

DEVELOPMENT AGREEMENT

This Development and Repurchase Agreement (the “**Agreement**”), is entered into this ____ day of _____, 2024 (the “**Effective Date**”), by and between the **CITY OF WESTMINSTER**, a Colorado home rule municipal corporation (“**City**”), and **COMMUNITY REACH CENTER, INC.**, a Colorado nonprofit corporation whose principal office address is 1870 West 122nd Avenue, Suite 100, Westminster, CO 80234 (“**CRC**”). The City and CRC may be referred to hereinafter collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

This Agreement is made with respect to the following facts:

A. The City is the owner of certain real property consisting of approximately 6,300 square feet of undeveloped land to be platted on a separate lot serviced from Grove Street at approximately 7045 Grove Street, in Westminster, Colorado (the “**Property**”), as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

B. The City and CRC intend to enter into a Purchase and Sale Agreement (“**Purchase Agreement**”) August 13, 2024 pursuant to which CRC intends to acquire the Property.

C. CRC plans to construct a new building adjacent to the City’s future Municipal Court building on the Property to operate a facility that provides mental and emotional health services beneficial to the City of Westminster and the Westminster Municipal Court (the “**Project**”).

D. There currently exist on or near the Property improvements consisting of public streets, sewer, utility and other infrastructure (the “**Infrastructure**”) for development of the Project.

E. Through this Agreement, the City desires to assist CRC in developing the Project.

F. CRC and the City agree that it is desirable to advance the construction of the Project as early as possible consistent with demands on financing and construction activities.

G. The City has determined that it is in the best interests of the City and its residents to assist in the development of the Project to provide the benefits set forth in this Agreement.

AGREEMENT

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

1. TERM

This Agreement will commence on the Effective Date and, unless otherwise sooner terminated in accordance with its terms, will automatically terminate on the date that the City and CRC have fulfilled (or obtained a waiver of) their respective obligations hereunder to completion. At the request of a party hereto, the parties shall execute documentation memorializing the termination of this Agreement upon confirmation by the parties that the obligations hereunder have been fulfilled or waived.

2. PROJECT DESCRIPTION; OBLIGATIONS OF THE PARTIES

2.1. Project Development. As set forth in the Purchase Agreement, within 60 days after execution of the Purchase Agreement, CRC will submit for the City's approval an Official Development Plan for development of the Project ("ODP"). Upon acquisition of the Property, CRC will exercise good faith, commercially reasonable efforts to cause the development of the Project in accordance with the ODP and applicable laws and regulations (including, without limitation, the Westminster Municipal Code and the Environmental Laws) as soon as reasonably feasible. CRC will complete all design, entitlement, land development and construction of the Project as set forth herein and in the approved ODP.

2.2. City Obligations. The City will construct the parking lots, sidewalks, landscaping, lighting, water quality facilities, and any Grove Street improvements necessary to serve the Property outside of the Property line. The City will also provide water and sanitary sewer service stubs to the Property line. Buyer will be responsible for connecting to such stubs and paying associated tap fees in accordance with the Westminster Municipal Code ("Municipal Code" or "W.M.C.").

2.3. Parking and Maintenance. Seller and Buyer will enter into a parking and maintenance agreement, which will identify the number of non-exclusive parking spaces for use by CRC and its clients, as well as the shared costs for ongoing maintenance of shared facilities and improvements, including but not limited to, parking lots, striping, signage, lighting, sidewalks, snow removal, landscaping, waste removal and management.

2.4. Permitting. The Parties anticipate that a portion of the permit fees will be rebated to CRC by the City pursuant to a separate Economic Development Agreement between the CRC and the City.

3. RIGHT OF REPURCHASE

3.1. City's Right of Repurchase.

3.1.1. The City shall have the option to repurchase the Property for the original sale price of \$100 ("Option to Repurchase") in the following circumstances:

3.1.1.1. CRC fails to commence construction on the Project within sixty days of obtaining all necessary permitting approvals from the City;

3.1.1.2. CRC fails to complete construction of the Project within eighteen months of the commencement of construction, provided all necessary approvals have been obtained; or

3.1.1.3. CRC unilaterally halts progress on the Project for a period exceeding thirty days without just cause.

3.1.2. In the event CRC fails to continuously operate a Community Reach Center (or a facility providing substantially the same services, whether or not under a different name) for any consecutive 90-day period, the City shall have the option to repurchase the Property, including all improvements thereon, in an amount equal to the then fair market value of the building only, in consideration of the significantly discounted original sale price of \$100 for the land.

4. REPORTS; COOPERATION AND COORDINATION

4.1. Reports. Until completion of construction of the Project, CRC shall submit to the City quarterly progress reports which shall describe the steps that CRC has taken in furtherance of the Project, including development and construction activities.

4.2. Plans, Reports, Studies and Investigations. CRC 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 CRC 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 CRC’s sole cost and expense, shall be owned by CRC, as applicable, and may not be used by the City, or any other entity or person without CRC’s express written permission in its sole discretion.

5. GENERAL COVENANTS

5.1. Cooperation with CRC. The City agrees to reasonably cooperate with CRC and to provide CRC with reasonable assistance with respect to CRC’s applications for building and other permits and approvals from the City, and any permits or approvals required from any governmental authority, whenever reasonably requested to do so; provided, however, that all applications for such permits and approvals are in compliance with the applicable ordinances and regulations, approved plans and specifications, and all applicable codes.

5.2. Construction of the Project. Construction of the Project, and the contemplated uses and occupancies thereof, will comply with all applicable federal, state and City laws, rules and regulations, including, but not limited to, building, zoning, and other applicable land use codes, subject to modifications approved by the City pursuant to the planning, subdivision, zoning, environmental and other developmental ordinances and regulations.

6. RIGHT OF ASSIGNMENT

6.1. Generally. The City may assign its rights or delegate its duties under this Agreement without giving prior written notice to CRC. CRC may not assign its rights or delegate its duties under this Agreement without the City’s prior written consent, unless such assignment or delegation is to an affiliate of CRC in which CRC has majority of equity or majority of voting interest and for which CRC is the managing member or managing partner. Any attempted assignment and/or delegation by CRC in violation of this section 6 shall be void and of no force and effect.

6.2. Financing. No consent will be required under this section 6 for any pledge or assignment of this Agreement as collateral security for CRC’s financing.

7. NOTICES

All notices, certificates or other written communications hereunder will be sufficiently given and will be deemed made when received by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, or by telecopy or email (if confirmed promptly telephonically or transmitted by hand delivery or overnight delivery within 24 hours thereafter), addressed to the following or such other address or addresses as a Party designates in writing to the other Party:

City:

City Engineer - City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

With a copy to:

City Attorney - City of Westminster
4800 W. 92nd Avenue

Westminster, CO 80301

CRC:

With a copy to:

8. MISCELLANEOUS

8.1. City Council Approval. This Agreement shall not become effective until approved by the Westminster City Council. In the event this Agreement is not approved in its entirety by the City Council, neither party hereto shall be bound to the terms of this Agreement.

8.2. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns.

8.3. Amendments. Except as otherwise set forth in this Agreement, this Agreement may not be amended or terminated except by mutual consent in writing of CRC and the City, following the public notice and public hearing procedures required under applicable law.

8.4. Time of Essence. Time is of the essence of this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

8.5. Further Assurances. The parties hereto agree to execute such documents, and take such actions, as will be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

8.6. Good Faith; Consent or Approval. In performance of this Agreement or in considering any requested extension of time, the parties hereto agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously or unreasonably withhold, condition, or delay any approval required by this Agreement. All reviews, approval and consents by the City under the terms of this Agreement are for the sole and exclusive benefit of CRC, and no other person or party will have the right to rely thereon.

8.7. Waiver. No failure by any party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party by giving notice to the other parties, may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

8.8. Jointly Drafted; Rules of Construction. The parties hereto agree that this Agreement was jointly drafted and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other documents will be construed against the party drafting such agreement or document.

8.9. Conflicts of Interest. The City will not allow, and except as disclosed in writing to the City, CRC will not knowingly permit, any of the following persons to have any interest, direct or indirect, in this Agreement: a member of the governing body of the City, an employee of the City who exercised responsibility concerning the Project, or an individual or firm retained by the City who had performed consulting or other professional services in connection with the Project.

8.10. No Partnership. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither party hereto will be deemed or construed to be a partner, joint venturer or agent of the other party, and neither party will be responsible for any debt or liability of the other.

8.11. No Third-Party Beneficiaries. Except as expressly provided hereunder, this Agreement is executed for the exclusive benefit of the signatory parties and their respective successors and assigns. Nothing herein shall be construed as creating any enforceable right, claim or cause of action in or for any third-party.

8.12. Non-Liability of City, City Officials and City Employees. No Council member, official, employee, agent or consultant of the City will be personally liable to CRC in an event of default of the City or for any amount that may become due to CRC under the terms of this Agreement.

8.13. Governmental Immunity. The City is relying on and does not waive or intend to waive by any provision of this Agreement the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City.

8.14. Applicable Law; Venue; Disputes. The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement, and venue for any legal action arising under this Agreement shall be in the District Court of Adams County, Colorado. In the event of such legal action, the prevailing party therein shall be awarded all reasonable costs and attorney fees. In no event shall any dispute hereunder be submitted to binding arbitration.

8.15. Section Titles. Any titles of the several parts and sections of this Agreement are inserted for convenience and reference only and will be disregarded in constructing or interpreting any of its provisions.

8.16. Digital Signatures and Copies. The parties hereto hereby acknowledge that this Agreement 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. The parties agree that signature pages may be executed via ink signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means. Further, the parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

8.17. Public Records Disclosure. To the extent required or otherwise authorized by Colorado law, any public records submitted to or generated by the City in connection with this Agreement are potentially subject to public inspection and copying upon request. CRC expressly waives any claim or cause of action against the City arising out of such disclosure. The provisions of this section shall survive the expiration or termination of this Agreement.

8.18. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity will not affect the application or validity of any other provisions, covenants or portions of this Agreement.

[Remainder of page intentionally left blank; Signatures on next page]

IN WITNESS WHEREOF, the City has caused these presents to be executed by its duly authorized officer; and CRC has caused these presents to be executed by its duly authorized officer, as of the date first above written.

By:

By: _____

CITY:

ATTEST:

By: _____

By: _____

ATTEST:

By: _____

APPROVED AS TO LEGAL FORM:

Exhibit A

Legal Description of Property

(Legal description to be attached prior to execution)