

DEVELOPMENT AND REIMBURSEMENT AGREEMENT (SHOENBERG FARMS PROJECT)

THIS DEVELOPMENT AND REIMBURSEMENT AGREEMENT (SHOENBERG FARMS PROJECT) (the “Agreement”) is made as of _____, 2025 (the “Effective Date”), by and between **CITY OF WESTMINSTER**, a Colorado home rule municipal corporation whose principal office address is 4800 92nd Avenue, Westminster, Colorado (the “City”), and **MJ DEVELOPMENT LTD**, a Colorado partnership whose principal office address is 7765 Wadsworth Boulevard, P.O. Box 746494, Arvada, Colorado (“Developer”). The City and Developer may be referred to hereinafter collectively as the “Parties” or individually as a “Party.”

RECITALS

A. The City and Developer are parties to that certain Purchase and Sale Agreement entered into as of September 18, 2023, and amended by that certain First Amendment to Purchase and Sale Agreement entered into as of January 3, 2024, and that certain Second Amendment to Purchase and Sale Agreement entered into as of April 12, 2024 (collectively, the “PSA”), pursuant to which the City agreed to sell, and Developer agreed to purchase, the land more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference (the “Land”), and certain rights and interests associated therewith (collectively and together with the improvements located thereon, the “Property”).

B. Developer intends to develop a food hall that adaptively reuses the existing structures on Lot 14A of the Property (“Phase 1”) and to renovate and adaptively reuse the structures on Lot 5 of the Property as residential units and a retail space (“Phase 2”) (Phase 1 and Phase 2 may be referred to collectively hereinafter as the “Project”).

C. Subject to the terms and conditions of this Agreement, the Conservation Easement Agreement attached hereto as **Exhibit B** and incorporated herein by this reference (the “Conservation Easement”), and any other agreements between the City and Developer referenced herein, Developer desires to develop the Project on the terms and conditions contained herein.

D. The PSA provides that the City and Developer shall enter into this Agreement to, among other things, define certain obligations of the City and Developer regarding development of the Project.

AGREEMENT

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

1. Definitions and General Provisions.

(a) Internal References. Unless otherwise stated, references in this Agreement to Recitals, Sections, subsections, or Exhibits are to this Agreement.

(b) Definitions.

“Commence Construction” or “Commencement of Construction” means such time as Developer causes physical demolition or physical movement of dirt/soil of the Land to be caused by heavy construction equipment in the nature of an excavator, bulldozer, grader, or the like.

“Complete Construction” or “Completion of Construction” occurs at the time Developer has obtained a temporary or final certificate of occupancy for a Phase or for the Project, as specified.

“Improvements” means, collectively, the Public Improvements and Private Improvements.

“ODP” means the official development plan for the Project, submitted and approved by the City in accordance with the Westminster Municipal Code and Comprehensive Plan, as amended.

“Phase 1” means the improvement of Lot 14A to develop a food hall.

“Phase 2” means the improvement of Lot 5 to renovate the farmhouse into two residential units and a retail space.

“Phase 1 Eligible Improvements” means the Improvements set forth in **Exhibit E**, identified below.

“Phase 2 Eligible Improvements” means the Improvements set forth in **Exhibit F**, identified below.

“Private Improvements” means the privately owned improvements Developer will construct on the Property.

“Public Improvements” means the improvements required by the City to serve the Property and Private Improvements and dedicated or otherwise transferred to the City or other public entity for operation and maintenance. Public Improvements are intended by the Parties to be part of the Phase 1 Eligible Improvements and the Phase 2 Eligible Improvements.

“Repurchase Agreement” means the Repurchase Option and Post-Closing Agreement for the Project.

(c) Exhibits. In the event of conflict between the terms of this Agreement and any Exhibit, the provisions of the Agreement will prevail. The following Exhibits are attached to and made part of this Agreement:

| | |
|------------------|---|
| Exhibit A | Legal Description of the Property |
| Exhibit B | Conservation Easement Agreement |
| Exhibit C | Approved Official Development Plan (to be attached upon approval) |
| Exhibit D | Estimated Project Timeline |
| Exhibit E | Phase 1 Eligible Improvements & Costs |

Exhibit F Phase 2 Eligible Improvements & Costs
Exhibit G Reimbursement Request

2. Project Timeline.

(a) Phase 1 Construction. Developer shall Commence Construction for Phase 1 of the Project in accordance with Sections 1(a) and 1(b) of the Repurchase Agreement.

(b) Phase 2 Construction. Developer shall begin construction for Phase 2 at such time as Developer obtains building permits for all Phase 2 Eligible Improvements.

3. Obligations of the Developer. Developer shall have the following obligations under this Agreement.

(a) Construction of Improvements. All construction required by this Agreement shall comply with all applicable standards, specifications, regulations, and ordinances of the City. Developer agrees to adhere to the approved ODP on or before the deadline set forth in Section 2(a)(ii) of the PSA and the Estimated Project Timeline in **Exhibit D**. Developer's general contractor (the "General Contractor") shall be responsible for all construction activities and will coordinate with the City throughout the construction process. The City shall inspect construction activity to verify the Contractor is in compliance with the City's Standards and Specifications. The City shall be listed or otherwise identified as an additional insured on the Contractor's liability insurance policy.

(b) Compliance with Conservation Easement. Developer shall comply with all applicable standards, specifications, regulations, and requirements of the Conservation Easement.

(c) Cost Certification. Developer shall document and certify the costs for Phase 1 and Phase 2 as set forth in this Section 3(c). The reimbursement request to the City for the payment of Phase 1 or Phase 2 costs (the "Reimbursement Request"), the form of which is attached hereto as **Exhibit G**, shall include a certification signed by the General Contractor and an authorized representative of Developer certifying that the costs included in the Reimbursement Request constitute Phase 1 or Phase 2 costs. Such submissions shall include copies of back up documentation supporting the listed cost items, including bills, statements, pay request forms from first-tier contractors and suppliers, conditional lien waivers, and copies of each check issued in payment of such costs. Such certification shall include a statement that the Phase 1 or Phase 2 costs included in the certificate were actually incurred and have not been previously reimbursed. Statements for certification and payment of Phase 1 or Phase 2 costs shall not include advance payments of any kind for unperformed work or for materials not delivered and stored on the Property.

(d) No Duplicate Payments: Cost Savings and Cost Overruns. There shall be no duplicate payment of any of the Phase 1 or Phase 2 costs. At Developer's discretion, cost savings for Phase 2 Eligible Improvements may be applied to cost overruns incurred for any other Phase 1 Eligible Improvements in accordance with Section 3(c) above and 3(e), 4(c) and 4(d) below.

(e) Reimbursement Request; Approval. After Completion of Construction of Phase 1, and at quarterly intervals of Phase 2, and upon City acceptance and approval of the Phase 1 or

Phase 2 Eligible Improvements, and any additional improvements authorized by the City, Developer shall submit the Reimbursement Request in accordance with Section 3(c) for reimbursement by the City of such costs. The City shall review and provide notice of approval or disapproval of such Reimbursement Request within ten (10) business days after receipt thereof.

(f) Insurance. At all times prior to Completion of Construction of the Project, Developer, within ten (10) days after request by the City, will provide the City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing the General Contractor to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages reasonably required by the City or statute. 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 of cancellation to the City and will include the City as an additional insured on the builders' risk and general liability policies.

(g) Restrictions on Assignment and Transfer. Until Completion of Construction of the Project, Developer shall not assign all or any part of or any interest in this Agreement or the Property or the right to receive payment of the Reimbursement Obligation without the prior written approval of the City. Collateral assignment or pledge of this Agreement or granting of a mortgage or deed of trust by Developer for purposes of collaterally securing the Developer Financing necessary for Completion of Construction of the Project shall not constitute an assignment or transfer.

(h) Reports. Until Completion of Construction of the Project, Developer shall submit to the City quarterly progress reports which shall describe the steps Developer has taken in furtherance of the Project, including activity for the Project and design, development and construction activities.

(i) Plans, Reports, Studies and Investigations. Developer shall regularly provide the City, without cost or expense to the City, copies of all final plans, reports, studies, and investigations (collectively, the "Plans") prepared by or on behalf of Developer with respect to the Project. To the extent the Plans are proprietary in nature or represent confidential commercial and financial information, they shall be deemed confidential and shall not be available as public records under the Colorado Public Records Act, C.R.S. 24-72-201, *et seq.* All Plans shall be prepared at Developer's sole cost and expense, shall be owned by Developer, as applicable, and may not be used by the City or any other entity or person without Developer's express written permission in its sole discretion.

4. Obligations of the City. The City shall have the following obligations under this Agreement.

(a) Reimbursement Obligation – Phase 1.

(i) At Completion of Construction of Phase 1, the City shall make a one-time payment to Developer, in accordance with Sections 3(e) above and 4(d) below, to reimburse Developer for its expenditures on the Phase 1 Eligible Improvements, so long as

such expenditures have been paid, documented, certified, and approved in accordance with Section 3(c) above (the “Phase 1 Reimbursement Obligation”).

(ii) The Phase 1 Reimbursement Obligation shall be subordinate to any obligations of the City for the repayment of current or future bonded indebtedness and shall not exceed Five Hundred Thousand Dollars (\$500,000).

(b) Reimbursement Obligation – Phase 2.

(i) The City shall reimburse Developer for Developer’s expenditures on the Phase 2 Eligible Improvements so long as such expenditures have been paid, documented, certified, and approved in accordance with Section 3(c). The City will make quarterly reimbursement payments to Developer in accordance with Sections 3(e) above and 4(d) below (the “Phase 2 Reimbursement Obligation”).

(ii) The Phase 2 Reimbursement Obligation shall be subordinate to any obligations of the City for the repayment of current or future bonded indebtedness and shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

(iii) Developer further understands and agrees that the Phase 2 Reimbursement Obligation shall terminate on July 1, 2028.

(c) Application of Reimbursement Obligations. In the event the cost of the Phase 2 Eligible Improvements is less than the full amount of the Phase 2 Reimbursement Obligation and at Completion of Construction of Phase 2, any unused portion of the Phase 2 Reimbursement Obligation may be applied to reimburse Developer for costs associated with the Phase 1 Eligible Improvements. In such event, the City will make reimbursement payments to Developer in accordance with Sections 3(e) above and 4(d) below.

(d) Reimbursement Payments. If approved, the City shall make a payment to Developer no later than thirty (30) days following the end of the calendar quarter in which application of reimbursement is received by the City. All payments except the initial payment by the City shall be made electronically to Developer’s designated financial institution account. The initial payment will be issued by check and a pre-note confirmation sent to Developer’s designated financial institution account.

(e) No Impairment. The City shall not enter into any agreement or transaction that impairs the rights of the Parties under this Agreement.

5. Construction Activities. During any construction on the Property, Developer shall maintain the Property and the surrounding property in good and sightly order, condition and repair and in compliance with all applicable laws and regulations, and shall not damage any adjacent property, including, without limitation, any curb, gutter, sidewalk, tree, landscaping or paving within the public right-of-way or on any adjacent property or lot not owned by Developer. Developer covenants that it shall repair any such damage in a timely manner and shall, during and upon Completion of Construction of the Project, remove from and about the construction site any unnecessary debris, refuse, trash and construction materials. If Developer does not perform one or more of the maintenance measures required by this Section 5 or causes any damage to adjacent

property prohibited by this Section 5, then Developer shall cure such matter as promptly as practicable after receiving notice thereof from the City. If Developer does not cure such matter within a reasonable time after receiving notice from the City, then the City may undertake such cure at Developer's expense, and Developer shall reimburse the City for the expense of undertaking such curative actions within twenty (20) days after receiving an invoice therefor from the City. Developer will provide the City with reasonable updates on not less than a quarterly basis of Developer's construction schedule for the Project. In addition, Developer shall, at all times, and in good faith coordinate Developer's construction, maintenance and other related activities on the Property with the City.

6. City Use of Project Event Space. As additional consideration for the reimbursement obligations set forth in Section 4 above, Developer grants to the City, for a period of five years after the date of Completion of Construction of the Project, the right to free and exclusive use of event space at the Project for up to two dates per year, on a first-come, first-served basis; provided that any food or beverage used or consumed during the City's use of the event space as provided herein shall be purchased and otherwise provided by the food and beverage vendors operating at the Project.

7. Redevelopment. At any time beginning prior to the end of the 15th year following the date of recording this Agreement, if Developer intends to redevelop the Property, Developer shall submit any plans for redevelopment to the City for approval in accordance with the then applicable requirements of the Westminster Municipal Code. Any redevelopment shall be consistent with the requirements of the Conservation Easement and may require approval of the holder of the Conservation Easement. For purposes of this Section 7, "redevelop" shall mean a change in use of the Property that requires approval of an Amended ODP, Amended Preliminary Development Plan, and/or an amendment to the Westminster Comprehensive Plan.

8. Term. Notwithstanding anything to the contrary, this Agreement, and all rights and obligations hereunder, shall automatically terminate and be of no further force or effect on the date that is fifteen (15) years following the date of the recording of this Agreement. After termination hereof, upon Developer's written request, the City shall promptly sign and record a termination of this Agreement and all Repurchase Options set forth in the Repurchase Agreement.

9. Delays. 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, strikes, labor disputes, accidents, pandemic or other widespread contagious disease which results in restrictions on civil or commercial activities, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, that are beyond the control of such Party.

10. Default. Time is of the essence, subject to Section 9 above. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by any Party, then any non-defaulting Party may seek any remedy available at law or in equity, including damages; provided, however, damages, if any, recoverable by Developer shall be limited only to the amounts payable under this Agreement plus applicable interest. No special, consequential, or punitive damages shall be payable for any default under this Agreement.

11. **Annual Appropriation.** Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

12. **Successors/Assigns; Binding Effect; Enforcement.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. As long as this Agreement is in effect, Developer's obligations under this Agreement are and shall be considered real covenants that touch and concern the Property, shall run with the Property for the benefit of the City and its affiliates, successors and assigns, and shall be binding upon all parties taking any interest in the Property. Without limiting the generality of the foregoing, Developer and the City hereby agree that the City and its affiliates, successors and assigns may enforce this Agreement without regard to the City's ownership of the Property or any property adjacent to the Property. The Parties each agree to take such further action and deliver such ancillary documents as may be reasonably necessary in order to carry out the terms and provisions of this Agreement.

13. **Severability.** If any term, covenant or provision of this Agreement is found to be illegal or unenforceable for any reason, the same will not invalidate any other term, covenant or provision, and all of the remaining terms, covenants and provisions of this Agreement will remain in full force and effect.

14. **Recordation.** Upon execution, this Agreement shall be recorded in the real property records of the Clerk and Recorder of Jefferson County, Colorado.

15. **Notices.** Any notices required or permitted to be sent pursuant to this Agreement shall be in writing and shall be deemed served, given, delivered and received upon the earlier of: (a) when personally received by the Party to whom it is addressed; or (b) one business day after being deposited with a commercial overnight courier for overnight delivery with all required charges prepaid; or (c) when confirmed if sent by facsimile or by email; and addressed to the City or to Developer at the appropriate address or facsimile number as set forth below. Any Party may change its address or facsimile number for the purpose of this section by giving written notice of such change to the other Party in the manner provided for in this section.

If to the City:

Director, Community Services Department
City of Westminster
4800 W. 92nd Ave.
Westminster, CO 80031
Email: LKimball@westminsterco.gov
Phone: 303-658-2113

with a copy to:

City Attorney's Office
City of Westminster

4800 W. 92nd Avenue
Westminster, Colorado 80031
Email: ggraham@westminsterco.gov
Phone: 303-658-2233

If to Developer:

MJ Development LTD
7765 Wadsworth Boulevard
P.O. Box 746494
Arvada, CO 80006

with a copy to:

Hatch Ray Olsen Conant LLC
Attn: Christopher Conant, Esq.
730 Seventeenth Street, Suite 200
Denver, CO 80202
303-298-1800
cconant@hatchlawyers.com

16. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action or proceeding against any Party relating in any way to this Agreement or the obligations of any Party arising from any of the transactions contemplated herein shall be brought and enforced only in the District Court in Jefferson County, Colorado, and each Party irrevocably submits to the jurisdiction of each such court in respect of any such action or proceeding. Each Party irrevocably waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any such action or proceeding in the court of plenary civil jurisdiction in Jefferson County, Colorado, and any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum.

17. Attorney Fees. In the event of any litigation between the Parties concerning this transaction, the Party determined by the court to be the prevailing Party shall be entitled to court costs and reasonable attorney fees and costs, which shall be paid by the other Party.

18. No Binding Arbitration. No dispute hereunder shall be submitted to or resolved by binding arbitration.

19. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver by Developer, either express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, applicable to the City.

20. Counterparts. This Agreement may be executed by the Parties in multiple counterparts, the signature pages of which may be collated to form a single fully executed original of this Agreement for the purposes of recording and all other purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Development and Reimbursement Agreement (Shoenberg Farms Project) as of the date first written above.

CITY OF WESTMINSTER, a Colorado home rule municipal corporation

By: _____

Name: _____

Title: _____

ATTEST

City Clerk's Office

Approved as to legal form and content

City Attorney's Office

MJ DEVELOPMENT, LTD, a Colorado limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) :s
 s
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, _____ of MJ Development, LTD.

Notary Public

My Commission expires:_____

EXHIBIT A

Legal Description of the Land

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN WESTMINSTER, IN THE COUNTY OF JEFFERSON, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

Lot 5, Shoenberg Farms Commercial, County of Jefferson, State of Colorado.

For Informational Purposes Only:

TAX I.D. 300454229 / 29-364-23-049

Parcel 2:

Lot 14A, First Replat of Shoenberg Farms Commercial, per the plat recorded May 5, 2009 at Reception Number 2009040529, County of Jefferson, State of Colorado.

For Informational Purposes Only:

TAX I.D. 300456098 / 29-364-23-061

EXHIBIT B

Conservation Easement Agreement

(Conservation Agreement Follows – remainder of page intentionally left blank)



STATE HISTORICAL FUND
Grants for Historic Preservation

August 1, 2008

Ms. Vicky Bunsen
Community Development Programs Coordinator
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Ms. Bunsen:

The Colorado Historical Society has completed its review of grant applications (>\$35,000) submitted to the State Historical Fund for the April 1, 2008 deadline. We are pleased to announce that a grant of \$300,000 has been awarded to your project for the exterior restoration and rehabilitation of the Shoenberg Farm - Dairy Barn.

I have enclosed our most recent State Historical Fund (SHF) Grants Packet, including a business card for the historic preservation specialist assigned to your project. Please note that this letter is neither a contract nor an authorization to begin work. Grant contracts staff will contact you within the next few weeks to negotiate and execute a contract; this may include clarifications to your proposed scope of work and budget to meet SHF policies and procedures. Work cannot begin until a contract has been fully executed. After executing the contract you should discuss the project with your assigned historic preservation specialist before beginning work. For your convenience, I am returning the extra copies of your application and copies of the reviewer score sheets.

As a condition of the receipt of this grant, City of Westminster and the property owner (if different from grant recipient) will be required to convey a perpetual easement to an appropriate easement-holding organization. If there is an existing easement on the property, it will require updating. The Colorado Historical Foundation is one such organization, and they can be reached by calling Lane Ittelson, Executive Director, at (303) 894-2503. In the Denver Metro area, Historic Denver, Inc. is also willing to accept perpetual easements. Their easement program administrator can be reached by calling (303) 534-5288. The cost of preparing and recording this easement, or updating an existing easement, will be paid by the State Historical Fund, in addition to the amount of this grant. In order to acknowledge this condition the City of Westminster and the property owner must sign a copy of this letter and return it to our offices within 60 days, or your grant award may be rescinded.

If your project requires any approval by a federal or state agency, a federal or state agency license, or is receiving any type of federal or state agency funding, please contact the Colorado Historical Society's intergovernmental services director, Dan Corson at (303) 866-2673 to determine if any consultation is needed pursuant to the State Register Act or Section 106 of the National Historic Preservation Act.

If you don't already have an active email address you are required to obtain one and monitor it regularly for grant management purposes. Please notify SHF contracts staff (shfcontracts@chs.state.co.us, include ref. # provided below) of any changes to your email address from the information provided on the application Organizational Summary.

Congratulations on receiving the State Historical Fund award. We look forward to getting your project under contract and on its way to successful completion. If you have any questions about the grant award, please do not hesitate to contact our office at (303) 866-2825.

Sincerely,

Mark Wolfe
Director

City of Westminster

8/25/08
Date

Property Owner

Date

X:\Document\10144029.doc
Ref: 09-01-021
Funded

Encl: State Historical Fund Grants Packet

A Grants Program of the
COLORADO HISTORICAL SOCIETY

COLORADO HISTORICAL FOUNDATION

DEED OF

CONSERVATION EASEMENT

FOR THE PROPERTY KNOWN AS:

SHOENBERG FARM

also known as DUDLEY C. SHOENBERG MEMORIAL FARM

Granted by:

CITY OF WESTMINSTER, COLORADO,
A HOME RULE CITY

to

THE COLORADO HISTORICAL FOUNDATION,
A NONPROFIT COLORADO CORPORATION

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

John E. Moye, Esq.

Moye White LLP

16 Market Square, 6th Floor

1400 16th Street

Denver, Colorado 80202-1486

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Schedule of Exhibits

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Exhibit B Photographs of Buildings

Exhibit C Site Plan

Exhibit D Permitted Encumbrances

Exhibit E Existing Mortgages/Subordination Agreements

Exhibit F Permitted Alterations

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THIS DEED OF CONSERVATION EASEMENT (the "Easement"), made as of December 18, 2010, by and between the CITY OF WESTMINSTER, a Colorado home rule city, Grantor, and the COLORADO HISTORICAL FOUNDATION, a nonprofit Colorado corporation, of P.O. Box 40910, Denver, Colorado 80204, Grantee;

RECITALS:

A. The Grantee, a non-profit corporation exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, is a qualified organization for purposes of Section 170(h)(3) of the Internal Revenue Code, as further defined by Internal Revenue Service Regulation §1.170A-14(c), and was created at least two years prior to the date of this Easement;

B. The Grantee is authorized to accept easements to protect property significant in Colorado history, architecture, and culture;

C. The Grantor is the owner in fee simple of certain real property sometimes known as Shoenberg Farm (also known as Dudley C. Shoenberg Memorial Farm) (the "*Property*"), said Property presently including seven structures (the "*Buildings*"); the Property is more particularly described below;

D. Intentionally Deleted.

E. The Property has been designated for preservation by the City of Westminster under Ordinance No. 2008-3406, dated March 31, 2008.

F. The Grantor and Grantee recognize the historical, architectural, cultural, and aesthetic value and significance of the Property, and have a common purpose of conserving and preserving the value and significance of the Property;

G. The grant of this Easement and the acceptance of this Easement will assist in preserving and maintaining the historical, architectural, cultural, and aesthetic value and significance of the Property;

H. To that end, Grantor desires to grant to Grantee, and Grantee desires to accept this Easement on the Property, pursuant to Article 30.5 of Title 38, Colorado Revised Statutes (the "*Act*").

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. GRANT OF EASEMENT.

1.1. Grant. Grantor does hereby irrevocably grant and convey unto Grantee a conservation easement in gross, to have and to hold in perpetuity (which easement is more particularly described below), to constitute a binding servitude upon the Property and the exterior surfaces of the Buildings located thereon, owned by the Grantor, and more particularly described in Exhibit A attached hereto and incorporated by this reference.

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1.2. Photographs and Surveys. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Property (including the Buildings), and in order to document the exterior nature of the Buildings as of the date hereof, attached hereto as Exhibit B and incorporated herein by this reference is a set of photographs depicting the exterior surfaces of the Buildings and the surrounding property. Attached hereto as Exhibit C and incorporated herein by this reference is a site plan illustrating the boundaries of the Property and the location of the Buildings on the Property. It is stipulated by and between Grantor and Grantee that the external nature of the Buildings as shown in Exhibit B is deemed to be the external nature of the Buildings as of the date of this Easement and as of the date this Easement is first recorded in the real property records of Jefferson County, Colorado. The external nature of the Buildings as shown in Exhibit B is hereinafter referred to as the "*Present Facades*."

ARTICLE 2. AFFIRMATIVE COVENANTS.

Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Property each of the following covenants and stipulations, which contribute to the conservation purposes of this Easement in that they aid significantly in the preservation of the historic structures and surrounding land area, which contributes to the historical, architectural, and cultural integrity of the Buildings

2.1. Maintenance and Repair. Grantor shall at all times maintain the Buildings in a good and sound state of repair and shall maintain the Present Facades and the Buildings according to the "Standards," as defined in Section 3.2 below, so as to prevent deterioration of the Present Facades. Subject to the casualty provisions of Article 4 below, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction according to the Standards whenever necessary to have the external nature of the Buildings at all times appear to be the same as the Present Facades.

2.2. Interior Maintenance. The Grantor shall maintain the interiors of the Buildings as is required to ensure the structural soundness and the safety of the Buildings, but Grantor is not obligated by this Section 2.2 to preserve or rehabilitate the interiors of the Buildings in accordance with the Standards.

2.3. Insurance. Grantor at its expense shall (i) keep the Property insured by an insurance company rated "A VII" or better by Best's and also acceptable to the Grantee, under a form of full replacement cost insurance policy against risk of physical damage to those aspects of the Property that are governed by this Easement in form and in such amount as may be required by Grantee; and (ii) carry and maintain comprehensive public liability insurance under a policy issued by an insurance company rated "A VII" or better by Best's and also acceptable to Grantee with coverage per person per occurrence of not less than \$1,000,000.00 combined single limit or such greater amount as may reasonably be required by Grantee from time to time. All insurance policies required to be obtained or maintained by Grantor shall name Grantee as an additional insured or a loss payee thereunder as applicable and provide for 60 days notice of cancellation by the insurer to Grantee. Grantor shall promptly provide certificates of insurance required by this Section 2.3 and all supplements or endorsements thereto to Grantee on a yearly basis or as such

insurance policies are entered into, renewed or amended. As of the effective date of this Easement, Grantor is in compliance with the provisions of this paragraph by participating in the Colorado Intergovernmental Risk Sharing Agency (CIRSA), which uses insurance companies that are not rated by Best's.

2.4. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property. Grantee is hereby authorized -- but in no event required or expected -- to make or advance upon three days prior written notice to Grantor, any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipal charge, fine, imposition or lien asserted against the Property and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale or forfeiture. Such payment, if made by Grantee, shall become a lien on the Property of the same priority as the item if not paid would have had and shall bear interest until paid by Grantor at 2 percentage points over the prime rate of interest from time to time charged by Wells Fargo Bank, N.A., or its successor. As of the effective date of this Easement, the Grantor is a tax-exempt municipal corporation.

2.5. Indemnification. To the extent permitted by law, Grantor shall indemnify, defend (if requested, with counsel selected by Grantee) and hold Grantee harmless for any claims, liability, costs, attorney's fees, fines, judgments, losses or expenses to Grantee or any officer, employee, agent or independent contractor of the Grantee resulting from actions or claims of any nature by third parties arising out of or in connection with the conveyance, possession, or exercise of rights under this Easement; any injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused solely by the gross negligence or willful misconduct of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

2.6. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five business days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

2.7. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of this Easement to potential new owners prior to sale closing, except for the conveyance of individual residential condominium units.

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2.8. Existing Liens. Except for those matters shown in Exhibit D hereto, Grantor warrants to Grantee that no lien or encumbrance exists on the Property as of the date hereof. Grantor shall immediately cause any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee, to be subordinated to the rights, title and interest of Grantee, pursuant to Section 2.10 below.

2.9. Liens. Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien.

2.10. Subordination of Mortgages. Grantor warrants that there are no mortgages, deeds of trust, or other liens on the Property as of the date of recording of this Easement except as shown in Exhibit E hereto. Grantor and Grantee agree that all mortgages, deeds of trust, or other liens (collectively, the "*Mortgages*") shall be subject and subordinate at all times to the rights of the Grantee to enforce this Easement. Grantor has provided a copy of the Easement to all holders of Mortgages as of the date of this Easement, and the agreement of each such holder of Mortgages to subordinate the Mortgage to the Easement in the form attached hereto as Exhibit E has been obtained by Grantor and provided to Grantee.

2.11. Plaques. Grantor agrees that the Grantee, its successors or assigns, may provide and maintain one or more plaques on the Property or Buildings giving notice of the history of the Property and the grant of this Easement, subject to Grantor's reasonable approval of the size and location of such plaques.

2.12. Notice to Other Persons. Restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor (verbatim or by express reference to the Book, Page, and County of recording of this Easement) in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a sale or lease of a condominium unit. Concurrently with its entering into any such deed or other legal instrument, Grantor shall give written notice to Grantee of the same. With respect to individual residential condominium units, the requirements of this paragraph shall be deemed to be satisfied at such time as (1) Grantor forms or causes to be formed a condominium or cooperative association as described in Section 3.10, and (2) such association shall have adopted and recorded a condominium declaration or declaration of protective covenants disclosing and requiring compliance with the terms of this Easement.

2.13. Recording. Grantee, its successors or assigns, will do and perform at its cost all acts necessary to the prompt recording of this Easement among the land records of Jefferson County, Colorado.

2.14. Proof of Compliance. Upon written request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained herein.

ARTICLE 3. NEGATIVE COVENANTS.

3.1. No Demolition. The Buildings shall not be demolished, removed or razed except as provided in Paragraph 4.4.

3.2. No Construction. Without the express written permission of the Grantee, signed by a duly authorized representative thereof, no construction, alteration, or remodeling or any other thing shall be undertaken or permitted to be undertaken on the Property which would affect either the Present Facades or increase or decrease the height of the Buildings, including without limitation anything which would alter the external appearance of the Buildings as depicted in Exhibit B or which would adversely affect the structural soundness of the Buildings or anything which would encroach on the open land area on the Property adjacent to and surrounding the Buildings; provided, however, that:

a. Reconstruction. The reconstruction, repair, or refinishing of the Present Facades, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted provided that such reconstruction, repair, or refinishing is performed according to the Standards for Historic Preservation Projects and Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, issued and as may from time to time be amended by the U.S. Secretary of Interior (hereinafter, collectively the "*Standards*"), subject to the prior written approval of Grantee, and in a manner which maintains or recreates, as the case may be, the appearance of the Present Facades; and

b. Permitted Alterations. Grantor may make such alterations to the Property, Buildings and Present Facades as are expressly authorized in attached Exhibit F which is incorporated herein by this reference, subject to the Grantee's right to review and approve detailed plans and specifications, designs and materials prior to and during the course of construction. Any changes in such detailed plans, specifications, designs and materials are subject to Grantee's prior review and approval. Upon completion of the alterations permitted by Exhibit F, Grantor shall promptly document (by photographs and other appropriate means) the altered appearance of the Property, Buildings, and Present Facades, and shall execute an amendment (the "*First Amended Deed of Easement*") to this Easement, by which such documentation of the aforesaid altered appearance of the Property, Buildings, and Present Facades shall be substituted for Exhibit B to this Easement. Grantee shall accept said First Amended Deed of Easement if the alterations permitted by Exhibit F shall have been performed to the satisfaction of Grantee and in accordance with the Standards, in which event Grantee shall record said First Amended Deed of Easement in the land records of Jefferson County, Colorado, in the office of the Recorder of Deeds. Upon such recordation, the references in this Easement to the Property, the Buildings, and the Present Facades shall be deemed to refer to the altered appearance of the same as shall be documented in the First Amended Deed of Easement. Neither Grantor's delivery or failure to deliver said First Amended Deed of Easement to Grantee, nor Grantee's refusal to accept said First Amended Deed of Easement, shall be construed to impair the full force and effect of this Easement; and

c. Painting. In all events, Grantor, in painting the exteriors of the Buildings, shall obtain the prior written consent of Grantee as to the quality and color of paint to be used.

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3.3. New Buildings. No buildings, structures or other improvements not presently on the Property shall be erected or placed on the exterior of the Property hereafter, except as expressly described in Exhibit F and except for temporary structures, such as scaffolding needed to assist workmen.

3.4. Signs. No signs, billboards, or advertisements shall be displayed or placed on the exterior of the Property or Buildings except as expressly described in Exhibit F; provided, however, that Grantor may, with prior written approval from and in the sole discretion of Grantee, erect such signs as are compatible with the conservation purposes of this Easement and appropriate to identify the Building[s] and any activities carried on in the Buildings.

3.5. Topography. No topographical changes, including but not limited to excavation, shall occur on the exterior of the Property except as expressly described in Exhibit F; provided, however, that Grantor may, with prior written approval from and in the sole discretion of Grantee, make such topographical changes as are consistent with and reasonably necessary to promote the conservation purposes of this Easement.

3.6. Landscaping. There shall be no removal, destruction, or cutting down of trees, shrubs, or other vegetation on the exterior of the Property except as expressly described in Exhibit F; provided, however, that Grantor may with prior written approval from and in the sole discretion of Grantee, undertake such landscaping of the Property as is compatible with the conservation purposes of this Easement and which may involve removal or alteration of present landscaping, including trees, shrubs, or other vegetation. In all events, Grantor shall maintain trees, shrubs, and lawn in good manner and appearance.

3.7. Public View. Grantor agrees not to obstruct the substantial and regular opportunity of the public to view the exterior architectural features of any Buildings, structures or improvements on the Property from adjacent publicly accessible areas such as public streets.

3.8. Trash. No dumping of ashes, trash, rubbish or any other unsightly or offensive materials shall be permitted on the Property, except for customary trash disposal in accordance with the ordinances and regulations of the City of Westminster.

3.9. Use. The Property shall be used only for purposes consistent with the conservation purposes of this Easement.

3.10. Subdivision. The Property is currently subdivided into two lots and shall not be further subdivided and the Property shall not be devised or conveyed except as currently subdivided; provided, however, that the Grantor shall be permitted to convert the Property into cooperatives or condominiums and to convey interests in the resulting cooperative or condominium units, provided that the Grantor shall form or cause to be formed, in connection with such conveyance, a cooperative or condominium association for the purposes of performing all obligations of the Grantor and its successors and assigns under this Easement.

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3.11. Utilities. No above-ground utility transmission lines, except those reasonably necessary for the existing Buildings, may be located on the Property, except within utility easements already recorded.

ARTICLE 4. CASUALTY/OBSCOLESCENCE.

4.1. Damage or Destruction. In the event that the Property or any part thereof shall be damaged or destroyed by casualty, the Grantor shall notify the Grantee in writing within seven days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and for safety purposes, shall be undertaken by Grantor without the Grantee's prior written approval of the work. Within 90 days of the date of damage or destruction, the Grantor shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer, if required, acceptable to the Grantor and the Grantee which shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Present Facades and/or reconstruction of damaged or destroyed portions of the Property; and
- (c) a report of such restoration/reconstruction work necessary to return the Property to the condition existing at the date hereof or as of the completion of any required work as set forth in the Easement.

4.2. Review After Casualty Damage or Destruction. After reviewing the report described in Section 4.1,

- (a) Grantor shall have the right to restore or reconstruct the Buildings as provided in this section; or, even if Grantor does not exercise this right,
- (b) Grantee shall have the right to require Grantor to restore or reconstruct the Buildings if Grantee believes, in its sole discretion, that the purposes and intent of this Easement will be served by such restoration or reconstruction of the Buildings.

In the event that either Grantor or Grantee exercises the rights set forth in (a) and (b), then Grantor and Grantee shall establish a Schedule under which Grantor shall, as soon as practicable, complete the restoration and reconstruction of the Buildings in accordance with plans and specifications approved in advance by the Grantee, provided that Grantor shall not be obligated to incur expenses in connection with such restoration or reconstruction in excess of the total amount of casualty insurance proceeds that are payable (or would be payable) out of any insurance maintained or required to be maintained by Grantor hereunder (the "*Proceeds*") except as set forth in Section 4.3.

4.3. Grantee's Right to Raise Funds. If Grantor has failed to maintain the amount of replacement cost casualty insurance required under Section 2.3 of this Easement, Grantee has the

right to raise funds toward the costs of restoration of partially or totally destroyed Buildings above and beyond the total amount of the Proceeds as may be necessary to restore the appearance of the Present Facades, and such additional funds shall constitute a lien on the Property to the extent used to restore the Buildings until repaid by Grantor. Said lien shall have the same priority as a mechanic's lien arising on the date of commencement of construction.

4.4. Determination Not To Require Rebuilding. If both Grantor and Grantee determine not to exercise their respective rights regarding restoration or reconstruction of the Buildings as set forth in Section 4.2, then the Grantor may, with the prior written consent of the Grantee, alter, demolish, remove or raze one or more of the Buildings, or construct new improvements on the Property. In such event, Grantee may elect to choose any salvageable portion of the exterior surfaces of the Buildings and remove them from the Property, and Grantor shall deliver to Grantee a good and sufficient bill of sale for such salvaged pieces. In such case, Grantee shall have no right to insurance proceeds except to the extent required by law to have this Easement qualify as a charitable contribution under Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder as of the date of the grant of this Easement.

4.5. Constitutional Limits on Certain Provisions. Grantor acknowledges that the restrictions of the Colorado Constitution, Article X, Section 20, and Article XI, Section 1, and the inability to place a mechanic's lien on public property may limit the applicability of certain portions of this Agreement.

ARTICLE 5. EXTINGUISHMENT.

5.1. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible or impractical the continued use of the Property for the purposes of this Easement and necessitate extinguishment of the Easement. Such a change in conditions may include, but is not limited to, partial or total destruction of the Buildings resulting from casualty. Such an extinguishment must be the result of a judicial proceeding and shall entitle Grantee to share in any proceeds resulting from the extinguishment in an amount determined under the provisions of Section 170(h)(3) of the Internal Revenue Code, and regulations promulgated thereunder as of the date of the original grant. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's historic preservation purposes and the conservation purposes of the grant of this Easement.

In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic's lien until all amounts due to Grantee hereunder have been paid.

5.2. Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All

expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Section 5.1 unless otherwise provided by law. Provided, however, that if the Property is encumbered by a mortgage or deed of trust at the time of such condemnation, Grantor and Grantee shall be entitled to their respective interests in any proceeds remaining after satisfaction of all mortgages or deeds of trust.

ARTICLE 6. ADMINISTRATION AND ENFORCEMENT.

6.1. Inspections. Grantor hereby agrees that representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the Buildings. Grantor agrees that representatives of Grantee shall be permitted to enter and inspect the interior of the Buildings to ensure maintenance of structural soundness and safety; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee and Grantor covenants not to withhold unreasonably its consent in determining a date and time for such inspection.

6.2. Grantee's Remedies.

(a) In the event of a violation of any covenant, stipulation or restriction in this Easement or in any collateral agreement made in connection with or pursuant to this Easement, the Grantee may, in addition to any remedies now or hereafter provided by law, and following reasonable written notice to Grantor:

- i) institute suit(s) to enjoin such violation by *ex parte*, temporary, preliminary and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance required under this Easement, and Grantee shall not be required to post any bond in connection with any such proceedings;
- ii) enter upon the Property, correct any such violation, and hold Grantor, its successors and assigns, responsible for the cost thereof, and such cost until repaid shall constitute a lien on the Property, such lien to have the priority of a lien as of the date of such expenditure, with Grantee agreeing to exercise reasonable care in selecting independent contractors if it chooses to retain such contractors to correct any such violations, including making reasonable inquiry as to whether any such contractor is properly licensed and has adequate liability insurance and workman's compensation coverage; or
- iii) release, terminate, extinguish or abandon this Easement.

(b) Grantee shall also have available all legal and equitable remedies to enforce Grantor's obligations under this Easement, or under any collateral agreement made in connection with or pursuant to this Easement, and in the event Grantor is found to have violated any of its

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obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection therewith, including all court costs and attorney's, architectural, engineering and expert witness fees.

(c) The exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

(d) To the extent that any violation described in this Section 6.2 is of a type which can be cured, and does not, in Grantee's sole judgment, subject the Property to immediate and irreparable harm, Grantor shall have thirty (30) days following Grantee's written notice to cure any such violation involving failure to pay money, and sixty (60) days following Grantee's written notice to cure any other violation.

6.3. No Merger. In the event that the Grantee shall at any time in the future become the fee simple owner of the Property, Grantee for itself, its successors and assigns, covenants and agrees, in the event of subsequent conveyance of the same to another, to create a new easement containing the same restrictions and provisions as are contained in this Easement, and either to retain such easement in itself or to convey such easement to a similar local or national organization whose purposes, *inter alia*, are to promote historic preservation, and which is a qualified organization under Section 170(h)(3) of the Internal Revenue Code, and Internal Revenue Service Regulation §1.170A-14(c)(1) and C.R.S. §38-30.5-101 et seq.

6.4. Assignment. Grantee may, at its discretion, convey and assign this Easement to a similar local, state, or national organization whose purposes, *inter alia*, are to promote historic preservation, and which is a qualified organization under Section 170(h)(3) of the Internal Revenue Code and Internal Revenue Service Regulation §1.170A-14(c)(1) and C.R.S. §38-30.5-101 et seq.; provided that any such conveyance or assignment requires that the conservation purposes for which this Easement was granted will continue to be carried out. If Grantee makes any such conveyance and assignment, Grantee or Grantee's assignor will promptly notify Grantor of such assignment. If Grantee fails to remain a qualified organization, as determined by an agency or court of competent jurisdiction in a final, unappealed ruling, Grantor may require Grantee to convey and assign this Easement to a qualified organization.

ARTICLE 7. MISCELLANEOUS.

7.1. Notices. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered, if to Grantor, to:

City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

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with a copy to:

City Attorney
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

and if to Grantee, then to:

Executive Director
Colorado Historical Foundation
P.O. Box 40910
Denver, Colorado 80204

with a copy to:

Moye White LLP
16 Market Square, 6th Floor
1400 16th Street
Denver, Colorado 80202-1486
Attn: John E. Moye

Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of Grantee under this Easement may be given by the President of the Grantee or by any duly authorized representative of the Grantee.

7.2. Effectiveness. This Easement is effective only upon recording among the real property records of Jefferson County, Colorado.

7.3. Perpetuity. This Easement is intended to be of perpetual duration, in accordance with the provisions of the Act. If, however, for any reason this Easement is ever held to be in contravention of the rule against perpetuities or rules respecting alienation of property, by a court of competent jurisdiction a final decision from which no appeal is taken, then the term of this Easement shall be deemed to expire 21 years after the death of the last to die of the now living descendants of John Fitzgerald Kennedy, Lyndon Baines Johnson, Richard M. Nixon, Gerald R. Ford, Jimmy Carter, Ronald W. Reagan, George H. W. Bush, William Jefferson Clinton and George W. Bush, all former Presidents of the United States.

7.4. Counterparts. This Easement is executed in four counterparts, each page of which (including exhibits) has been initialed by Grantor and Grantee for purposes of identification. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided above, each counterpart shall constitute the agreement of the parties. Immediately after execution hereof, one counterpart shall be held

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by each of Grantor, Grantee, Grantee's attorney, and one counterpart shall be recorded as provided above and will be returned to Grantee.

7.5. Interpretation. Any rule of strict construction designed to limit the breadth of restriction on alienation or use of property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to effect the transfer of rights and the restrictions on use herein contained.

7.6. Binding Effect. This Easement shall extend to and be binding upon Grantor, its successors and assigns, and all persons hereafter claiming under or through Grantor, and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this Easement or then have an interest in the Property. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this Easement where such person shall cease to have any interest (present, partial, contingent, collateral or future) in the Property by reason of a *bona fide* transfer for full value. Any right, title or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" when used herein shall include all such successors and assigns. This Easement shall survive any termination of Grantor or Grantee's existence.

7.7. No Public Right of Entry. Nothing contained in this Easement grants, nor shall be interpreted to grant, to the public any right to enter on the Property or into the Buildings.

7.8. Development Rights. To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to a use more intensive (in terms of height, bulk or other objective criteria regulated by such ordinances) than that to which the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property during the term of this Easement, except under the provisions of and under the circumstances defined in Section 3.2. Grantor hereby transfers to Grantee any such development rights over the Property.

7.9. Amendments. For purposes of furthering the preservation of the Property and Buildings and of furthering the other purposes of this Easement, and to meet changing conditions, Grantor and Grantee are free to amend jointly the terms of this Easement in writing without notice to any party; provided, however, that no such amendment shall limit the perpetual duration or interfere with the conservation purposes of the Easement. Such amendment shall become effective upon recording among the real property records of Jefferson County, Colorado. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

7.10. Enforceability. This Easement is made pursuant to the Act, but the invalidity of such statute or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence

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now or at any time subsequent hereto. The validity and enforceability of this Easement shall not be affected by a determination that the grant of this Easement does not qualify as a charitable contribution under Section 170(h)(3) of the Internal Revenue Code or otherwise. This Easement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this Easement or any part thereof. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement, or any ancillary or supplementary agreement relating to the subject matter hereof.

7.11. Building Regulations. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any governmental ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and governmental authorities to accommodate the purposes of both this Easement and such ordinance or regulation.

7.12. Statute of Limitations. Any action to enforce any provision of this Easement shall be commenced within the limitation period set forth in C.R.S. § 38-41-101(1) as of the effective date of this Easement. In the event a court of competent jurisdiction should determine that a different statute of limitations applies, the parties agree that any such alternative statute of limitations shall be tolled for a period equal to the limitation period set forth in said C.R.S. § 38-41-101(1).

7.13. Venue. Venue of any action brought pursuant to this Easement shall be in the City and County of Denver, Colorado.

IN WITNESS WHEREOF, Grantor has executed, sealed, and delivered this Deed of Conservation Easement by J. Brent McFall, City Manager, and Grantee has caused these presents to be accepted.

GRANTOR:

CITY OF WESTMINSTER, a home rule city

By: 

J. Brent McFall, City Manager

GRANTEE:

COLORADO HISTORICAL FOUNDATION,
a nonprofit Colorado corporation

By: 

Frank A. Kugeler, President

ATTEST:


H. Benjamin Duke III, Secretary

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ACKNOWLEDGMENT

STATE OF COLORADO)

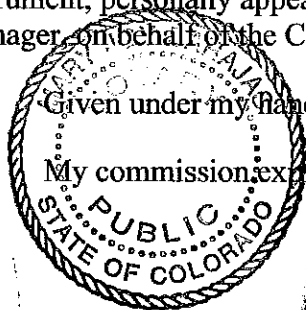
) ss.

JEFFERSON COUNTY)

I, Mary Joy Barajas, a Notary Public in and for the State of Colorado, do hereby certify that J. Brent McFall, whose name is subscribed to the foregoing instrument, personally appeared before me and acknowledged that he executed the same as City Manager, on behalf of the City of Westminster.

Given under my hand and seal this 21st day of December, 2010.

My commission expires: January 27, 2013



Mary Joy Barajas
Notary Public

[SEAL] My Commission Expires 1-27-13
City of Westminster
City Manager's Office
Adams County
4800 West 92nd Avenue
Westminster, CO 80031

STATE OF COLORADO)

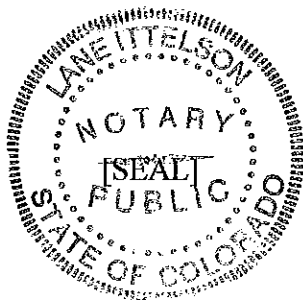
) ss.

CITY & COUNTY OF DENVER)

I, Lane Ittelson, a Notary Public in and for the State of Colorado, do hereby certify that Frank A. Kugeler and H. Benjamin Duke III, whose names are subscribed to the foregoing instrument as president and secretary, respectively, of the Colorado Historical Foundation, personally appeared before me and acknowledged that they executed the same.

Given under my hand and seal this 28th day of December, 2010.

My commission expires: 8/9/2013.



Lane Ittelson
Notary Public

JBB
22

EXHIBIT A

LEGAL DESCRIPTION

PARCEL ONE

LOT 5,
SHOENBERG FARMS COMMERCIAL,
COUNTY OF JEFFERSON,
STATE OF COLORADO.

PARCEL TWO

LOT 14A
FIRST REPLAT OF SHOENBERG FARMS COMMERCIAL,
PER THE PLAT RECORDED MAY 5, 2009 AT RECEPTION NO. 2009040529,
COUNTY OF JEFFERSON,
STATE OF COLORADO.

SBM
22



Shoenberg Farms: West elevations of Dairy Barn and silos, showing parking lot to the west of buildings

IBM
7/2



Shoenberg Farms: North and east elevation of Dairy Barn, showing wooden silo at right



Shoenberg Farms: South and east elevations of Dairy Barn

JBM
22



Shoenberg Farms: North elevation of silos

IBM
7/2



Shoenberg Farms: Southwest elevations of silos

JBN
2/



Shoenberg Farms: East and north elevations of Powerplant and Milk House

Tom
sk

EXHIBIT B
(page 7 of 11)



Shoenberg Farms: Dairy Barn (at rear), Milk House (in foreground) and Powerplant (at right), looking northwest

JBM



Shoenberg Farms: West elevation of Milk House, looking northeast

JBM
26



Shoenberg Farms: East (fronting Sheridan) facade and south elevation of Farm House

JBN
2/2



Shoenberg Farms: View looking southwest at Garage/Carriage House and Farm House (east and north elevation)

JBM
26

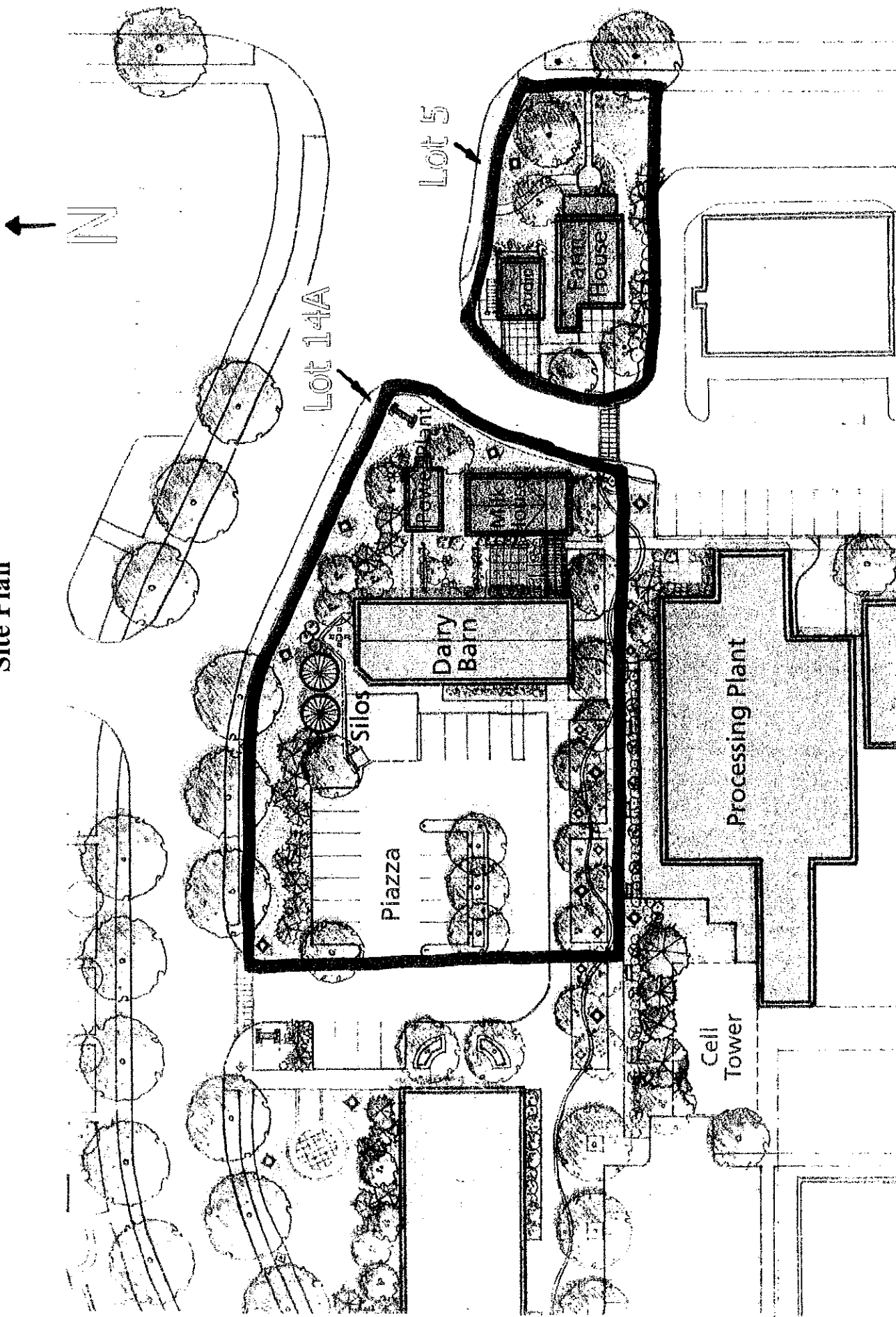


Shoenberg Farms: West elevations of Garage/Carriage House and Farm House

JBM
2

Exhibit C
Site Plan

Sheridan Blvd.



IBM
2/2

EXHIBIT D

Existing Encumbrances

NONE

JB
26

EXHIBIT E

EXISTING MORTGAGES/SUBORDINATION AGREEMENTS

Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases dated April 8, 2010, given by the City of Westminster to the Public Trustee of the County of Jefferson, Colorado, to secure a Promissory Note dated April 8, 2010, in the principal amount of \$117,000 between the City of Westminster as Borrower and the CHF Revolving Loan Fund as Payee, recorded April 8, 2010, at Reception No. 2010030184 in the official records of Jefferson County, State of Colorado.

JB/M
26

EXHIBIT E

SUBORDINATION AGREEMENT

This Subordination Agreement ("Subordination Agreement") is dated as of this ____ day of _____, 201 ____ ("Effective Date"), by and among City of Westminster, a Colorado home rule municipality, ("Owner"), CHF Revolving Loan Fund, a Colorado nonprofit corporation whose address is 770 Pennsylvania Street, Denver, Colorado 80203 ("Mortgagee") and the Colorado Historical Foundation, a Colorado nonprofit corporation, P.O. Box 40910, Denver, CO 80204 ("CHF").

RECITALS

A. Owner granted to Mortgagee a Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases dated April 8, 2010, in the original principal sum of \$117,000 (One Hundred and Seventeen Thousand and NO/100) Dollars recorded on April 8, 2010, at Reception No. 2010030184 of the official records of Jefferson County, State of Colorado ("Deed of Trust").

B. Owner will, simultaneously herewith, grant to CHF a Deed of Conservation Easement (the "Conservation Easement") over and across the real property described on Attachment A attached hereto (the "Property").

C. Mortgagee and CHF wish to establish their respective rights in order of recording with respect to the Property and to the indebtedness incurred by the Deed of Trust.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination.

1.1. Mortgagee hereby agrees that the right, title and interest of Mortgagee in and to the Property, pursuant to the terms of the Deed of Trust, are hereby made subordinate and junior in priority to the operation and effect of the Conservation Easement, as if the Conservation Easement were recorded first and the Deed of Trust was recorded after the Conservation Easement.

1.2. Foreclosure. Nothing contained herein shall impair or impede the rights of Mortgagee to foreclose upon its Deed of Trust and to realize the benefits of such Deed of Trust, provided, however, that a foreclosure will not join CHF as a party unless it is necessary to do so to confirm the rights granted to CHF herein. CHF agrees it will attorn to and recognize Mortgagee as Owner of the Property subject to the Conservation Easement, after such foreclosure.

2. Miscellaneous.

2.1. Successors and Assigns. This Subordination Agreement shall be binding upon the Mortgagee and Owner and their successors and assigns and shall inure to the benefit of CHF, its successors and assigns.

JB/M
2/2

2.2. Governing Law. This Subordination Agreement shall be deemed to be a contract made under the laws of the State of Colorado and for all purposes shall be governed by and construed in accordance with the laws of said state.

IN WITNESS WHEREOF, the Owner, the Mortgagee and CHF have executed this Subordination Agreement to be effective as of the date first written above.

OWNER:

City of Westminster,
a Colorado home rule municipality

By: _____

Name: _____

Title: _____

MORTGAGEE:

CHF Revolving Loan Fund,
a Colorado nonprofit corporation

By: _____

Name: _____

Title: _____

CHF:

COLORADO HISTORICAL FOUNDATION,
a Colorado nonprofit corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
201____, by _____ as _____ of City of Westminster.

Witness my hand and official seal.

My commission expires:_____.

Notary Public

[SEAL]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
201____, by _____ as _____ of CHF Revolving

Loan Fund.

Witness my hand and official seal.

My commission expires:_____.

Notary Public

[SEAL]

IBM
26

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
201____, by _____ as _____, of Colorado Historical
Foundation.

Witness my hand and official seal.

My commission expires:_____.

Notary Public

[SEAL]

JBM
m

EXHIBIT A
(SUBORDINATION AGREEMENT)

LEGAL DESCRIPTION

PARCEL ONE

LOT 5,
SHOENBERG FARMS COMMERCIAL,
COUNTY OF JEFFERSON,
STATE OF COLORADO.

PARCEL TWO

LOT 14A
FIRST REPLAT OF SHOENBERG FARMS COMMERCIAL,
PER THE PLAT RECORDED MAY 5, 2009 AT RECEPTION NO. 2009040529,
COUNTY OF JEFFERSON,
STATE OF COLORADO.

IBM
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EXHIBIT F

Permitted Alterations

Subject to the provisions of paragraph 3.2(b), Grantor may construct the permitted alterations that follow, all of which are expected to be completed by 2030. Such permitted alterations may include landscape, health and safety improvements, educational and historic interpretation displays, and public art, provided that no such interpretive displays or public art are directly painted upon or affixed to the Buildings protected by this Easement. Grantor shall use materials that are complimentary to and compatible with the Present facades.

The permitted alterations include the restoration and rehabilitation of the following Buildings:

Milk and Ice House

The exterior restoration and rehabilitation of the milk and ice house, including: roof replacement, historic interior and exterior door and screen door restoration and reproduction, window restoration, masonry rebuilding, repointing and cleaning, foundation repair. These alterations are contained in Construction Documents, Shoenberg Farm Milk & Ice House Exterior Restoration and Rehabilitation, SHF Project No. 2009-M2-021.

Power Plant

The exterior restoration and rehabilitation of the garden-level power plant, including: Roof replacement, historic door restoration and reproduction, window restoration, masonry rebuilding, repointing and cleaning, foundation repair. These alterations are outlined in Historic Structures Assessment, SHF Project No. 2007-M2-011.

Concrete Silo

The stabilization and preservation of the concrete silo, including interior concrete reinforcement, steel hoop repair, foundation stabilization, repair of exterior concrete deterioration, repair of metal roof and metal culvert over hatch access column, repair and reproduction of hatch covers. These alterations are contained in Construction Documents, Shoenberg Farm Concrete Silo Exterior Restoration and Rehabilitation, SHF Project No. 2009-M2-002. (To be completed in 2011.)

Wooden Stave Silo

The exterior restoration and preservation of the wooden stave silo, including: Roof replacement, repair and restoration of wooden stave sides and steel retaining hoops, repair and reproduction of hatch covers, foundation repair. These alterations are outlined in Historic Structures Assessment, SHF Project No. 2007-M2-011.

Farm House and Carriage House

The exterior restoration and rehabilitation of the farm house and carriage house (former garage), including: Roof replacement, historic door restoration and reproduction (where historic doors are missing) window restoration and reproduction (where historic windows are missing), masonry rebuilding, repointing and cleaning, foundation repair, restoration of an exterior door opening in the west façade, rebuilding the west dining porch and provision of accessible entrance to the west façade between the street grade and the house first-floor level. These alterations are contained in Construction Documents, Shoenberg Farm Farmhouse & Carriage House Exterior Restoration and Rehabilitation, SHF Project No. 2010-M1-018.

EXHIBIT C

Official Development Plan (to be attached upon approval)
(Official Development Plan follows – remainder of page intentionally left blank)

EXHIBIT D

Estimated Project Timeline

- Permit Phase 6-8 months
- Site work 2-3 months
- Structural Improvements 1-2 months
- Building Improvements & Finishes 3-5 months
- Tenant Improvements 2 months
- Opening 1 month

Total Estimated Time: 21 months

EXHIBIT E

Phase 1 Eligible Improvements & Estimated Costs

| | |
|----------------------------------|-----------|
| Parking, paving, curb and gutter | \$180,000 |
| Earthwork | \$125,000 |
| Landscaping & Site Upgrades | \$150,000 |
| Exterior Lighting | \$50,000 |
| Demolition | \$40,000 |
| Structural Stabilization | \$190,000 |
| Utilities | \$650,000 |
| Code & Historic Compliance | \$650,000 |

Total: \$2,035,000

EXHIBIT F

Phase 2 Eligible Improvements & Estimated Costs

| | |
|----------------------------------|-------------------|
| Pre-development | \$51,500 |
| Sitework | |
| Landscaping and Lighting | \$48,300 |
| Utilities | \$251,300 |
| Building Costs | |
| Structural and Exterior Rehab | \$403,000 |
| MEP | \$151,000 |
| Finishes | \$247,000 |
| Soft Costs | |
| Consultants, studies, fees, etc. | \$255,000 |
| Contingency | \$100,000 |
| | Total \$1,507,100 |

EXHIBIT G

Reimbursement Request

(Reimbursement Request follows – remainder of page intentionally left blank)



Shoenberg Farms Project
5202 W 73rd Avenue, Westminster CO 80003
Request for Phase 1 Reimbursement
(Per Section 4 of the Development and Reimbursement Agreement)

Please Type or Print Clearly

| | | | | | |
|--|-----------|---------|--------------------|--|--|
| 1) Legal Name or Business: MJ Development LTD | | | 7) Contact Person: | | |
| 2) Trade Name of Business (if any): | | | 8) Title: | | |
| 3) Mailing Address: | | | 9) Phone Number: | | |
| 4) City: | 5) State: | 6) Zip: | 10) Email Address: | | |

This form must be filled out completely in order for your request to be processed.

| Current Reimbursement Request | | | |
|--|--------------------------|------------------|-------------|
| Shoenberg Farms Phase I Reimbursement Obligation | | | \$500,000 |
| Date Processed | Disbursement Draw Number | Item Description | Draw Amount |
| | | | |

| Prior Reimbursement Payments Processed | | | |
|--|--------------------------|------------------|-------------|
| Date Processed | Disbursement Draw Number | Item Description | Draw Amount |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| | | | \$ - |
| Total Amount | | | \$ - |

ENCLOSE ADDITIONAL SHEETS IN SAME FORMAT IF NEEDED

Total Balance Remaining **\$500,000**

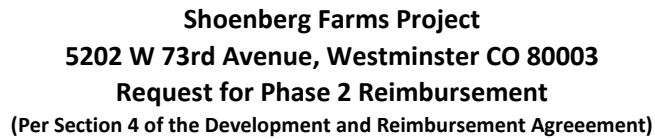
| | | | |
|----------------------------|---|-------|--------------|
| Requestor Signature | Under penalty of perjury, I declare that I have examined this request for distribution of the Development Assistance Funds and that the same is true and correct to the best of my knowledge and belief. I hereby warrant and guarantee that I am fully authorized to make this request on behalf of the Requestor. | | |
| | Signature | | Date |
| | Printed Name | Title | Phone Number |
| | | | |

Return completed form to: Attn: Philippe Brady • City of Westminster • Community Services • 4800 W 92nd Avenue • Westminster, CO 80031
303-658-2116 • pbrady@westminsterco.gov • www.westminsterco.gov

City Use

Reviewed and Approved by: _____ Date: _____

After approved, return form to Finance, Special Districts, for payment process.



| | | | |
|--|-----------|---------|--------------------|
| 1) Legal Name or Business: MJ Development LTD | | | 7) Contact Person: |
| 2) Trade Name of Business (if any): | | | 8) Title: |
| 3) Mailing Address: | | | 9) Phone Number: |
| 4) City: | 5) State: | 6) Zip: | 10) Email Address: |

| Current Reimbursement Request | | | |
|--|--------------------------|------------------|-------------|
| Shoenberg Farms Phase 2 Reimbursement Obligation | | | \$1,500,000 |
| Date Processed | Disbursement Draw Number | Item Description | Draw Amount |
| | | | \$ - |

ENCLOSE ADDITIONAL SHEETS IN SAME FORMAT IF NEEDED

| | | | |
|--------------------------------|---|-------|--------------|
| Requestor Signature | Under penalty of perjury, I declare that I have examined this request for distribution of the Development Assistance Funds and that the same is true and correct to the best of my knowledge and belief. I hereby warrant and guarantee that I am fully authorized to make this request on behalf of the Requestor. | | |
| | | | |
| | Signature | | Date |
| | | | |
| | Printed Name | Title | Phone Number |

After approved, return form to Finance, Special Districts, for payment process.