



## PUBLIC NOTICE OF SPECIAL MEETING

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold a virtual **SPECIAL MEETING** at 3 pm on **Wednesday, December 14, 2022**, via Zoom webinar.

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

Register in advance for this webinar:

<https://us06web.zoom.us/j/82116709052?pwd=ZnBKNHY5cmsreWY2SC9DMTBNN0VyZz09>

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 [cbriscoe@arvada.org](mailto:cbriscoe@arvada.org) prior to noon on December 14, 2022. 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  
Deputy Director/Recording Secretary

POSTED: Friday, December 9, 2022



**SPECIAL MEETING OF THE AURA BOARD OF COMMISSIONERS**  
**Via Zoom Webinar**  
**3:00 p.m., Wednesday, December 14, 2022**

**AGENDA**

**SPECIAL MEETING – 3:00 P.M.**

1. Call to Order
2. Moment of Reflection and Pledge of Allegiance
3. Roll Call of Members
4. Old Business
  - A. AR-22-23 A Resolution of the Arvada Urban Renewal Authority Approving the Redevelopment Agreement between 5690 Olde Town, LLC and The Arvada Urban Renewal Authority
5. New Business – None
6. Executive Session - None
7. Adjournment

## **ARVADA URBAN RENEWAL AUTHORITY**

### **AGENDA INFORMATION SHEET**

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**Agenda No.:** Special Meeting 4.A.

**Meeting Date:** December 14, 2022

**Title:** Development Agreement between AURA and 5690 Olde Town LLC  
(Tabernacle Church)

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#### **ACTION PROPOSED:** Approval

**HISTORY OF THE SITE:** The Tabernacle Church, located on the SE corner of Yukon and 57th Streets was constructed in 1915 as the Arvada Presbyterian Church, the south wing was added in 1952. Since then the building served as an Elks Lodge, daycare, art gallery and more recently as The Way, The Truth, The Life Tabernacle Church. The building is now vacant.

**INFORMATION ABOUT THE ITEM:** The AURA Board approved a Development Agreement on March 18, 2020 with Edgemark Development for the same property. That agreement expired when Edgemark chose to sell the property rather than develop it. The new developers consist of two individuals – Brandon Young and Nicole Brant-Zawadzki whose legal entity for this development is 5690 Olde Town LLC.

The development plan for the building includes:

- Invest \$6,577,899 into remodeling the church and site while honoring and preserving the relevant historic features.
- Proposed use – food hall and community gathering place with six vendors including a bar, three food vendors, a local grocery, and a coffee stand. The basement will include a private event space and commissary kitchen.
- Construct the City approved streetscape along the perimeter of the project.
- Construction must commence no later than October 31, 2023 or the Development Agreement terminates.
- AURA will pay the developer an initial contribution of \$300,000 no later than 30 days after commencement of construction.
- AURA will rebate 100% of the sales tax increment generated by the project up to \$1.2 million.
- Development Agreement terminates upon payment of the \$1.2 million or the expiration of the Olde Town Urban Renewal Area on 2/4/2034, whichever occurs first.

**FINANCIAL IMPACT:** The project is estimated to produce \$2,132,000 in increment over the span of the urban renewal term, which expires in 2034. That number is comprised of \$732,000 in property tax TIF and \$1,400,000 in sales tax TIF. AURA's financial contribution

is \$1.5 million, the project will produce an excess of \$632,000 which will be allocated to AURA's Olde Town Station fund.

AURA's primary mechanism for financial participation is through pledging \$1.2 million in sales tax increment produced by the development to finance the construction of the public improvements. AURA is also providing an initial contribution of \$300,000 to the developer.

Other than those funds, no other AURA funds will be allocated to this project. All monies rebated to the developer are generated by the development. If the developer does not produce the revenue projected, AURA is not obligated to fill the gap with other revenue. The financial risk of the TIF rebate is on the developer.

Summary:

\$2,132,000	Total TIF produced by project
1,500,000	AURA participation (\$300,000 up front & \$1.2M sales TIF)
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\$ 632,000	Excess funds produced by the project to AURA

The developer is investing \$6,577,899 in Arvada to redevelop the former Tabernacle Church. The private sector is investing 77% into the project compared to the 23% by AURA, which is in line with the increased costs associated with the rehabilitation of a historic structure.

AURA's financial consultant, Economic and Planning Systems, reviewed the developer's proforma and assumptions and confirmed all the numbers including the development gap. The analysis showed the project returns were lower than the industry standards.

**COMMUNITY BENEFIT:** This development will save and restore a structure that was built in 1915 and is contributing to the Olde Town Historic District. In addition to the historical renovation, the project will bring new commercial activity to Yukon Street, add new restaurants to the thriving Olde Town scene, generate both sales and property taxes for the first time in over a century, and finally, it will create new jobs.

**STAFF RECOMMENDATION:** Approval

**SUGGESTED MOTION:** I move that the AURA Board approve the Development Agreement between AURA and 5690 Olde Town LLC

**RESOLUTION AR-22-23**

**A RESOLUTION OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING  
THE REDEVELOPMENT AGREEMENT BETWEEN 5690 OLDE TOWN, LLC AND  
THE ARVADA URBAN RENEWAL AUTHORITY**

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

Section 1. The Authority hereby approves the Redevelopment Agreement between 5690 Olde Town, LLC and the Authority, attached hereto as **Exhibit A**, and incorporated herein by this reference, and the Chairman of the Authority is hereby authorized to execute the Agreement on behalf of the Authority.

DATED this \_\_\_\_ of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Paul Bunyard

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

APPROVED AS TO FORM

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

## **REDEVELOPMENT AGREEMENT**

THIS REDEVELOPMENT AGREEMENT (this "**Agreement**") dated as of \_\_\_\_\_, 2022, is made by and between ARVADA URBAN RENEWAL AUTHORITY, an urban renewal authority and a body corporate and politic of the State of Colorado (the "**Authority**"), and 5690 OLDE TOWN LLC, a Colorado limited liability company ("**Developer**"). The Authority and Developer are sometimes collectively called the "**Parties**," and individually, a "**Party**."

### **RECITALS**

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

**WHEREAS**, Developer seeks to redevelop the property generally known as the former Tabernacle Church Property, located at 5690 Yukon Street at the Southeast corner of Yukon Street and 57<sup>th</sup> Avenue, Arvada, CO, as more particularly described on **Exhibit A** attached hereto (the "**Redevelopment Property**"), and to construct certain Eligible Improvements (hereinafter defined) within the Redevelopment Property (the "**Project**");

**WHEREAS**, the Authority has determined that the Project is necessary in order to remediate blight, and is consistent with and in furtherance of the purposes of the Authority and the Olde Town Station Urban Renewal Plan;

**WHEREAS**, in order to facilitate the acquisition, construction, and installation of the Project, the Authority seeks to reimburse Developer for the cost of certain Eligible Improvements up to a maximum aggregate amount of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) (as further defined below, the "**Reimbursement Amount**") as set forth in this Agreement through: (a) utilization of sales tax increment, and (b) a cash contribution upon commencement of the Project;

**WHEREAS**, pursuant to the Colorado Urban Renewal Law , C.R.S. § 31-25-101, *et seq.*, and the Urban Renewal Plan, the Authority may finance undertakings pursuant to the Plan by any method authorized under the Act or any other applicable law, including without limitation, issuance of notes, bonds, and other obligations in an amount sufficient to finance all or part of the Plan; borrowing of funds and creation of indebtedness; advancement of reimbursement agreements; agreements with public or private entities; and loans, advances, and grants from any other available sources; and the Plan authorizes the Authority to pay the principal and interest on any such indebtedness from property and sales tax increments, or any other funds, revenues, assets, or properties legally available to the Authority;

**WHEREAS**, the Parties have agreed to enter into this Agreement for the redevelopment of the Redevelopment Property in accordance with the Urban Renewal Plan and the Act.

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

## **AGREEMENT**

### **1. DEFINITIONS.**

In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

**"Act"** means the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31 of the Colorado Revised Statutes, as amended.

**"Agreement"** means this Redevelopment Agreement, as it may be amended or supplemented in writing. References to Sections or Exhibits are to this Agreement unless otherwise qualified. All exhibits attached to and referenced in this Agreement are hereby incorporated into this Agreement.

**"Authority"** means Arvada Urban Renewal Authority, an urban renewal authority and a body corporate and politic of the State of Colorado which has been duly created, organized, established, and authorized by the City to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Act, and its successors and assigns.

**"City"** means the City of Arvada, Colorado, a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State of Colorado.

**"Commencement of Construction"** means the commencement by Developer of actual physical work on the Project, pursuant to a permit issued by the City.

**"Default"** or **"Event of Default"** means any of the events described in Section 15; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods, and periods of enforced delay provided for in this Agreement.

**"Developer"** means 5690 Olde Town LLC, a Colorado limited liability company, and any successors and assigns approved in accordance with this Agreement.

**"Effective Date"** means the date of this Agreement.

**"Eligible Costs"** means, collectively, the reasonable and customary expenditures for the acquisition, design, construction, and installation of the Eligible Improvements, including without limitation, reasonable and customary soft costs and expenses, as set forth in **Exhibit B** attached hereto, as it may be amended hereunder. Eligible Costs also includes all reasonable and customary costs and expenses related to the engineering and design work for the Eligible Improvements. The maximum amount of Eligible Costs to be paid or reimbursed pursuant to this Agreement shall be the Reimbursement Amount as defined in this Agreement.

**"Eligible Improvements"** means the improvements set forth on **Exhibit C**, attached hereto as amended in accordance with this Agreement.

**"Executive Director"** means the Executive Director of the Authority.

"Party" or "Parties" means one or both of the parties to this Agreement.

"Pledged Revenues" means the total aggregate principal amount of the Reimbursement Amount as defined in this Agreement, including specifically one hundred percent (100%) of the sales tax increment generated by the Redevelopment Property during the term of this Agreement.

"Project" means the redevelopment of the Redevelopment Property by performing the Eligible Improvements, and shall include a food hall and community gathering place with restaurants, private event space, and a commissary kitchen.

"Redevelopment Property" means the real property, located at 5690 Yukon Street, Arvada, Colorado, at the Southeast corner of Yukon Street and 57<sup>th</sup> Avenue, as more particularly described in **Exhibit A** attached hereto.

"Reimbursement Amount" means a maximum amount equal to One Million, Five Hundred Thousand Dollars (\$1,500,000.00), which is the maximum amount that will be paid to Developer to reimburse Developer for Eligible Costs in accordance with the terms and provisions hereof.

"Urban Renewal Plan" or "Plan" means the Olde Town Station Urban Renewal Plan.

## **2. FINANCING AND CONSTRUCTION OF PROJECT.**

2.1 Construction of Project. As set forth in Section 4, if Developer proceeds with the Project, then Developer shall be responsible for acquiring, constructing, and installing the Eligible Improvements, and shall be responsible for compliance in all respects with the requirements of the City of Arvada, as imposed pursuant to the governmental approvals obtained from the City by Developer with respect to the Project.

2.2 Financing the Eligible Improvements. Developer shall be responsible for initially financing the costs and expenses in connection with the acquisition, construction, and installation of the Eligible Improvements which financing may be provided by a financial institution or an investor lending the funds to the Developer and securing such loan with a deed of trust encumbering the Redevelopment Property, including without limitation, all design costs, engineering costs, and other soft costs incurred in connection therewith, except that the Authority shall pay to Developer the amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Initial Contribution") in accordance with Section 5 below.

## **3. CONDITIONS PRECEDENT TO PAYMENT OF REIMBURSEMENT AMOUNT.**

3.1 Conditions Precedent. Unless waived in writing by the Executive Director, except for the payment of the Initial Contribution, the following conditions precedent shall be satisfied prior to Developer receiving reimbursement for Eligible Costs from sales tax increment generated by the Project pursuant to the terms and provisions of this Agreement:

A. Developer shall have completed the Project, as evidenced by issuance of a certificate of occupancy by the City, building permit sign-off by the City, or other



evidence of completion customarily used in the City to confirm completion of the Eligible Improvements; and

B. No Events of Default by Developer shall have occurred and be continuing under this Agreement, after expiration of all applicable grace, notice, and cure periods.

#### **4. DEVELOPER.**

4.1 Acquisition, Construction, and Installation of Project. This Agreement shall not obligate Developer to proceed with the Project. If Developer proceeds with the Project, Developer shall be responsible for the financing, design, acquisition, construction, and installation of the Eligible Improvements, subject to the provisions in this Agreement regarding reimbursement of Eligible Costs in accordance herewith, and except that the Authority shall pay to Developer the Initial Contribution no later than thirty (30) days after Commencement of Construction.

The design and construction of the Project shall comply in all material respects with all applicable codes and regulations of entities having jurisdiction, including any City requirements. In addition, the Project shall comply with the following minimum requirements:

A. The Project shall retain and preserve the relevant historic features as generally depicted on **Exhibit C**, attached hereto and incorporated herein by this reference, and shall provide activation of the alley adjacent to the Redevelopment Property through the inclusion of architectural design features, windows, and access points to the alley;

B. The Project shall include construction of a streetscape substantially similar to the streetscape on Olde Wadsworth, or the City of Arvada approved streetscape, along the perimeter of the Project as depicted on **Exhibit C**; and

C. The Project shall include a food hall and community gathering place with restaurants, private event space, and a commissary kitchen.

Notwithstanding any provisions to the contrary contained herein, Developer shall be entitled to reimbursement for Eligible Costs incurred in connection with an Eligible Improvement only if such Eligible Improvement complies with the above requirements.

If Developer proceeds with the Project, Developer will pay or cause to be paid all required fees and costs, including those imposed by the City, in connection with the design, construction, applicable warranty requirements, and use of the Project.

The Parties agree that if Commencement of Construction by Developer of the Project has not occurred by October 31, 2023, this shall not constitute an Event of Default hereunder, but that the Authority shall have the right to terminate this Agreement as set forth in Section 17 prior to the date Commencement of Construction occurs.

4.2 Access to Property. Subject to the terms and restrictions of any leases or other documents encumbering the Redevelopment Property, Developer will permit representatives of the Authority access to the Redevelopment Property and the Project at reasonable times during

regular business hours and with prior notice as necessary for the purpose of carrying out or determining compliance with this Agreement and the Urban Renewal Plan. The Authority shall not interfere with the construction, operation, or use of the Redevelopment Property in connection with any such access, and shall comply with all laws, including without limitation, OSHA requirements for entry onto a construction site.

4.3 Notification of Sale of Property. Developer shall provide written notice to the Authority of the sale, conveyance, or assignment of all or any portion of the Redevelopment Property by Developer during the term of this Agreement, and any such sale, conveyance, or assignment of the Redevelopment Property shall be subject to the provisions of Section 6 of this Agreement.

## 5. THE AUTHORITY.

5.1 Payment of Reimbursement Amount. Upon compliance with the conditions precedent set forth in Section 3.1 relating to the payment of the Reimbursement Amount the Authority agrees that it shall pay and reimburse Developer for Eligible Costs incurred in connection with the acquisition, construction, and installation of Eligible Improvements in an amount equal to the Reimbursement Amount as follows:

A. The Authority shall pay the Initial Contribution of Three Hundred Thousand Dollars (\$300,000.00) no later than thirty (30) days after Commencement of Construction by placing the Initial Contribution in an escrow account or similar account according to the terms of a mutually acceptable form of agreement determined to be acceptable to the Parties, to cause the Initial Contribution to be utilized to pay for the Eligible Costs. The Initial Contribution may also be used as equity for Developer's construction lender, or may be utilized by causing the Authority to pay such Eligible Costs directly; and

B. The Authority shall reimburse one hundred percent (100%) of the sales tax increment produced by the Project on a monthly basis in an amount up to One Million, Two Hundred Thousand Dollars (\$1,200,000.00), commencing upon the first Certificate of Occupancy issued for the Project, and terminating upon the receipt by Developer of the amount of One Million, Two Hundred Thousand Dollars (\$1,200,000.00), or the date of December 6, 2034, whichever first occurs, but subject to the provisions of Section 6.

5.2. Approval of Site Plan and Elevations. The Authority shall review and approve the site plan and elevations prior to Developer submitting the same to the City to assure that the Project is consistent with the provisions of this Agreement.

5.3 No Election Required. The Parties acknowledge that according to the decision of the Colorado Court of Appeals in *Olson v. City of Golden*, 53 P.3d 747 (2002), an urban renewal authority is not a local government and therefore is not subject to the provisions of Article X, Section 20 of the Colorado Constitution. Accordingly, the Authority may enter into this Agreement with Developer, and agree to remit the Pledged Revenues to Developer to reimburse Developer for Eligible Costs in accordance with the provisions of this Agreement without electoral authorization, and such obligations are not subject to annual appropriation.

5.4 No Impairment. The Authority will not enter into any agreement or transaction that impairs the rights of the Parties, including without limitation, the right to receive and apply the Pledged Revenue in accordance with the terms and provisions of this Agreement.

6. ASSIGNMENT OF REIMBURSEMENT AMOUNT. Because of the unique nature of this Agreement, and the fact that the Authority and Developer are using the best available information to anticipate the performance of the Project under this Agreement, the Parties hereby agree that if Developer sells, conveys, or otherwise assigns the Property and the obligations of this Agreement to a third party during the term of this Agreement (collectively, the "**Future Conveyance**"), other than an assignment to a single purpose entity established by Developer or its members, in which Developer and its members control such entity, to acquire the Redevelopment Property ("**Acquisition Party**") the Future Conveyance shall be subject to the following provisions:

A. The Parties agree that they have based the urban renewal assistance provided herein on a demonstrable gap that utilizes an unlevered Internal Rate of Return ("**IRR**") of a maximum of fifteen percent (15%). Therefore, in the event that a Future Conveyance occurs, Developer and the Authority shall engage in the analysis set forth in subsection B. of this Section 6.

B. Developer shall provide to the Authority its records showing the unlevered IRR as of the date of the proposed Future Conveyance. The Authority shall, at its sole discretion, determine to accept Developer's analysis of the IRR, or engage a third party to review Developer's analysis of the unlevered IRR. The Parties agree to meet in good faith, as necessary to determine the unlevered IRR as of the date of the proposed Future Conveyance.

C. Notwithstanding the provisions of Section 5.1, subsection B., if the unlevered IRR is in excess of fifteen percent (15%) as of the date of the proposed Future Conveyance, the Authority shall terminate the reimbursement of the sales tax increment produced by the Project that would otherwise be provided by Section 5.1, subsection B. of this Agreement.

D. If the unlevered IRR is fifteen percent (15%) or less as of the date of the proposed Future Conveyance, the Authority shall assign the sales tax increment reimbursement obligation to the assignee as a result of the Future Conveyance.

For the avoidance of doubt, an assignment of this Agreement by Developer to the Acquisition Party shall be permitted without the consent of the Authority, but with prior written notice to the Authority, and such assignment shall not constitute a Future Conveyance pursuant to this Section 6. Such Acquisition Party shall have all the rights and obligations of the "Developer" under this Agreement, as if the Acquisition Party were the original signatory hereto.

7. INSURANCE. On or prior to the Commencement of Construction, Developer will provide the Authority with certificates of insurance showing that Developer is carrying, or causing prime contractors to carry, at a minimum, the following insurance: General Liability, with a general aggregate of Two Million Dollars (\$2,000,000.00); fire damage of One Hundred

Thousand Dollars (\$100,000.00); medical expense of Five Thousand Dollars (\$5,000.00); products/completed operations aggregate of Two Million Dollars (\$2,000,000.00); and personal injury of One Million Dollars (\$1,000,000.00) with each occurrence up to One Million Dollars (\$1,000,000.00), with a deductible of Ten Thousand Dollars (\$10,000.00) per claim. Excess liability shall be covered in an amount equal to Two Million Dollars (\$2,000,000.00) per occurrence, Five Million Dollars (\$5,000,000.00) aggregate.

8. **INDEMNIFICATION.** From Commencement of Construction of the Project through Completion of Construction of the Project, and for any action arising during that time period, Developer agrees to indemnify, defend, and hold harmless the Authority, its officers, agents, and employees, from and against all liability, claims, demands, and expenses, including fines imposed by any applicable state or federal regulatory agency, court costs and reasonable attorneys' fees, on account of any injury, loss, or damage to the extent arising out of any of the work to be performed by Developer, any subcontractor of Developer, or any officer, employee, agent, successor, or assign of Developer under this Agreement, but only to the extent such injury, loss, or damage is caused by the negligent act or omission, error, professional error, mistake, accident, or other fault of Developer, any subcontractor of Developer, or any officer, employee, agent, successor, or assign of Developer, but excluding any injuries, losses, or damages which are due to the gross negligence, breach of contract or willful misconduct of the Authority, or any arising by, through, or under the Authority.

9. **REPRESENTATIONS AND WARRANTIES.**

9.1 **Representations and Warranties by the Authority.** The Authority represents and warrants as follows:

A. The Authority is a body corporate and politic of the State of Colorado, duly organized under the Act, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations.

B. The Authority knows of no litigation, proceeding, initiative, referendum, investigation, or threat of any of the same contesting the powers of the Authority or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

C. The execution and delivery of this Agreement and the documents required and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule, or regulation applicable to the Authority or to its governing documents; (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the 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.

D. The Reimbursement Amount to be paid by the Authority to Developer is from available funds of the Authority, and is not subject to any other or prior pledge or

encumbrance, and the Authority will not encumber the funds necessary to pay the Reimbursement Amount prior to full payment to Developer.

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

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

A. Developer is a Colorado limited liability company in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

B. The execution and delivery of this Agreement has been duly and validly authorized by all necessary action on its part to make this Agreement valid and binding upon Developer.

C. The execution and delivery of this Agreement will not: (i) conflict with or contravene any law, order, rule, or regulation applicable to Developer or to Developer's governing documents; (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which Developer is a Party or 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 Developer.

D. Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat of any of the same contesting the powers of Developer or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the Authority.

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

## 10. TERM.

The term of this Agreement is the period commencing on the Effective Date and terminating on the date that the Reimbursement Amount is paid in full by the Authority from the Pledged Revenues; or December 6, 2034, whichever first occurs, but subject to the provisions of Section 6 in the event of a Future Conveyance; provided that the following provisions shall continue beyond the term of this Agreement: (i) any rights and remedies that a Party has for an Event of Default hereunder; (ii) any rights that a Party has to inspect books and records as set forth herein for a period of four (4) years following termination of this Agreement; and (iii) the indemnification provisions set forth in Section 8.

## **11. CONFLICTS OF INTEREST.**

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

## **12. ANTI-DISCRIMINATION.**

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

## **13. NOTICES.**

Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if delivered in person, by prepaid overnight express mail or overnight courier service (in which case, such notice shall be deemed received on the next business day), by certified mail or registered mail, postage prepaid return-receipt requested (in which case, such notice shall be deemed received five (5) business days after being deposited in the U.S. Mail), by electronic or facsimile delivery (in which case, such notice will be deemed received on the same day if sent prior to 5:00 p.m. on a business day, or, otherwise, on the next business day), addressed to the Party to whom such notice is to be given (and such Party's additional persons to copy) at the address(es) set forth below or at such other or additional addresses as may be furnished in writing to the other Parties. The Parties may also agree on a different means of providing written notice hereunder.

To AURA:

Arvada Urban Renewal Authority  
5601 Olde Wadsworth Boulevard, Suite 210  
Arvada, Colorado 80002  
Attention: Maureen Phair, Executive Director  
Email: mphair@arvada.org  
Fax: 720-898-7061

With a Copy To: AURA Counsel  
Corey Y. Hoffmann  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 16<sup>th</sup> Street, Suite 610  
Denver, Colorado 80202  
Email: [cyh@hpwclaw.com](mailto:cyh@hpwclaw.com)  
Fax:

To the Developer: 5690 Olde Town LLC  
5880 Carr St.  
Arvada, Co. 80004  
Attention: Brandon Young  
Email: [by.dev@outlook.com](mailto:by.dev@outlook.com)

With a Copy To: Brandon Young  
2209 Morning Star Dr.  
Park City, UT. 84060  
Email: [brandon@brandoneyoung.com](mailto:brandon@brandoneyoung.com)

#### **14. DELAYS; FORCE MAJEURE.**

Subject to the following provisions, time is of the essence. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, earthquake, strikes, labor disputes, regulation, or order of civil or military authorities, or other causes, similar or dissimilar, which are beyond the control of such Party.

#### **15. EVENTS OF DEFAULT.**

The following events shall constitute an Event of Default under this Agreement:

- A. Any representation or warranty made by any Party in this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness has a material adverse effect upon the other Party.
- B. So long as the Reimbursement Amount has not been paid in full, the Authority fails to remit the Pledged Revenues to Developer in accordance with the terms of this Agreement.
- C. Except as otherwise provided in this Agreement, any Party fails in the performance of any other covenant in this Agreement and such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party. If such default is not of a type which can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable

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

#### **16. REMEDIES.**

Upon the occurrence and continuation of an Event of Default, the non-defaulting Party's remedies will be limited to the right to enforce the defaulting Party's obligations by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy, and no Party will be entitled to or claim damages for an Event of Default by the defaulting Party, including without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive, or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants, or conditions of this Agreement, the prevailing Party in such litigation or other proceeding shall receive, as part of its judgment or award, its reasonable attorneys' fees and costs.

#### **17. TERMINATION.**

This Agreement may be terminated by Developer at any time prior to the Commencement of Construction of the Project. In the event that Commencement of Construction of the Project by Developer has not occurred on or prior to October 31, 2023, then the Authority shall have the option to terminate this Agreement at any time prior to such Commencement of Construction.

In order to terminate this Agreement, a Party shall provide written notice of such termination to the other Party. Such termination shall be effective thirty (30) days after the date of such notice, without any further action by the Parties, unless prior to such time, the Parties are able to negotiate in good faith to reach an agreement to avoid such termination; provided, however, that, in the event of termination by the Authority due to Commencement of Construction not occurring on or before October 31, 2023, if Commencement of Construction occur prior to expiration of said 30-day notice period, such termination notice shall be void and this Agreement shall continue in full force and effect. Upon such termination, this 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 Agreement, except as otherwise expressly set forth herein. In addition, the Parties agree to execute a mutual release or other instruments reasonably required to effectuate and give notice of such termination.

#### **18. PAYMENT OF FEES AND EXPENSES.**

Each Party agrees to pay for its own fees, costs, and expenses incurred by such Party in connection with the execution and delivery of this Agreement and related agreements and documents.

#### **19. NONLIABILITY OF OFFICIALS, AGENTS, MEMBERS, AND EMPLOYEES.**

Except for willful or wanton actions or gross negligence, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney, or agent



of any Party, nor any lender to any Party or to the Project, will be personally liable under the Agreement or in the event of any default or for any amount that may become due to any Party.

## **20. ASSIGNMENT.**

Except for an assignment to the Acquisition Party and a Future Conveyance, this Agreement shall not be assigned in whole or in part by any Party without the prior written consent of the other Party, and such assignment shall be subject to the provisions of Section 6 of this Agreement.

## **21. SECTION CAPTIONS.**

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

## **22. ADDITIONAL DOCUMENTS OR ACTION.**

22.1 The Parties agree to execute any additional documents or take any additional action, including without limitation, estoppel documents requested or required by third parties, including without limitation, lenders, tenants, or potential purchasers, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party.

22.2 If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal, or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform, or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

22.3 The Executive Director shall have the authority to act on behalf of the Authority under this Agreement.

## **23. AMENDMENT.**

This Agreement may be amended only by an instrument in writing signed and delivered by the Parties.

## **24. WAIVER OF BREACH.**

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

**25. GOVERNING LAW.**

The laws of the State of Colorado govern this Agreement.

**26. BINDING EFFECT.**

This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Sections 6 and 20.

**27. EXECUTION IN COUNTERPARTS.**

This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which will constitute but one and the same instrument.

**28. LIMITED THIRD-PARTY BENEFICIARIES.**

Except as hereinafter provided, this Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement; provided, however, that the City shall be deemed to be a third-party beneficiary under this Agreement to the extent that Developer or Authority have agreed to undertake certain actions for the benefit of the City.

**29. NO PRESUMPTION.**

The Parties and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement will be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

**30. SEVERABILITY.**

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

**31. DAYS.**

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

**32. GOOD FAITH OF PARTIES.**

In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act

unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

**33. PARTIES NOT PARTNERS.**

Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

**34. NO WAIVER OF IMMUNITY.**

Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by the Authority under applicable state law.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of \_\_\_\_\_, 2022

ARVADA URBAN RENEWAL AUTHORITY

ATTEST:

\_\_\_\_\_  
Paul Bunyard, Chairperson

\_\_\_\_\_  
Maureen Phair, Recording Secretary

DEVELOPER

5690 OLDE TOWN LLC, a Colorado limited liability company

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 24 through 27, Block 1 Reno Park,  
County of Jefferson, State of Colorado

**EXHIBIT B**

**ELIGIBLE COSTS**

Environmental Remediation Allowance			\$150,000.00
Site Work (\$16.83 x 12,360 sq/ft)			\$208,000.00
Utility Upgrades (Gas, Water, Electrical Service)			\$200,000.00

Interior Demolition	\$67,000.00
Elevator & ADA Access	\$250,000.00
Structural Integrity	\$139,000.00
Storefront / Windows	\$102,000.00
Plumbing / New Sewer Line	\$113,000.00
Electrical	\$235,000.00
HVAC	\$152,000.00
New Strutural Floor	\$185,000.00
New Roof Structure & Gutters	\$159,000.00
Brick Treatment (Acid Wash)	\$87,000.00
Bell Tower	\$32,000.00
Landscaping	\$38,000.00
Fire Sprinkler	\$283,000.00
Exterior Paint	\$32,000.00
Exterior Facade Repair	\$34,000.00
s/t	\$1,908,000.00

Total Eligible Costs    \$2,466,000

AURA Contribution        \$1,500,000

# EXHIBIT C

## ELIGIBLE IMPROVEMENTS

