, transfer shall include any transfer of equity interests in Redeveloper to one or more third parties not currently owners of Redeveloper unless Redeveloper remains managed or controlled, directly or indirectly, by the current members or managers of Redeveloper, or by a parent corporation without the prior written approval of the Authority.

- (b) Notwithstanding the foregoing or anything else set forth herein, Redeveloper is authorized to transfer and, in fact, shall transfer and assign obligations related to Phase 3 to a third-party developer, reviewed and approved in advance by the Authority, who shall purchase Phase 3 from Redeveloper in an arms-length transaction (the “Developer Assignee”). Developer Assignee shall acknowledge in writing the requirements of this Amended Agreement, including without limitation the Authority’s right to re-purchase Phase 3 as set forth in Section 15.05.
- (c) Following approval by the Authority, any assignee of Redeveloper’s rights, duties and obligations under this Amended Agreement shall assume in writing all of the duties imposed by this Amended Agreement. Upon such assumption, Redeveloper shall be released from any and all liability under this Amended Agreement.
- (d) Notwithstanding anything in this Amended Agreement to the contrary, Redeveloper (and any Developer Assignee) shall have the right to assign or transfer this Amended Agreement or the rights herein without the consent of the Authority to an affiliate of Redeveloper provided that such affiliate is substantially owned, managed or controlled, directly or indirectly, by Redeveloper, or the members or managers of Redeveloper, and further provided that the assignee or transferee has the legal and similar or greater financial ability than Redeveloper to perform all duties and obligations under this Amended Agreement, and assumes all such duties and obligations. Provided however, any assignment or transfer of all or any portion of this Amended Agreement shall not relieve Redeveloper or any assignee of any obligation or duty hereunder, and any such transfer or assignment which has as its purpose or effect the elimination, reduction or curtailment of any duty or obligation arising hereunder shall be deemed null and of no effect. Anything in this Section to contrary notwithstanding, no transfer or assignment by Redeveloper shall be permitted which extends or enlarges any duty or obligation of the Authority, or which assignment or transfer adversely affects the rights, interests or prerogatives of the Authority under this Amended Agreement. No assignment or transfer shall be effective or binding upon the Authority unless and until the Authority has received Notice as provided in this Amended Agreement of Redeveloper’s assignment or transfer of the Amended Agreement, or any part thereof.
- (e) In the anticipated event of a sale of Phase 3 to an approved Developer Assignee, Redeveloper shall notify the Authority and provide written notice to Developer Assignee of its obligations under the Amended Agreement.
- (f) Effective upon delivery of a deed conveying Phase 3 to a Developer Assignee, all obligations related to Phase 3 as set forth in this Amended Agreement, including without limitation the Authority’s remedies and its right to repurchase Phase 3 as set forth in Section 15.05 below, shall apply to the Developer Assignee. This Amended Agreement shall apply to the Developer Assignee only to the extent it relates to the property conveyed to the Developer Assignee. Upon the Developer Assignee expressly assuming in writing the obligations set forth herein, Redeveloper shall be released from all remaining liability under this Amended Agreement with respect to Phase 3 except as to Section 9.02 as it relates to any claims or liabilities occurring

prior to such date as Phase 3 was owned by the Developer Assignee. Should Redeveloper exercise a right of repurchase with regard to any property conveyed to a Developer Assignee, Redeveloper shall be considered a Developer Assignee with regard to such property.

- (g) Regarding Phase 5, Redeveloper shall make commercially reasonable efforts to lease restaurant space to a local or regional restaurant for the first 10 years following issuance of a Certificate of Completion for Phase 5 and shall use commercially reasonable efforts to ensure a national restaurant franchise does not locate within Phase 5 for that period of time. The Parties acknowledge this provision shall survive beyond Closing and beyond the Authority's issuance of a Certificate of Completion for Phase 5.

12.02 Freely Transferable. Upon receipt of a Certificate of Completion for the Improvements or any part of the Improvements, such Improvements together with the property underlying the Improvements shall be freely transferable with no additional Authority approval required.

12.03 Information as to Interest Holders. During the period between execution of this Amended Agreement and the delivery of the Final Certificate of Completion, the Redeveloper shall promptly notify the Authority of any and all changes in the majority of the ownership interest, legal or beneficial, in the Redeveloper, or of any change in the majority control of such interests (including shares of stock, if applicable, in the Redeveloper), except as to those transfers permitted under Section 12.01(d).

## SECTION 13. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

13.01 Limitation Upon Encumbrance of Property. Prior to the delivery of a Certificate of Completion for the applicable Phase, Redeveloper shall not engage in any financing or any other transaction creating any mortgage, deed of trust or other encumbrance or lien upon such applicable portion, whether by agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to such applicable portion, except for the purpose of obtaining Redeveloper's Financing, in which event the Redeveloper's Financing may be secured by a first priority Mortgage on the Area or such applicable portion. Notice of any Mortgage together with name and address of any Holder or successor Holder thereof, shall be given by the Redeveloper to the Authority within ten (10) days of such action or any change.

13.02 Right to Cure. If any Holder provides written notice to the Authority with its name and address, the Authority shall provide (concurrently with delivery to Redeveloper) such Holder with a copy of any Default Notice by nationally recognized overnight courier at the most recent address provided to the Authority for such Holder. Notwithstanding the provisions of this Amended Agreement, the Holder of any Mortgage authorized by this Amended Agreement, including a Holder who obtains title to all or part of the property as a result of foreclosure proceedings, or action in lieu thereof (but not including any other party who acquires title to the Area at or after a foreclosure sale), shall not be obligated by this Amended Agreement to construct or complete the Improvements; provided, that nothing in this Amended Agreement shall permit a Holder to devote any part of the

Area to any uses or to construct any improvements thereon, other than those uses or improvements permitted in the Plan and this Amended Agreement.

#### SECTION 14. TERMINATION

14.01 Redeveloper's Option to Terminate Prior to Closing. Prior to Closing on any Phase, Redeveloper shall have the right to terminate this Amended Agreement if, within the times established in the Schedule of Performance, as may be extended by agreement of the Parties, any of the following occurs:

- (a) The City fails to grant any necessary approvals or issue building permits or licenses or other necessary entitlements after the Redeveloper properly applies for the same;
- (b) If the Redeveloper is not in Default, the Authority does not deliver Title to and possession of all or portions of the Area as required by this Amended Agreement;
- (c) The Title Company fails to be irrevocably committed to issue the Title Policy at a Closing;
- (d) Changes in zoning, the Plan, the Act or other land use and building provisions affecting the Area materially and adversely impact the Area or Redeveloper's intended use thereof;
- (e) Related to the Gas Station Site only, in conducting the Inspections, Redeveloper discovers a previously unknown and unsatisfactory condition affecting Phase 5 not disclosed by reports referenced in Exhibit D;
- (j) Redeveloper is unable to obtain Redeveloper's Financing in accordance with the Schedule of Performance as required by Section 7.01; or
- (g) In the event of material damage to all or a portion of the Area in accordance with Section 11.03.

14.02 Authority's Option to Terminate Prior to Closing. Prior to the first Closing, the Authority shall have the right to terminate this Amended Agreement, if, within the times established in the Schedule of Performance, as may be extended by agreement of the Parties, any of the following occurs:

- (a) The City fails to grant necessary approvals or to issue necessary building permits or licenses for construction or installation of the Improvements on the first to close of the Phases 3, 4 or 5, as the case may be, by the deadlines set forth in the Schedule of Performance after the Redeveloper properly applies for and diligently pursues the same in a timely and responsive manner, and the Redeveloper has had a period of six (6) months after the applicable deadline to continue to seek such approvals, permits or licenses (in which event, all of the dates in the Schedule of Performance shall be extended on a day for day basis until such approvals, permits or licenses are obtained, up to a maximum of six (6) months); or Redeveloper fails to apply on a timely basis

for necessary permits or licenses to construct or install the Improvements in accordance with the Schedule of Performance;

- (b) Through no fault of the Authority, changes in zoning, the Plan, the Act or other land use and building provisions effectively frustrates the applicable development concept for Phases 3, 4, or 5, as the case may be, or materially and adversely affects Redeveloper's intended use of such Area, and Redeveloper is not actively pursuing in good faith a revision to the applicable development concept to be consistent with such change in the zoning, Plan, Act or land use and building provision;
- (c) Redeveloper fails to obtain a Developer Assignee for Phase 3 as required by Section 12.01 and the Schedule of Performance;
- (d) Redeveloper fails to provide evidence of Redeveloper's Financing for Phases 4 and 5, reasonably satisfactory to the Authority, and enter into any related financing agreements as required by Section 7.01; or
- (e) With regard to Closing for Phases 4 and 5, Commencement of Construction has not occurred by the date set forth in the Schedule of Performance.

14.03 Action to Terminate. Notice of termination must be given to the other Party within thirty (30) days after the date that the right to terminate accrues under Section 14.01 or 14.02. Failure to terminate this Amended Agreement for any such failure constitutes a waiver of the right to terminate this Amended Agreement for that particular failure only and shall not constitute a waiver of the right to terminate the Amended Agreement for any other failure. If such notice is given, it shall state with specificity the grounds for termination. The Party receiving the notice shall then have a period of time, to be not less than 30 days, to cure. If the notice specifies a reason for termination that under the facts and circumstances shall reasonably take more than 30 days to cure, the Party shall have a reasonable period of time to cure, but not exceeding 90 days, provided the Party promptly takes action in response to the notice and prosecutes the same to completion with reasonable due diligence.

14.04 Effect of Termination. If this Amended Agreement is terminated pursuant to Section 14.01 or 14.02, this Amended Agreement shall be null and void and of no effect, and no action, claim or demand may be based on any term or provision of this Amended Agreement. If termination occurs, Redeveloper shall return to the Authority such portion of the Total Contribution Authority has paid to Redeveloper to date, minus Redeveloper's documented expenses. In addition, the Parties agree to execute such mutual releases or other instruments reasonably required to effectuate and give notice of such termination. In the event of termination, Redeveloper shall have no further rights under this Amended Agreement.

## SECTION 15. EVENTS OF DEFAULT; REMEDIES

15.01 Events of Default by Redeveloper. Default or an Event of Default by the Redeveloper under the Amended Agreement shall mean one or more of the following events:

- (a) Redeveloper, in violation of this Amended Agreement, assigns or attempts to assign this Amended Agreement, the Improvements or any part of the Area, or any rights in the same;
- (b) There is any change in the identity of the parties in control of the Redeveloper in violation of this Amended Agreement;
- (c) Redeveloper fails to provide the Development Plan, the Design Development Documents, the Construction Documents, or the Site Plans as required by Section 6;
- (d) Redeveloper or Developer Assignee fails to undertake Commencement of Construction or fails to accomplish the Completion of Construction as required by Section 7.03 or the Schedule of Performance;
- (e) A Holder rightfully exercises any remedy provided by loan documents, law or equity that creates a materially adverse effect on the Area; or
- (f) Redeveloper fails to substantially observe or perform any other covenant, obligation or agreement required under this Amended Agreement.

If such Event or Events of Default are not cured within the time provided in Section 15.03, then the Authority may exercise any remedy available under Sections 15.04 and 15.05.

15.02 Events of Default by the Authority. Default or any Event of Default by the Authority under the Amended Agreement shall mean the Authority fails to reasonably observe or perform any covenant, obligation or agreement required of it under this Amended Agreement. If such Event or Events of Default are not cured within the time provided in Section 15.03, then the Redeveloper may exercise any remedy available under Section 15.04 of this Amended Agreement.

15.03 Grace Periods. Upon the occurrence of an Event of Default by either Party, subject to the termination rights of the Parties as described in Section 14, such Party, upon written notice from the other, shall proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days, except that Redeveloper shall have a cure period of ninety (90) days if the default relates to the date for Commencement of Construction or the Completion of Construction, after receipt of such notice, or, with respect to Redeveloper only, such cure shall be commenced and diligently pursued to completion within a reasonable time if curing cannot be reasonably accomplished within thirty (30) days (ninety (90) days if the Default relates to the date for Commencement of Construction or the Completion of Construction). The Grace Periods described herein shall apply to each Phase separately.

15.04 Remedies on Default. Whenever any Event of Default occurs and is not cured under Section 15.03 of this Amended Agreement, the non-defaulting Party may take any one or more of the following actions:

- (a) In the case of default by either Party, the other may suspend performance under this Amended Agreement until it receives assurances from the defaulting Party, deemed

adequate by the non-defaulting Party in its sole discretion, that the defaulting party will cure its default and continue its performance under this Amended Agreement;

- (b) Cancel and rescind this Amended Agreement;
- (c) In the case of the Authority, withhold any Certificate of Completion but only as to the Phase, or Subdivided Parcel thereof, which is directly involved in the default in question, and not as to any other Phase or Subdivided Parcel thereof;
- (d) In the case of the Authority, as to Phase 3, exercise its right of re-purchase pursuant to Section 15.05;
- (e) In the case of the Authority as to Phases 4 or 5 or Phases 4 and 5, exercise its right of re-entry pursuant to Section 15.06;
- (f) Take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including, without limitation, specific performance or to seek any other right or remedy at law or in equity, including damages.

15.05 Authority's Right to Re-Purchase; Phase 3. If Developer Assignee fails to achieve Completion of Phase 3 Construction before the deadline set out in the Schedule of Performance, the Authority shall have the right and ability to purchase Phase 3 from Developer Assignee at the then-current market value of the Phase 3.

15.06 Authority's Right of Re-Entry; Phases 4 and 5. In addition to any other remedy, upon a Default by the Redeveloper not cured under Section 15.03, expressly including a post-Closing default, the Authority shall have the right to re-enter and take possession of the Phases 4 or 5, or both Phases 4 and 5, and to terminate and revest in the Authority the estate conveyed to the Redeveloper. The covenants to be recorded contemporaneously with the Deed pursuant to Section 6 shall contain a condition subsequent that upon any such Default, subject to the rights of a Holder as set forth in this Section 15, the Authority may declare a termination of all rights and interest in and to Phases 4 or 5 conveyed by the Deed, or both Phases 4 and 5, and that such rights and interest shall revert to the Authority. However, such condition subsequent shall always be subject to (a) the lien of any Mortgage and (b) any right provided in the Amended Agreement for the protection of a Holder. Such condition subsequent shall not apply to any part of the Area for which a Certificate of Completion has been issued.

15.07 Resale of Reacquired Property. After revesting in the Authority of title to Phase 4 or 5, or both Phases 4 and 5, the Authority shall use its best efforts to resell Phase 4 or 5, or both Phases 4 and 5 as appropriate (subject to any Mortgage authorized by this Amended Agreement and any leasehold interest approved by the Authority), in accordance with applicable law to a qualified and responsible party or parties who will assume the obligation of making or completing the construction of the Improvements or such other improvements in their stead as shall be satisfactory to the Authority and in accordance with the Plan. The proceeds of such resale shall be applied: first, to reimburse the Holder to the extent sums are due and owing under the Mortgage, then to Redeveloper up to the amount equal to the sum of the portion of the Purchase Price allocable to the Phase being

repurchased (based on relative square feet of such Phase in comparison to total square feet of the Area) and Redeveloper's hard costs and soft costs actually invested by it in construction of the applicable portion of the Improvements, less any gains or income withdrawn or made by it from the Amended Agreement or the Area. Any balance remaining after such reimbursement shall be retained by the Authority.

15.08 Delays, Waivers. Any delay by either Party in asserting any right or remedy under this Amended Agreement shall not operate as a waiver of any such right or deprive it of or limit such right in any way; nor shall any waiver in fact made by such Party with respect to any specific Default by the other Party be considered or treated as a waiver of the rights of the non-defaulting Party with respect to any other Default by the other Party or with respect to the particular Default, except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in Amended this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

15.08 Enforced Delay in Performance for Causes Beyond Control of Party. Neither Party shall be considered in Default of its obligations under this Amended Agreement in the event of enforced delay due to causes beyond its control and without its fault or negligence, including, without limitation, acts of God, acts of the public enemy, acts of federal, state or local government, acts of the other party, acts of third parties (including the effect of any petitions for initiative or referendum), acts or orders of courts, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather or delays of subcontractors or materialmen due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided, that the Party seeking the benefit of the provisions of this Section, within thirty (30) days after such Party knows of any enforced delay, shall first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the enforced delay.

15.09 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Amended Agreement are cumulative, and the exercise by either Party of any one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

15.10 Provisions Not Merged With Deed(s). No provision of this Amended Agreement is intended to or shall be merged by reason of the Deeds transferring Title to the Phase or Phases from the Authority to the Redeveloper or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants or this Amended Agreement.

## SECTION 16. MISCELLANEOUS

16.01 Severability. In case any one or more of the provisions contained in this Amended Agreement or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Amended Agreement, or any other application thereof, shall not in any way be affected or impaired thereby.

16.02 Notices. All notices required or permitted by this Amended Agreement shall be in writing and shall be sufficiently given if delivered in person, or by prepaid overnight express mail or express courier to either party or may be sent by certified mail, with postage prepaid, return receipt requested, or by electronic mail, and addressed in the case of the Authority to:

Maureen C. Phair, Executive Director  
The Arvada Urban Renewal Authority  
5601 Olde Wadsworth Blvd, Suite 210  
Arvada, Colorado 80002  
Email: mphair@arvada.org

With a copy to:

Corey Y. Hoffmann, Esq.  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 Sixteenth Street, Suite 610  
Denver, Colorado 80202  
Email: cyh@hpwclaw.com

and in the case of the Redeveloper to:

James R. Loftus, Manager  
Ralston Creek North, LLC  
2595 Canyon Blvd., Suite 200  
Boulder, CO 80302  
Email: jrl@loftusdevelopments.com

With a copy to:

Brigette M. Paige, Esq.  
Packard and Dierking, LLC  
2595 Canyon Blvd., Suite 200  
Boulder, CO 80302  
Email: brigette@packarddierking.com

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other. Notice delivered by a party's attorney on behalf of such party shall be deemed delivered by such party.

16.03 Conflict of Interest; Authority Representatives not Individually Liable. No member, official, employee, attorney, agent or consultant of the Authority shall have any personal interest, direct or indirect, in this Amended Agreement, nor shall any such person participate in any decision relating to this Amended Agreement that affects his or her personal interest or the interest of any corporation, partnership business or association in which he or she is directly or indirectly interested. No member, official, agent, attorney or employee of the Authority or the City shall be personally liable to the Redeveloper or any successor in interest in the event of any Default or breach by the

Authority, or for any amount that may become due to the Redeveloper or successor, or on any obligation under the terms of this Amended Agreement.

16.04 Estoppel Certificate. Each Party agrees to execute such documents as the other Party shall reasonably request to verify or confirm the status of this Amended Agreement, the performance of the obligations hereunder and such other matters as the requesting Party shall reasonably request.

16.05 Amendments. This Amended Agreement shall not be amended except by written instrument. Each amendment hereof, which is in writing and signed and delivered by the Parties, shall be effective to amend the provisions hereof.

16.06 Survival of Representations and Warranties. No representatives or warranties whatever are made by any Party to this Agreement except as specifically set forth in this Amended Agreement. The representations, warranties and indemnities made by the Parties to this Amended Agreement and the covenants and agreements to be performed or complied with by the respective parties under this Amended Agreement before the Closing shall be deemed to be continuing and shall survive the Closing and delivery of the Deed(s). Nothing in this Section shall affect the obligations and indemnities of the Parties with respect to covenants and agreements contained in this Amended Agreement that are permitted or required to be performed in whole or in part after the Closing.

16.07 Minor Changes. This Amended Agreement is approved in substantially the form submitted to the governing bodies of the Parties. The officers executing the Amended Agreement are authorized to make such minor changes in the Amended Agreement and the attached Exhibits as may be necessary, so long as such changes are consistent with the intent and understanding of the Parties. The execution of the Amended Agreement or any document regarding such minor changes shall constitute conclusive evidence of the approval of such changes by the respective Parties. This Section 16.07 shall only apply to the Authority.

16.08 Counterparts. This Amended Agreement shall be executed in two (2) counterparts, each of which shall constitute the contract of the parties.

16.09 Titles of Sections. Any titles of the several parts and Sections of the Amended Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

16.10 No Third Party Beneficiaries. Except for specific rights in favor of a Holder under Section 15 and an approved Developer Assignee, no third party beneficiary rights are created in favor of any person or business not a party to the Amended Agreement.

16.11 Applicable Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Amended Agreement.

16.12 Covenant of Good Faith. Each Party agrees to act reasonably and in good faith in performing or attempting to perform each and every condition, covenant, obligation or duty required by the Amended Agreement, and each party shall not unreasonably, arbitrarily or capriciously withhold any approval required by the Amended Agreement.

16.13 Binding Effect. The Amended Agreement shall be binding on the Parties, their heirs, devisees, personal representatives, successors and assigns.

16.14 Days. If the day for any performance or event provided for herein is a Saturday, Sunday or other day on which either national banks or the office of the Clerk and Recorder of Jefferson County, Colorado, are not open for the regular transaction of business, such day therefore shall be extended until the next day on which said banks or said office are open for the transaction of business.

16.15 Further Assurances. The Parties agree to execute such documents and take such action as shall be reasonably requested by the other party to effectuate the agreements herein contained and the intent hereof.

16.16 Incorporation of Exhibits. All exhibits, and amended exhibits attached to the Amended Agreement are incorporated into and made a part of this Amended Agreement.

16.17 Authority or City Not a Partner. Notwithstanding any language in this Amended Agreement or any other agreement, representation or warranty to the contrary, neither the Authority nor the City shall be deemed or constituted to be a partner or joint venturer of the Redeveloper, and neither the Authority nor the City shall be responsible for any debt or liability of the Redeveloper.

16.18 City Not a Party. The City is not a party to this Amended Agreement, and the Authority is not authorized to bind or represent the City or the position of the City in any manner whatsoever, nor is the City authorized to bind or represent the Authority or the position of the Authority in any manner whatsoever. No approval granted by the Authority shall be deemed to be an approval of the City.

16.19 Authority of Signatories. Each of the persons executing this Amended Agreement on behalf of the Parties covenants and warrants that he or she is fully authorized to execute this Amended Agreement on behalf of the Party he or she represents.

16.20 Jointly Drafted. The Amended Agreement shall be construed and interpreted as if jointly drafted by the Parties.

16.21 Severability. If any of the provision of this Amended Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Amended Agreement by the application of such provision or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of the Amended Agreement shall be valid and enforceable to the fullest extent permitted by law.

16.22 Attorneys' Fees. In the event of any controversy, claim, dispute, or litigation between the Parties to enforce or interpret any of the provisions of this Amended Agreement or any right of either Party, the non-prevailing Party agrees to pay the prevailing Party all reasonable costs and expenses, including reasonable attorneys' fees, incurred therein by the prevailing Party,

including fees incurred during trial of any action and any fees incurred as a result of a successful appeal from judgment entered in such litigation.

16.23 Time of Essence. Time is of the essence of every provision herein contained.

16.24 Deemed Denial. Except as specifically provided otherwise in this Amended Agreement, any failure of the Authority to respond to a submittal or notice submitted by Redeveloper within the time period allotted therefor shall be deemed denial thereof.

16.25 Effect of Original Agreements. To the extent any action has been taken by either Party in accordance with, and to implement the terms and conditions of the Original Agreements as they existed prior to this amendment, such actions of the Parties are affirmed and ratified by the Parties. Nothing in this Amended Agreement shall be construed as a claim of breach or default by either Party against the other arising from or out of Schedule of Performance as previously adopted. All terms, conditions, covenants, representations, and warranties set forth in the Original Agreements prior to the date of this Amended Agreement are amended and superseded in their entirety by the terms, conditions, covenants, representations, and warranties set forth in this Amended Agreement.

IN WITNESS WHEREOF, the parties have executed this Amended Agreement as of the \_\_\_\_\_, 2021.

SIGNATURE PAGE

ARVADA URBAN RENEWAL AUTHORITY

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

ATTEST:

\_\_\_\_\_  
Maureen C. Phair  
Secretary/Executive Director

**RALSTON CREEK NORTH, LLC**

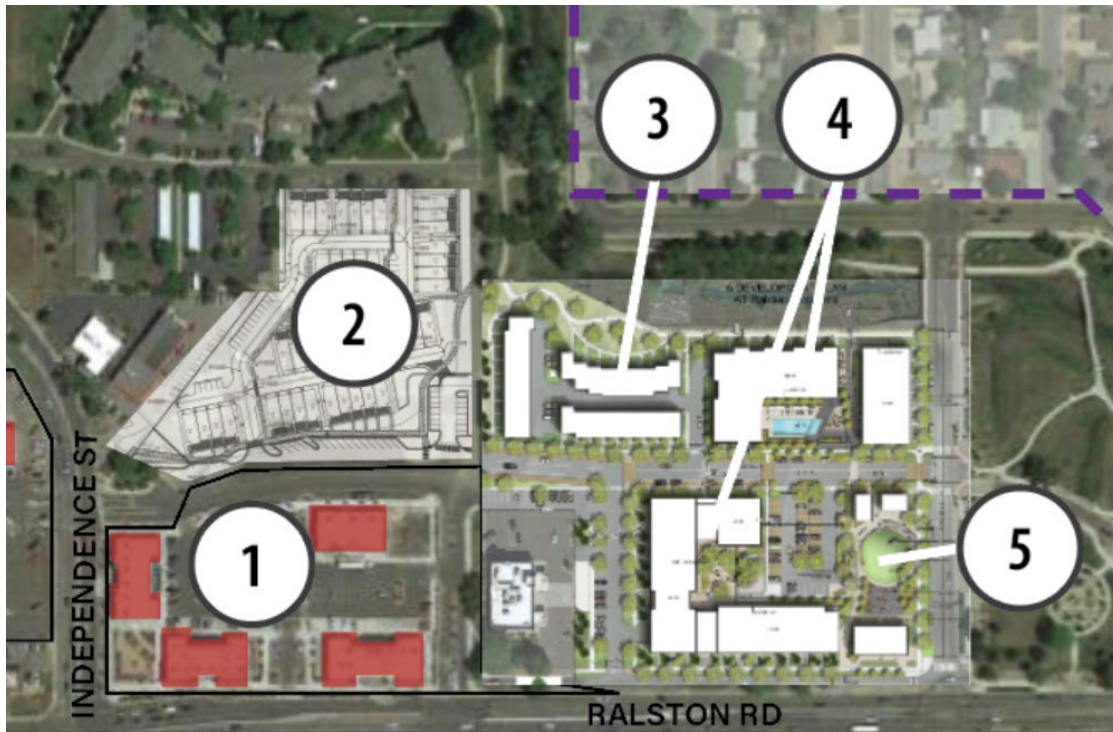
By: \_\_\_\_\_  
James R. Loftus, Manager

ATTEST:

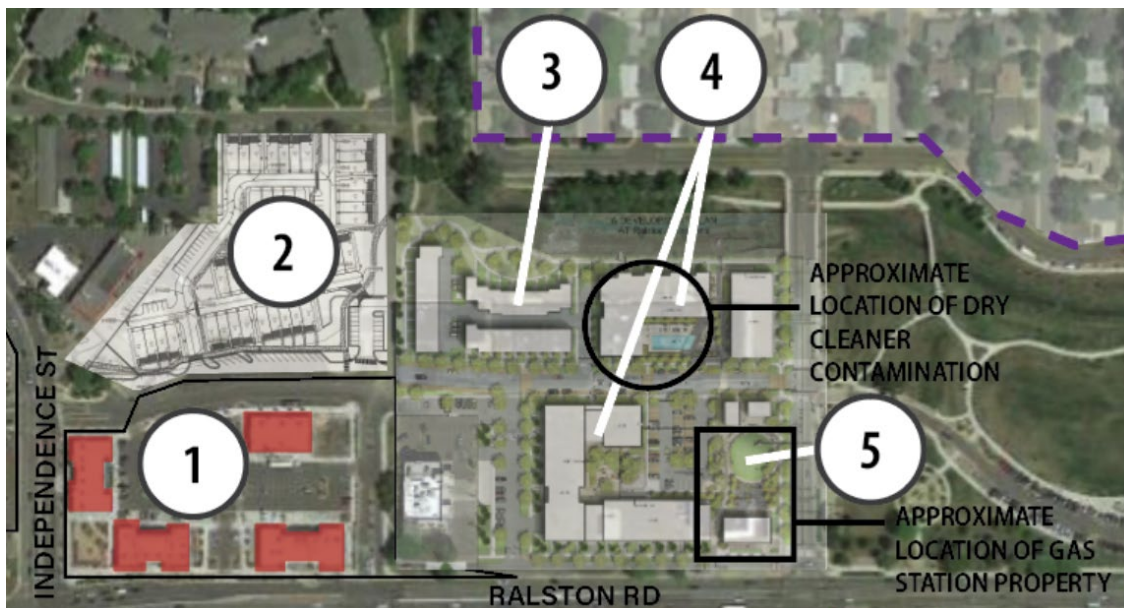
\_\_\_\_\_

**Exhibit A**

**Map of the Area Showing the Site Plans for the Five Phases of Development**



**Approximate Location of Dry Cleaning Contamination and Gas Station**



**Exhibit B**  
**Form of Certificate of Completion**

FORM OF CERTIFICATE OF COMPLETION OF  
IMPROVEMENTS

The Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado (the "Authority"), of 5601 Olde Wadsworth Blvd., Suite 210, Arvada, Colorado, hereby certifies that the improvements (the "Improvements") constructed on the real property described in Schedule 1 attached to and made a part hereof, which Improvements are listed on Schedule 2 attached hereto and made a part hereof, have been satisfactorily completed, and that such Improvements conform with the uses specified in the Ralston Fields Urban Renewal Plan.

This Certificate of Completion shall be a conclusive satisfaction of the obligation of \_\_\_\_\_ (the "Developer"), to construct the Improvements described on Schedule 2 on the real property described in Schedule A, as evidenced by the Second Amended and Restated Disposition and Development Agreement (DDA) dated \_\_\_\_\_.

The conditions recited in the DDA have been fulfilled as to such real property.

Signed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ARVADA URBAN RENEWAL  
AUTHORITY

Chairman

ATTEST:

\_\_\_\_\_  
Secretary

**Exhibit C**  
**Schedule of Performance**

<b>MILESTONE/EVENT</b>	<b>DEADLINE</b>
Survey Kickoff Deadline	Complete
Title Insurance	Complete
Title and Survey Review Deadline	Complete
Conditional Use Permit Submittal - Phases 3 & 4	In Process
Conditional Use Permit Approval – Phases 3 & 4	May 17, 2021
Site Plan Submission – Phases 4 & 5 (6 mth process, Developer 2 week turnaround)	June 1, 2021
Construction/Building Documents Submittal (Submit 4 mths after Site Plan Submittal)	October 1, 2021
Zoning and Permits Approval	January 31, 2022
Financing Approval	February 15, 2022
Closing – Phases 4 & 5	February 28, 2022
Commencement of Construction – Phases 4 & 5	March 15, 2022
Completion of Construction – Phases 4 & 5 (24 mths construction)	March 15, 2024
AURA Certificate of Completion – Phase 4 & 5 (6 mths after C.O.)	September 1, 2024

**Exhibit D**  
**List of Environmental Reports**

<b>LOCATION</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>PAGES</b>
9335 Ralston Rd	CDPHE - VCUP Action Approval Letter	1/6/2020	3
9335 Ralston Rd	Terracon - VCUP Application	11/22/2019	1,475
9255, 9415, 9425, 9465, 9477, 9479, 9489 Ralston Rd	Cherry Inc - Asbestos Abatement Notification and Permit Application Form	10/4/2017	25
9215 - 9489 Ralston Rd	Weecycle Environmental Consulting - Asbestos Demolition Survey	12/28/2016	41
9215 Ralston Rd	ATC - Phase 1 ESA	12/6/2018	904
9215 Ralston Rd	ATC - Phase 2 Subsurface Investigation	3/27/2019	216
9205 W 58th Ave	Terracon - Limited Site investigation Report	1/10/2020	93
9205 W 58th Ave	Terracon - Phase 1 ESA	12/9/2019	202
9205 W 58th Ave	Alta Environmental - Demolition Asbestos Inspection Report (Building)	5/29/2020	26
9205 W 58th Ave	Alta Environmental - Demolition Asbestos Inspection Report (East Canopy)	6/1/2020	17
9205 W 58th Ave	Alta Environmental - Demolition Asbestos Inspection Report (South Canopy)	6/1/2020	17
9205 Ralston Rd	CDOPS - NFA	9/18/2020	1
9205 Ralston Rd	Palmetto Environmental Group - Semi-Annual Monitoring & remediation Report (MRR) <i>with S. Clark cover letter analysis dated February 15, 2021</i>	10/2/2020	135
9205 Ralston Rd	Palmetto – UST System Removal Report	9/18/2020	65
9205 Ralston Rd	Palmetto – Hydraulic Lift and Sand Trap Removal Report	9/29/2020	55

**Exhibit E**  
**Form of Notice of Environmental Use Restriction**  
**Dry Cleaner Site**

**This property is subject to a Notice of Environmental Use Restrictions  
imposed by the Colorado Department of Public Health and  
Environment pursuant to section 25-15-321.5, Colorado Revised  
Statutes**

**NOTICE OF ENVIRONMENTAL USE RESTRICTIONS**

WHEREAS, the Arvada Urban Renewal Authority (“AURA”) is the owner of certain property commonly referred to as 9215 Ralston Road, Arvada, Jefferson County, Colorado, more particularly described in **Attachment A** and depicted in **Attachment B**, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as “the Property”); and

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (“the Department”), which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve Notices of Environmental Use Restrictions (a/k/a “Restrictive Notices”) pursuant to § 25-15-320(4)(a) of the Colorado Hazardous Waste Act, § 25-15-101, et seq., C.R.S.; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, AURA shall be considered the **Grantor**, and the Colorado Department of Public Health and Environment shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, pursuant to the approved Voluntary Cleanup Application for the Property submitted by AURA and approved by the Department on January 6, 2020, the Property is the subject of remedial action pursuant to the Voluntary Clean-up and Redevelopment Act, § 25-16-301, *et seq.*, which is on file with any amendments at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, Records Center, ref file #RV201207-1; and

WHEREAS, the purpose of this Restrictive Notice is to ensure protection of human health and the environment for the future use of the Property. The Property is the site of a former dry cleaning facility. Groundwater beneath the Property is contaminated with tetrachloroethene (PCE) and trichloroethene (TCE) in concentrations above the Colorado Groundwater Quality Standards. PCE and TCE were reported at concentrations above the EPA Residential Vapor Intrusion Screening Level (VISL) for groundwater. The proposed use restrictions will limit human exposure by limiting the use of groundwater from the Property and requiring that a vapor mitigation system be installed and maintained in any new buildings constructed on the Property.

WHEREAS, AURA desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes;

NOW, THEREFORE, the Department approves this Restrictive Notice pursuant to § 25-15-321.5, C.R.S. The Property described in Attachment A shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 13, below, which shall be binding on AURA and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. As used in this Restrictive Notice, the term OWNER means the then current record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1) Use restrictions.

(a) No water from the shallowest saturated zone may be withdrawn or used for any purpose, except: (i) for the purpose of environmental sampling; (ii) as authorized by a permit issued by the Water Quality Control Division; or (iii) as authorized in a remedial decision document approved by the Department.

(b) No structures intended for human occupancy (including residences, offices, or other workplaces, etc.) may be built on the Property without a properly designed and constructed vapor mitigation system approved by the Department. Once constructed, the vapor mitigation system must be operated and maintained as specified in the approved Operations and Maintenance Plan and any amendments thereto, which are on file with the Department.

2) Modifications. This Restrictive Notice shall remain in full force and effect unless modified or terminated in accordance with this paragraph and pursuant to § 25-15-321.5, C.R.S. or any successor statute. OWNER may request that the Department approve a modification or termination of the Restrictive Notice. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- a) proposal to perform additional remedial work;
- b) new information regarding the risks posed by the residual contamination;
- c) information demonstrating that residual contamination has diminished;
- d) information demonstrating that an engineered feature or structure is no longer necessary;
- e) information demonstrating that the proposed modification would not adversely

impact the remedy and is protective of human health and the environment; and  
f) other appropriate supporting information.

- 3) Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property. Within thirty (30) days after any such conveyance, OWNER shall provide the Department with the name, mailing address and telephone number of the new OWNER.
- 4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, or other instruments granting a right to use the Property.
- 5) Notification for proposed construction and land use. OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 6) Inspections. The Department, including its authorized employees, agents, representatives and independent contractors, shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Restrictive Notice.
- 7) Third Party Beneficiaries. OWNER of the Property is a third party beneficiary with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.
- 8) No Liability. The Department does not acquire any liability under State law by virtue of approving this Restrictive Notice, nor does any other named beneficiary of this Restrictive Notice acquire any liability under State law by virtue of being such a beneficiary.
- 9) Enforcement. The Department may enforce the terms of this Restrictive Notice pursuant to § 25-15-322, C.R.S. and may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.
- 10) Owner's Compliance Certification. OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Restrictive Notice.
- 11) Severability. If any part of this Restrictive Notice shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 12) Notices. Any document or communication required under this Restrictive Notice shall be

sent or directed to:

Mr. Fonda Apostolopoulos, VCRA Program  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health and the Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
[fonda.apostolopoulos@state.co.us](mailto:fonda.apostolopoulos@state.co.us)  
(303) 692-3411

Arvada Urban Renewal Authority (AURA)  
c/o Ms. Maureen Phair  
5601 Olde Wadsworth Boulevard, Suite 210  
Arvada, Colorado 80002  
mphair@arvada.org

- 13) Subdivision of Property. At least ninety (90) days prior to creating a subdivision of the Property, OWNER shall submit a plan addressing the certification required by paragraph (10) of this Restrictive Notice. The Department shall approve the plan if it determines that the plan reasonably will ensure continued compliance with the requirements of this Restrictive Notice. Any Department notice of disapproval shall include the Department's rationale for its decision, including any additional information or changes to the plan that the Department requires before the plan can be approved. Any appeal of a Department notice of disapproval shall be taken in accordance with section 25-15-305(2), C.R.S. If OWNER fails to obtain approval of such plan prior to subdividing the Property, the owner of each subdivided parcel shall continue to be responsible for certifying compliance with the restrictions set forth in paragraph (1) of this Restrictive Notice.

The Arvada Urban Renewal Authority has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2021.

Arvada Urban Renewal Authority

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

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_



**ATTACHMENT A**  
**to the**  
**NOTICE OF ENVIRONMENTAL USE RESTRICTIONS**

**ATTACHMENT B**  
**to the**  
**NOTICE OF ENVIRONMENTAL USE RESTRICTIONS**

**ARVADA URBAN RENEWAL AUTHORITY  
AGENDA INFORMATION SHEET**

---

**Agenda No.:** 8.B.  
**Meeting Date:** April 7, 2021  
**Titles:** IGA by and between COA and AURA to Complete the #.04 Denver Tramway Streetcar Site Development Project

---

**ACTION PROPOSED:** Approval of the Agreement

**INFORMATION ABOUT THE ITEM:** The City of Arvada, the Friends of the #.04 Trolley, the Denver Tramway Heritage, and the Colorado Preservation Inc. worked together to refurbish and restore the trolley. The trolley is listed in the Colorado State Register of Historical Places. The trolley restoration will be completed by May 2021 and the trolley must be displayed in a manner approved by the Colorado Historic Preservation Review Board in order to maintain its status on the Register. The site selected for display is located on the northwest corner of Grandview Avenue and Salsbury St.

AURA has agreed to fund the design, development and construction of the site in an amount not to exceed \$460,000, including landscaping, irrigation and hardscape.

**FINANCIAL IMPACT:** The one-time payment of \$460,000 in 2021 will come from the Olde Town Station account where there are adequate funds.

**COMMUNITY BENEFIT:** This project will educate the community about the trolley and the historical street system while enhancing the pedestrian functionality.

**STAFF RECOMMENDATION:** Approval

**SUGGESTED MOTION:** I move that Resolution AR-21-05, a Resolution of the Board of Commissioners of the Arvada Urban Renewal Authority Approving the Intergovernmental Agreement by and Between the City of Arvada and Arvada Urban Renewal to Complete the #.04 Denver Tramway Streetcar Site Development Project be approved.

**RESOLUTION AR-21-05**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND THE ARVADA URBAN RENEWAL AUTHORITY TO COMPLETE THE #.04 DENVER TRAMWAY STREETCAR SITE DEVELOPMENT PROJECT**

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

Section 1. The Intergovernmental Agreement by and between the City of Arvada and the Arvada Urban Renewal Authority to Complete the #.04 Denver Tramway Streetcar Site Development Project, attached hereto as **Exhibit A**, is hereby approved, and the Chairman is authorized to execute the Agreement on behalf of the Authority.

DATED this 7<sup>th</sup> day of April, 2021.

---

Alan Parker, Chair

---

Recording Secretary

APPROVED AS TO FORM

---

Corey Y. Hoffmann, Legal Counsel

## EXHIBIT A

### AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND THE ARVADA URBAN RENEWAL AUTHORITY TO COMPLETE THE #.04 DENVER TRAMWAY STREETCAR SITE DEVELOPMENT PROJECT

- 1.0 PARTIES.** This Intergovernmental Agreement (Agreement) is between the City of Arvada, a Colorado home rule municipal corporation, (Arvada), and the Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado (AURA). Individually referred to as “Party,” collectively as “Parties.”
- 2.0 RECITALS AND PURPOSE.**
- 2.1** Section 29-1-203, C.R.S., as amended, permits and encourages local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized function, service or facility; and
- 2.2** Arvada, the Friends of the #.04 Trolley, the Denver Tramway Heritage, and Colorado Preservation Inc. joined together to refurbish and restore the Denver Tramway Streetcar (Trolley).
- 2.3** The Trolley is listed in the Colorado State Register of Historical Places (Register).
- 2.4** The Trolley’s restoration is expected to be completed in May 2021, and the Trolley must be displayed in a manner approved by the Colorado Historic Preservation Review Board in order to maintain its status on the Register.
- 2.5** The site selected for the display of the Trolley is located on the northwest corner of Grandview Avenue and Saulsbury Street in Olde Town Arvada. More specifically, slightly to the east of the Grandview Bridge along Grandview Avenue (Site).
- 2.6** Britina Design Group completed a conceptual site plan, community outreach program, construction documents, and has been working with the Arvada Community Development Department and Arvada Park and Urban Design staff to estimate the cost to complete the Site.
- 2.7** AURA has agreed to provide funding for the design, development, and construction of the Site in an amount not to exceed \$460,000.00. The

funding will provide for the following items, listed more specifically in **Exhibit A**:

- 2.7.1 Removals/Relocation and Improvements;
- 2.7.2 Hardscape Improvements;
- 2.7.3 Landscape Improvements; and
- 2.7.4 Miscellaneous Improvements.

**Exhibit A** is attached to and incorporated into this Agreement.

**2.8** The Site will be beneficial to Arvada, AURA, and the community as a whole by providing the below amenities:

- Educating the community about the Trolley and historical streetcar system;
- Enhancing the pedestrian functionality; and
- Supporting economic activity.

**2.9** AURA has determined that the Project is necessary in order to preserve Arvada’s historical legacy, while creating fresh and engaging public spaces. AURA believes the Site is consistent with and in furtherance of the purposes of AURA.

**2.10** Pursuant to the Colorado Urban Renewal Law , C.R.S. § 31-25-101, *et seq.*, AURA may finance undertakings pursuant to an urban renewal 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.

**3.0** **TERM.** This Agreement shall be effective upon execution by the parties through the completion of construction of the Site.

**4.0** **ROLES AND RESPONSIBILITIES.**

**4.1** AURA. AURA will provide Arvada with \$460,000.00 to fund the design, development, and construction of the Site. AURA will transfer funding to the City of Arvada Capital Improvement Program under the “Trolley site development project” within 30 days of both AURA and Arvada’s execution of the Agreement. In the event the Site costs are less than \$460,000.00, Arvada shall return any unused funds to AURA within 30 days of the completion of the Site.

**4.2** Arvada. Arvada’s Vibrant Communities and Neighborhoods’ staff will

supervise and be responsible for the consultant fees and management of the Site. Arvada's purchasing department will assist staff in the construction bidding process. The construction project bid award for the site development will be approved by Arvada City Council. All project accounting will be completed by Arvada's project manager assigned to the Site project by the Director of Vibrant Communities and Neighborhoods. Arvada will regularly report to AURA on the progress of the Site as desired by AURA.

**5.0 TERMS AND CONDITIONS.**

**5.1** Generally.

**5.1.1** No separate entity formed. The Parties agree this Agreement is intended to facilitate cooperation between the Parties in the provision of the services provided herein, but does not establish a separate legal entity to do so. Except as set forth herein, this Agreement does not authorize any Party to act for another Party for any purpose whatsoever. This Agreement shall provide only that the Parties cooperate in the design, development, and construction of the Site as contained in this Agreement.

**5.1.2** Records are public. All records relating to the project will be public or open records, and will be released in accordance with the Colorado Open Records Act.

**6.0** **ADDITIONAL DOCUMENTS OR ACTION.** The Parties agree to take any additional action and execute any additional documents that are necessary to carry out this Agreement.

**7.0** **ASSIGNMENT.** This Agreement may not be assigned by any Party without the prior written consent of the other Party.

**8.0** **FORCE MAJEURE.** Any delays in or failure of performance by any Party of its obligations under this Agreement will be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control and such Party.

**9.0** **BINDING EFFECT.** This Agreement will inure to the benefit of, and be binding upon, the Parties, their respective legal representative, successors, heirs, and assigns; provided, however, that nothing in this paragraph may be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**10.0** **NOTICES.** Any notice required or permitted by this Agreement shall be in

writing and shall be given by certified mail or registered mail, postage and fees prepaid, to the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

Arvada:            Gordon Reusink  
                      Director of Vibrant Communities and Neighborhoods  
                      City of Arvada  
                      8101 Ralston Road  
                      Arvada, Colorado 80002

AURA:            Maureen Phair  
                      Executive Director  
                      Arvada Urban Renewal Authority  
                      5601 Olde Wadsworth Boulevard, Suite 210  
                      Arvada, Colorado 80002

Each Party may designate another employee to be responsible for the day-to-day administration of this Agreement.

- 11.0 INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of the Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.
- 12.0 WAIVER OF BREACH.** A waiver by any Party to the Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by another Party.
- 13.0 GOVERNING LAW AND VENUE.** This Agreement will be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement will be in the appropriate court for Jefferson County, Colorado.
- 14.0 NO MULTI-YEAR FISCAL OBLIGATION.** Arvada's and AURA's financial obligations, if any, after the current year are contingent on funds for that purpose being appropriated, budgeted and otherwise made available by the governing body of either Party. Arvada's and AURA's obligations under the Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution.

- 15.0 GOVERNMENTAL IMMUNITY.** Each Party shall be responsible for its own negligent or intentional acts or omissions, and for those of its employees and volunteers. The Parties intend that nothing herein shall be deemed or construed as a waiver by any Party of any rights or protections afforded to them under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., *et seq.*). The Parties agree that in the event any claim or suit is brought against any Party or Parties by any third party as a result of the operation of this Agreement, each Party will cooperate with each other and with the insuring entities of each Party in defending such claim or suit.
- 16.0 DEFAULT.** Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by any Party, then this Agreement, at the option of a Party who is not in default, may be terminated by the non-defaulting Party, in which case, the non-defaulting Party may recover such damages as may be proper. If a non-defaulting Party elects to treat this Agreement as being in full force and effect, that non-defaulting Party will have the right to an action for specific performance or damage or both.
- 17.0 NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action to any other third party on this Agreement. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 18.0 AMENDMENT.** Either party may seek to amend this Agreement by providing a written request detailing the terms of the requested amendment. Both Arvada and AURA must approve any amendment for the amendment to take effect.
- 19.0 AUTHORIZED SIGNATORIES.** Each signatory below represents he or she is authorized to bind the Party he or she represents; each Party is relying upon this representation.
- 20.0 COUNTERPART EXECUTION.** This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**CITY OF ARVADA,**  
a Colorado municipal corporation

By: \_\_\_\_\_  
Marc Williams, Mayor

8101 Ralston Road  
Arvada, Colorado 80002

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

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

**ARVADA URBAN RENEWAL AUTHORITY**

\_\_\_\_\_  
Alan Parker, AURA Board Chair  
5601 Olde Wadsworth Boulevard, Suite 210  
Arvada, Colorado 80002

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, Attorney for AURA  
Hoffmann, Parker, Wilson, & Carberry P.C.  
511 Sixteenth Street, Suite 610  
Denver, CO 80202

**AURA Flash Report**  
Balances as of February 28, 2021

FOR DISCUSSION PURPOSES ONLY  
UNOFFICIAL & UNAUDITED

**CASH & INVESTMENTS**

<u>Wells Fargo Bank</u>		<u>Account Balance</u>	<u>Hold</u>	<u>Net to AURA</u>
General - Checking (0193)		1,361,194	-	1,361,194
Ralston Fields - Checking (4061)		507,535	2,180,174	2,687,709
Ralston Fields Investments (9353)		358,225	-	358,225
Olde Town Station - Checking (0895)		1,374,462	-	1,374,462
Village Commons - Checking (0887)		759,040	-	759,040
<u>First Bank of Arvada</u>			<u>% change from</u>	
1.50% CD Maturity 10/11/2022 (4548)		333,534	<u>prior period</u>	333,534
<u>CSIP</u>				
Ralston Fields Fund (9003)		1,055,742	0.02%	1,055,742
<b>NET CASH AVAILABLE TO AURA</b>				<b>7,929,906</b>

**REAL ESTATE OWNED**

<u>Date Acq.</u>	<u>Name</u>	<u>Address</u>	<u>Purchase Price</u>	<u>Debt/Discout</u>	<u>Net Value</u>
2013	TOD Parcel	5580 Vance Street	660,000	659,990	10
2016	Arvada Square	9465 Ralston Road	4,963,065	4,963,064	1
2017	TOD Parcel - Gun Club		10	0	10
2019	TOD Parcel - RTD		10	0	10
2020	Gas Station	9205 W 58th Ave	3,000,000	2,999,990	10
2021	IRG Outparcel	9250 W 58th Ave	1,000,000	0	1,000,000
<b>NET VALUE OF REAL ESTATE OWNED</b>					<b>1,000,041</b>

**LONG TERM RECEIVABLES**

<u>Borrower</u>	<u>Current</u>	<u>Credit</u>	<u>Net Receivable</u>
	<u>Loan Balance</u>		
Loftus Development (Ralston Rd Café Demo)	300,000	300,000	0
<b>NET LONG TERM RECEIVABLES</b>			<b>\$0</b>

**LONG TERM PAYABLES**

<u>Loan</u>	<u>Loan Start Date / Term Date</u>	<u>Original</u>	<u>Payments</u>	<u>Current</u>
		<u>Loan Balance</u>		<u>Loan Balance</u>
Arvada Square	June 1, 2016 / June 1, 2028	5,000,000	707,110	4,292,890
Brooklyn's	January 1, 2016 / January 1, 2030	2,745,000	1,076,171	1,668,829
City of Arvada (Ralston Rd Streetscape)	2020	3,500,000	1,750,000	1,750,000
Tabernacle - Underground Utilities	2021	350,000	0	350,000
Wheat Ridge	2006/2024	1,800,000	1,400,000	400,000
<b>NET LONG TERM PAYABLES</b>				<b>\$8,461,719</b>

**GROSS INCOME & EXPENSES BY FUND As of February 28, 2021**

	<u>2021 BUDGET</u>		<u>Actual Revenues</u>	<u>Actual Expenses</u>
	<u>Revenue</u>	<u>Expenses</u>	<u>YTD</u>	<u>YTD</u>
Ralston Fields	4,393,000	3,056,000	572,651	12,566
Olde Town Station	1,180,000	1,430,000	3,000	0
Jefferson Center	12,106,000	12,106,000	0	61,716
Northwest Arvada	11,000,000	11,000,000	269,740	4,046
Village Commons	606,000	253,346	16,533	16,533
<b>TOTALS</b>	<b>29,285,000</b>	<b>27,845,346</b>	<b>\$861,924</b>	<b>\$94,861</b>

**GENERAL FUND EXPENSES As of February 28, 2021**

	<u>2021 Budget</u>	<u>Expended YTD</u>
Operating Expenses	585,565	61,567
<b>TOTAL EXPENSES</b>	<b>\$585,565</b>	<b>\$61,567</b>