



NOTICE OF SPECIAL MEETING

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold a special board meeting via Zoom Webinar at **3 PM** on **Wednesday, September 20, 2023**.

Anyone wishing to attend virtually may register as follows:

Register in advance for this webinar:

https://us06web.zoom.us/webinar/register/WN_p7EuRtejRNqLsRMqv7cYTQ

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

If you need assistance with the virtual webinar process or have questions or comments for the AURA Board regarding the agenda items, please contact cbriscoe@arvada.org prior to noon on September 20, 2023. A recording of the meeting will be posted on AURA's website following the webinar.

Agenda information is attached.

Carrie Briscoe

Carrie Briscoe
Deputy Director/Recording Secretary

POSTED: September 15, 2023



**ARVADA URBAN RENEWAL AUTHORITY
Board of Commissioners SPECIAL Meeting
Online Zoom Webinar Only
3 PM, Wednesday, September 20, 2023**

AGENDA

SPECIAL MEETING – 3:00 PM

1. Call to Order
2. Moment of Reflection and Pledge of Allegiance
3. Roll Call of Members
4. Executive Session
 - A. Instructions to Negotiators, Pursuant to CRS 24-6-402(4)(e) Related to Ralston Creek North LLC
5. Old Business
 - A. AR-23-14 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE SIXTH AMENDMENT TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN RALSTON CREEK NORTH, LLC AND THE ARVADA URBAN RENEWAL AUTHORITY
6. Adjournment

ARVADA URBAN RENEWAL AUTHORITY

AGENDA INFORMATION SHEET

Agenda No.: Item 4A

Meeting Date: September 20, 2023

Title: Sixth Amendment to the Amended and Restated Disposition and Development Agreement between Ralston Creek North and AURA (Including Loan Agreement and Personal Guaranty)

ACTION PROPOSED: Approve

BACKGROUND: AURA entered into a DDA with Ralston Creek North 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.

Phase 1, The Shops at Ralston Creek, is developed and open. Berkeley Homes is currently constructing 44 townhome on the former Safeway site, also known as Phase 2. Phase 3, the 27 townhomes is under contract with Royal Oak. Phase 4, 186 apartment units located at the former Arvada Square property and is being developed by Loftus. Phase 5, former gas station, will be redeveloped by City Street Investors into a beer hall/restaurant, large public plaza and another small retail building.

This amendment pertains to Phases 3 and 4 identified above.

INFORMATION ABOUT THE ITEM: In the current economic climate, banks have limited lending to real estate projects. Loftus is unable to secure a construction loan with a bank for the development of the apartment project. As a result, Loftus is working with alternative lending sources that charge a much higher interest rate, somewhere between 9-13%. To reduce the interest expenses, Loftus has asked AURA to provide a \$3.5 million loan at 6.75% interest for a three year term with a one year extension. The loan will be secured by a personal guaranty by Jim Loftus.

In addition, AURA allowed Loftus to sell Phase 3, the Town Home Site, and use the proceeds to help finance the apartment project. A prior townhome sale fell through requiring the site to go back on the market and setting back the timeline for when Loftus would receive the funds. Loftus as requested that AURA advance the future sales proceeds of \$ 1 million from the townhome site to Loftus to use to help finance the apartment project. When the site sells in 2024, AURA will keep all proceeds.

To allow Loftus additional time to secure project financing, the Schedule of Performance milestone dates will be adjusted by 90 days as outlined below:

Summary:

- \$3.5 million loan
 - AURA will lend Loftus \$3.5 million dollars at 6.75% interest for 36 months with an optional 12 month extension.
 - Principle and interest will accrue and are due in a lump sum payment in 36 months, or 48 months if the extension is used, following receipt of the loan.
 - AURA will pay the funds into the previously agreed upon escrow account after Loftus has received all necessary building permits, secured financing, and is prepared to break ground.
- Town Home Prepayment
 - AURA will pay Loftus \$1 million for the future sale of the townhome site. When the property sells, AURA will keep all proceeds.
 - AURA will pay the funds into the previously agreed upon escrow account after Loftus has received all necessary building permits, secured financing, and is prepared to break ground.
- 90 Day Extension
 - To allow Loftus additional time to secure project financing, the Schedule of Performance milestone dates will be adjusted by 90 days as outlined below:
 - Permit Approval, Selection of GC and Financial Commitment – extended from 10/1/23 to 1/1/24
 - Closing – extended from 11/1/23 to 2/1/24
 - Commence Construction - extended from 12/1/23 to 3/1/24
 - Completion of Construction – extended from 4/1/26 to 7/1/26

FINANCIAL IMPACT: AURA will pay \$4.5 million to Loftus at closing. \$1 million will be returned in approximately one year when the townhome site sells. \$3.5 million will be paid back with interest in three to four years, three years of interest is \$708,750. This agreement will tie up capital and possibly delays other projects.

STAFF RECOMMENDATION: Staff recommends approval.

SUGGESTED MOTION: I move that Resolution AR-23-14, A Resolution of the Board of Commissioner of the Arvada Urban Renewal Authority Approving the Sixth Amendment of the Amended and Restated Development Agreement between AURA and Ralston Creek North.

RESOLUTION AR-23-14

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN
RENEWAL AUTHORITY APPROVING THE SIXTH AMENDMENT TO THE
AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN RALSTON CREEK NORTH, 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 Sixth Amendment to the Amended and Restated Disposition and Development Agreement between Ralston Creek North LLC and the Arvada Urban Renewal Authority, attached hereto as **Exhibit A**, is hereby approved, and the Chair is authorized to execute the same on behalf of the Authority.

DATED this ____ day of _____, 2023.

Paul Bunyard, Chair

Recording Secretary

APPROVED AS TO FORM

Corey Y. Hoffmann, Legal Counsel

**Sixth Amendment to Amended and Restated
Disposition and Development Agreement
(Ralston Creek North)**

WITNESSETH

Whereas, Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado (the "**Authority**") and Ralston Creek North, LLC, a Colorado limited liability company ("**RCN**"), entered into that certain Amended and Restated Disposition and Development Agreement dated as of April 7, 2021, 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 as of March 2, 2022, the Second Amendment to the DDA as of March 2, 2022, the Third Amendment to the DDA as of September 7, 2022, the Fourth Amendment to the DDA as of May 3, 2023, and the Fifth Amendment to the DDA as of May 3, 2023 (collectively, the "**DDA**") (each a "**Party**" and collectively the "**Parties**");

Whereas, pursuant to Section 12.01(d), RCN, as Redeveloper, had the right to assign or transfer the Agreement to an affiliate of Assignor, provided that such affiliate is substantially owned, managed or controlled, directly or indirectly, by Assignor, or the members or managers of Assignor, and further provided that the assignee or transferee has the legal and similar or greater financial ability than Assignor to perform all duties and obligations under the Agreement, and assumes all such duties and obligations; and

Whereas, effective as of _____, 2023, RCN has assigned all of its right, title, interest and obligations in, under and to the DDA as Redeveloper with respect to Phase 4 to Residences at Ralston Creek, Inc., a Colorado corporation ("**RRC**" and also a "**Party**" for purposes of the DDA and this Sixth Amendment);

Whereas, the Parties wish to make certain other amendments to the DDA relating to the respective obligations of the Parties based on various changing conditions related to the Project;

Whereas, Exhibit C to the DDA is a Schedule of Performance that governs the times for performance by the Parties and also requires amendment to reflect such changing conditions; and

Whereas, the Parties therefore wish to also update the Schedule of Performance to reflect the current circumstances of the Project.

In consideration of the facts set forth in the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed, it is THEREFORE AGREED BY THE PARTIES AS FOLLOWS:

1. RRC as Redeveloper. The Parties confirm and agree that RRC shall be recognized as Redeveloper for all purposes relating to Phase 4.

2. Section 3 of the DDA is hereby deleted and restated in its entirety as follows:

SECTION 3. AUTHORITY'S OBLIGATIONS

3.01 Total Contribution by the Authority. 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 Sixth Amendment by making a total funding contribution of in the amount of Fourteen Million Nine Hundred Ninety Three Thousand Nine Hundred Eight Nine Dollars (\$14,993,989.00) (the "Total Contribution"), allocated to the development of the Property and consistent with the Project as follows:

A. Calculation of Total Contribution. The Authority shall pledge the Total Contribution less the Infrastructure Costs as defined by the Fourth Amendment as follows: The Total Contribution consists of:

- (i) A cash incentive of Thirteen Million, Three Hundred Ninety Three Thousand, Nine Hundred Eighty Nine Dollars (\$13,393,989.00);
- (ii) Such cash incentive is reduced by the Infrastructure Costs in the approximate amount of Four Million, Thirty Four Thousand, Eight Hundred Sixty Six Dollars (\$4,034,866.00). The reduction in Infrastructure Costs shall be finally reconciled and deducted from the Phase 4 Contribution, and such costs shall further include any and all soft costs associated with the Infrastructure Costs, including but not limited to architectural, engineering and construction management costs. In addition, if the Parties deem it necessary, the Infrastructure Costs may further be amended to include the payment by the Authority of fees due to the City in order to obtain permits for Phase 4, including the System Development Fees for the Property which must be paid prior to September 30, 2023 to avoid an increase in the cost of such System Development Fees; and
- (iii) The amount of One Million, Six Hundred Thousand Dollars (\$1,600,000.00) pledged to Phase 5 (the "Phase 5 Contribution").

The approximate amount of Nine Million, Three Hundred Fifty Nine Thousand, One Hundred Twenty Three Dollars (\$9,359,123.00) (the "Phase 4 Contribution"), which is the Total Contribution minus Infrastructure Costs and minus the Phase 5 Contribution shall be deposited in an escrow account (the "Escrow Account") at the Closing for Phase 4 no later than February 1, 2024.

The Phase 5 Contribution shall separately be deposited in an escrow account for the benefit of Phase 5, which amount shall be paid to Arvada Beer Garden RE, LLC upon performance by Arvada Beer Garden RE, LLC of both (a) the obligations

under that Purchase and Sale Agreement dated May 3, 2023 and, (b) the issuance of the first building permit to Arvada Beer Garden RE, LLC for construction of the improvements for Phase 5.

B. The Phase 4 Contribution shall be released from the Escrow Account to Redeveloper according to the terms of a mutually acceptable form of Escrow Agreement as more particularly described in Section 7.02 below.

C. Total Contribution as Equity in the Project. The Parties agree that the Phase 4 Contribution is and shall be equity by Redeveloper's construction lender(s) for Phase 4, and further agree that the escrow agreement for such Escrow Account shall contain terms necessary to reflect any requirements of Redeveloper's construction lender(s) relating to the same. Subject to such reasonable terms and conditions as may be agreed to by the Authority with Redeveloper's construction lender(s), 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.

3.02. Prepayment of Proceeds of Phase 3. The Authority shall further deposit into the Escrow Account the additional amount of One Million Dollars (\$1,000,000.00) (the "Phase 3 Proceeds"), which Phase 3 Proceeds are and shall be a prepayment by the Authority to Redeveloper of the amount to be paid for the sale of the property for Phase 3 of the Property. Such amount shall be deposited into such Escrow Account upon Redeveloper having received all necessary building permits, and having secured financing from one or more construction lenders to allow for Commencement of Phase 4 Construction. When the sale of the Phase 3 property is consummated to a developer of the townhome development contemplated for Phase 3, the Authority shall be entitled to retain all such proceeds from such sale.

3.03. Loan by the Authority to Redeveloper. In addition to the Total Contribution defined hereinabove, the Authority further agrees to loan Redeveloper the amount of Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) as more particularly described in that Loan Agreement, attached hereto as Exhibit F, and incorporated herein by this reference. The loan shall be for a term of 36 months, with an optional 12 month extension, at an interest rate of 6.75% per annum. Principal and interest shall be due in a lump sum payment upon expiration of the term of the Loan.

3. Section 7 of the DDA is hereby deleted and restated in its entirety as follows:

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.

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. The Redeveloper further specifically agrees that to the extent the Loan Agreement attached hereto as **Exhibit F**, and incorporated herein by this reference is included in Redeveloper's financing alternatives, that Redeveloper shall include the following minimum requirements and assurances to the Authority in connection with the construction loan and financing agreements with Redeveloper's construction lender(s):

A. The funds payable by the Authority to Redeveloper as set forth in Section 3 of this Agreement consisting of the Phase 4 Contribution and the Phase 3 Proceeds shall be placed in an Escrow Account upon Redeveloper both (i) securing all other construction financing to complete Phase 4 as set forth in this Agreement, and (ii) receiving necessary building permits and land use approvals to cause Commencement of Phase 4 Construction.

B. For purposes of this Section 7.02, the total amount of such Authority remittance to the Escrow Account shall be approximately Ten Million Three Hundred Fifty Nine Thousand, One Hundred Twenty-Three Dollars (\$10,359,123.00) consisting of (i) the Phase 4 Contribution of Nine Million, Three Hundred Fifty Nine Thousand, One Hundred Thirty Four Dollars (\$9,359,134.00); (ii) the Phase 3 Proceeds in the amount of One Million Dollars (\$1,000,000.00);, and (iii) the loan from the Authority to Redeveloper in the amount of Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) as more particularly described in Exhibit F. The costs set forth herein are approximate and will be reduced by the final reconciliation of the Infrastructure Costs, which shall include any and all soft costs including but not limited to architectural, engineering and construction management costs, and may further be reduced by including the payment by the Authority of fees due to the City in order to obtain permits for Phase 4, including the System Development Fees for the Property which must be paid prior to September 30, 2023 to avoid an increase in the cost of such System Development Fees.

C. Said Escrow Account shall require that any draws from said Escrow Account shall be subject to prior approval of any draw taken thereon by the Authority in addition to any other prior approvals required by any other construction lender(s);

D. James R. Loftus shall guarantee performance of the loan set forth in Section 3.05 of this Agreement; and

E. Redeveloper shall further provide the Authority with all loan documents from Redeveloper's construction lender(s), which documents shall at a minimum provide the minimum requirements set forth in this Section 7.02, and such construction loan documents shall include a form of Completion Guarantee for Phase 4 consistent with Section 7.03 below.

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, an unlevered IRR below 10.5% on Phase 4 will allow Redeveloper to keep all sales proceeds. On Phase 5, an 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.

3. Exhibit C to the DDA is hereby replaced for all purposes with the Schedule of Performance attached to this Sixth Amendment and incorporated herein as **Exhibit C-3**.

4. Ratification. Except as amended hereby, the DDA remains unmodified and in full force and effect. In the event of any conflict between the DDA and this Sixth Amendment, the terms and provisions of this Sixth Amendment shall control.

5. Counterparts; Electronic Delivery. This Sixth Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by email

or other electronic means (including, without limitation, DocuSign) and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

[Signatures on the following page]

DATED THIS ____ DAY OF _____, 2023.

The Authority:

ARVADA URBAN RENEWAL AUTHORITY

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

RCN:

RALSTON CREEK NORTH, LLC

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

RRC:

RESIDENCES AT RALSTON CREEK, INC.

By: _____
Name: _____
Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

EXHIBIT C-2

DDA REVISED SCHEDULE OF PERFORMANCE PHASE 4

PATH A:

Permit Final Approval, Selection of General Contractor and Financing Commitment	1/1/24
Closing (Finalize Loan)	2/1/24
Commence Construction	3/1/24
Completion of Construction	7/1/26
AURA Certificate of Completion	6 Months after Completion

PATH B:

Deadline to secure General Contractor and Financing	1/1/24
Deadline for Redeveloper to identify acceptable purchaser for Phase 4 and/or Phase 5 Plans and Rights	Four months from failing to secure General Contractor and Financing (No later than 5/1/24)
Deadline for closing with approved buyer for Phase 4 and/or Phase 5 Plans and Rights	Four months from identifying acceptable purchaser (No later than 9/1/24)
Transfer to AURA of Phase 4 and/or Phase 5 Plans and Rights in exchange for reimbursement of expenses	TBD at AURA's election

EXHIBIT F
Sixth Amendment to Amended and Restated
Disposition and Development Agreement
(Ralston Creek North)

Loan Agreement

This Loan Agreement ("Loan Agreement") is entered into this ____ day of _____, 2023 (the "Effective Date"), by and 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 RESIDENCES AT RALSTON CREEK, INC., a Colorado corporation, whose address is 2595 Canyon Blvd., Suite 200, Boulder, CO 80302 (the "Redeveloper") (each a "Party" and together, the "Parties").

Whereas, by and through that certain Amended and Restated Disposition and Development Agreement between the Parties dated April 7, 2021, most recently amended by a Sixth Amendment dated September 20, 2023 (collectively, the "DDA"), Redeveloper is responsible for redevelopment of certain property located within the Ralston Fields Urban Renewal Project Area for a mixed-use development (hereafter, the "Project"); and

Whereas, in order to support the Project specifically and the redevelopment of the Ralston Fields Urban Renewal Project Area generally, the Authority wishes to advance funds to Redeveloper on a temporary basis subject to the terms and conditions of this Loan Agreement.

In consideration of the facts set forth in the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed, it is THEREFORE AGREED BY THE PARTIES AS FOLLOWS:

A. **Definitions.** Terms defined in the DDA and used herein shall have their defined meaning.

B. **Loan Amount; Term.** Subject to Redeveloper's performance under the DDA and the terms and conditions set forth herein, the Authority loans Redeveloper the amount of three million five hundred thousand dollars (\$3,500,000.00) at an interest rate of 6.75% per annum for a term of thirty six (36) months from the Deposit Date, as defined below (the "Loan"). Subject to written agreement of the Parties, the Loan term may be extended at the same interest rate for an additional twelve (12) months, for a maximum term of forty eight (48) months from the Deposit Date. Any extension shall be agreed upon by the Parties in writing not less than thirty (30) calendar days prior to the date of expiration of the original term.

C. **Authority's Obligations.** Upon Redeveloper's receipt of all permits and financing needed to commence work on Phase 4, as determined by the Authority, the Authority shall remit the Loan funds to the Escrow Account as defined in the DDA (the "Deposit Date"). Loan funds shall be released from the Escrow Account for Redeveloper's use according to the escrow agreement described in Section 7.02 of the DDA.

D. Redeveloper's Obligations. Prior to the Deposit Date, as security for the Loan, James R. Loftus ("Loftus") shall provide a personal guaranty for the repayment of the Loan in a form acceptable to the Authority (the "Guaranty"). The Authority acknowledges its position as a unsecured creditor claiming behind creditors holding deeds of trust secured by portions of the Project. As such, in the event Redeveloper or its affiliate, Ralston Creek North, LLC ("RCN"), grants the Authority a junior subordinated lien or deed of trust against real property owned by either Redeveloper or RCN within the Project in a form acceptable to the Authority, the Authority confirms that the Guaranty shall be terminated, and Loftus shall be released from his obligations thereunder.

E. General Terms.

1. Redeveloper acknowledges and agrees that the Loan is solely to facilitate the completion of the Project. The Loan funds may only be used according to the escrow agreement described in Section 7.02 of the DDA. Use of the Loan for any other purpose shall be a breach of this Loan Agreement.

2. In the event of breach of this Loan Agreement by Redeveloper, the Authority shall have the right to terminate this Loan Agreement, and repayment of the Loan shall become due and payable in full immediately. Any portion of the Loan not repaid in full when due shall bear interest at the rate of 8% per annum, compounded annually, until paid in full.

3. Redeveloper shall at all times make all records, ledgers, books, accounts or other documents, concerning the Loan or its balance in any medium, kept or maintained by Redeveloper available for the Authority's inspection at reasonable times upon request by the Authority.

4. By entering into this Loan Agreement, Authority expressly does not assume any obligation of Redeveloper to any third party, including, but not by limitation, any term, condition, covenant, duty, or obligation set forth in any contract, certificates of participation, commercial loan, or any other debt or obligation of Redeveloper to which Authority has not expressly consented in writing.

5. The Parties agree to execute any additional documents or take any additional action that is reasonably necessary to carry out this Loan Agreement.

6. This Loan Agreement shall not be assigned by Redeveloper without the prior written consent of Authority, which may be granted or denied in Authority's absolute discretion. Redeveloper may not hypothecate, lend, or otherwise pledge the proceeds of the Loan to any other lender for any purpose, including, but not by limitation, as collateral for Redeveloper's performance under any other contract or financial obligation without the consent of Authority.

7. This Loan Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, heirs, and assigns;

provided however, that nothing in this Section shall be construed to permit the assignment of this Loan Agreement except as otherwise expressly authored herein.

8. All attachments referred to in this Loan Agreement are, by reference, incorporated herein for all purposes.

9. This Loan Agreement supersedes and replaces all prior agreements, written or oral, with respect to the Loan.

10. This Loan Agreement shall be governed by the laws of the State of Colorado without reference to its conflict of laws principles. Venue for any action arising under this Loan Agreement or for the enforcement of this Loan Agreement shall be in the appropriate court for Jefferson County, Colorado.

11. The Parties understand and agree that by making the Loan, the Authority is not a guarantor of Redeveloper's performance, or is assuming any debt or obligation of Redeveloper, or is creating a partnership or joint venture with Redeveloper. Nothing herein shall be deemed to be, or be construed as, a guarantee by the Authority of any debt or obligation of Redeveloper. Redeveloper shall not make any representation on behalf of the Authority, except as expressly authorized.

12. There are no intended or unintended third party beneficiaries to this Loan Agreement.

13. If either Party breaches this Loan Agreement, the breaching Party shall pay all of the prevailing Party's reasonable attorney's fees and costs in enforcing this Loan Agreement.

14. A waiver by any Party to this Loan Agreement of the breach of any term or provision of this Loan Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

F. **Termination of Agreement.** This Loan Agreement shall automatically terminate upon payment of the Loan. Termination of this Loan Agreement shall not otherwise relieve Redeveloper of any obligation set forth in the DDA.

IN WITNESS WHEREOF, the Parties have executed this Loan Agreement as of the Effective Date.

Arvada Urban Renewal Authority

By: Paul Bunyard
Title: Chair

Attest:

Secretary/Executive Director

Residences at Ralston Creek, Inc.

By: James R. Loftus
Title: President

STATE OF COLORADO)
)ss.
COUNTY OF)

Subscribed and sworn to before me on _____.

My commission expires: _____
Witness my hand and official seal.

_____,
Notary Public

PERSONAL GUARANTY

This Personal Guaranty (the "Guaranty") is entered into as of _____, _____ by JAMES R. LOFTUS ("Guarantor"), as a material inducement to and in consideration of the ARVADA URBAN RENEWAL AUTHORITY ("Lender"), making a loan to RESIDENCES AT RALSTON CREEK, INC., a Colorado limited liability company (the "Borrower"), in an amount of \$3,500,000.00 (the "Loan").

In connection with and to evidence the Loan, Borrower has executed a Loan Agreement dated the date of this Guaranty (the "Agreement"). Guarantor acknowledges that he will benefit from the Loan to Borrower. Lender is making the Loan in consideration for the covenants contained herein.

1. Guarantor hereby unconditionally guarantees to Lender the full and punctual payment, when due, of all payments of principal and interest under the Agreement. If Borrower shall at any time default in the performance of any of its obligations under the Agreement, Guarantor will perform Borrower's obligations under the Agreement. Notwithstanding the foregoing, in the event that either Borrower or Ralston Creek North, LLC ("RCN") provides Lender with a junior subordinated lien or deed of trust encumbering real property owned by either Borrower or RCN as described in the Agreement in a form acceptable to Lender, this Guaranty shall automatically terminate and Guarantor shall be released from all obligations hereunder.

2. Any act of Lender, or its successors or assigns, consisting of a waiver of any of the terms or conditions of the Agreement, or the giving of any consent to any manner or thing relating to the Agreement, or the granting of any indulgences or extension of time to Borrower, may be done without notice to Guarantor and without affecting the obligations of Guarantor under this Guaranty. This Guaranty shall apply to the Loan and any extension, renewal, modification or amendment thereof, regardless of whether Guarantor consents thereto or receives notice thereof.

3. Guarantor agrees that he may be joined in any action against Borrower in connection with the obligations of Borrower under the Agreement, and recovery may be had against Guarantor in any such action.

4. Until all the covenants and conditions in the Agreement on Borrower's part to be performed and observed are fully performed and observed and all payments are made under the Agreement, Guarantor (a) shall have no right of subrogation against Borrower by reason of any payments or performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Borrower now or hereafter held by Guarantor to the obligations of Borrower to Lender under the Agreement.

5. Failure by Lender to exercise any right which it may have under this Guaranty shall not be deemed a waiver thereof unless so agreed in writing by Lender, and the waiver by Lender of any default by Guarantor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

6. This instrument constitutes the entire agreement between Lender and Guarantor with respect to the subject matter hereof, superseding all prior oral or written agreements or

understandings with respect thereto, may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and Lender.

7. This Guaranty may be executed in counterparts, each of which is an original and all of which together constitute one instrument. Signatures transmitted by DocuSign (or similar software) or electronic PDF will be deemed original signatures and will be valid and binding for all purposes.

GUARANTOR:

James R. Loftus