

**REPURCHASE OPTION AND POST-CLOSING AGREEMENT
(SHOENBERG FARMS PROJECT)**

THIS REPURCHASE OPTION AND POST-CLOSING AGREEMENT (SHOENBERG FARMS PROJECT) (the “Post-Closing 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 (“MJ Development”).

RECITALS

A. The City and MJ Development 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 (collectively, the “PSA”), pursuant to which the City agreed to sell, and MJ Development 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. MJ Development intends to develop a food hall that adaptively reuses existing improvements 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”) (collectively the “Project”).

C. The PSA provides that the City and MJ Development shall enter into this Post-Closing Agreement to, among other things, grant the City the right to repurchase the Property under certain circumstances.

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. Required Construction Schedule; Repurchase Options.

(a) Construction Obligations. MJ Development shall commence physical construction for Phase 1 within nine (9) months after receiving a building permit for utilities and interior rehabilitation (the “Commencement Deadline”), commence construction of Phase 1, which obligation is hereinafter referred to as the “Commencement Obligation.” MJ Development shall be deemed to have commenced construction of Phase 1 pursuant to this subsection at such time as MJ Development 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. Following such commencement of construction, MJ Development shall continue and complete construction of Phase 1 using reasonable diligence in accordance with all applicable laws, rules, regulations or requirements of all governmental or quasi-governmental authorities having jurisdiction (the “Continuing Obligations”) and shall complete construction of Phase 1 (the

“Completion Obligation”) on or before the deadline set forth in Section 2(a)(ii) of the PSA (the “Completion Deadline”). MJ Development shall be deemed to have completed construction of Phase 1 pursuant to the foregoing sentence at the time MJ Development has obtained a temporary or final certificate of occupancy for Phase 1. MJ Development shall promptly notify the City of the date on which commencement of construction of Phase 1 and completion of construction of Phase 1 has occurred.

(b) Extension of Commencement Deadline.

(i) MJ Development, in its sole discretion, may extend the Commencement Deadline by thirty (30) days by providing written notice of such extension to the City no later than sixty (60) days following the date of closing on MJ Development’s purchase of the Property pursuant to the PSA (the “PSA Closing”).

(ii) If a Force Majeure Event (defined below) delays MJ Development’s ability to timely fulfill the Commencement Obligation, the Continuing Obligations or the Completion Obligation, MJ Development may extend the Commencement Deadline or the Completion Deadline by the number of days of delay caused by such Force Majeure Event by providing written notice of such Force Majeure Event to the City no later than fifteen (15) days following the end of such Force Majeure Event, which notice shall include reasonably sufficient evidence or details to permit the City to confirm the occurrence and duration of the Force Majeure Event. A “Force Majeure Event” is a delay in MJ Development fulfilling the Commencement Obligation, the Continuing Obligations or the Completion Obligation, which delay is beyond the reasonable control of MJ Development, and may include, without limitation, a labor strike, a shortage of building materials or labor, or a natural catastrophe such as a tornado, fire, major precipitation event, earthquake or flood; provided, however, that in no event will lack of financing or MJ Development’s inability to fund construction costs constitute a Force Majeure Event.

(c) Repurchase Options.

(i) First Repurchase Option. If MJ Development does not fulfill the Commencement Obligation by the Commencement Deadline, as it may be extended pursuant to Section 1(b) above, then the City shall have the option to repurchase the Property as set forth herein (the “First Repurchase Option”). The First Repurchase Option may be exercised at any time prior to the date that is one hundred eighty (180) days after the Commencement Deadline (the “First Repurchase Deadline”).

(ii) Second Repurchase Option. If MJ Development does not fulfill its Continuing Obligations or does not fulfill the Completion Obligation by the Completion Deadline (taking into consideration any extension for a Force Majeure Event, or the extension of the Completion Deadline in accordance with Section 1(b) above), then the City shall have the option to repurchase the Property as set forth herein (the “Second Repurchase Option”). The Second Repurchase Option may be exercised within six (6) months after the Completion Deadline (as may be extended by a Force Majeure Event), if MJ Development has not fulfilled the Completion Obligation by the Completion Deadline (the “Second Repurchase Deadline”).

(iii) Repurchase Price.

a. The price payable by City with respect to the First Repurchase Option (the “First Repurchase Price”) shall be one hundred percent (100%) of the gross purchase price paid by MJ Development for the Property on the date of the PSA Closing (the “First Repurchase Price”).

b. The price payable by City with respect to Second Repurchase Option (the “Second Repurchase Price”) shall be equal to the sum of (1) the gross purchase price paid by MJ Development for the Property on the date of PSA Closing plus (2) the direct, reasonable, out-of-pocket expenses actually incurred by MJ Development for the hard costs of construction by MJ Development of any physical improvements on the Property as of the date the Second Repurchase Option is exercised, as evidenced by invoices and other documentation as may be reasonably requested by City (the “Hard Cost Reimbursable Expenses”). Notwithstanding anything contained herein to the contrary, in the event City is not satisfied with the amount of the Hard Cost Reimbursable Expenses for any reason whatsoever, then City shall have the option to rescind the Second Repurchase Option.

c. The City may exercise the First Repurchase Option or the Second Repurchase Option (each, generically, a “Repurchase Option”) by providing written notice of such exercise to MJ Development no later than the Repurchase Deadline applicable to the particular Repurchase Option. If the City does not timely exercise a Repurchase Option, such Repurchase Option shall expire without further action of MJ Development or the City.

2. Repurchase Mechanics.

(a) Effect of Exercise. If the City timely gives notice of its intention to exercise any Repurchase Option, then the City and MJ Development agree to consummate the transactions necessary to complete the City’s repurchase of the Property subject to the terms and conditions of this Section 2.

(b) Title. Within ten (10) days after the City’s timely notice to MJ Development of its intention to exercise a Repurchase Option, MJ Development shall deliver to City a title insurance commitment issued by Fidelity National Title Insurance Company or such other title company selected by the City (the “Title Company”) showing the status of record title to the Property (the “Title Commitment”) together with copies of all recorded documents referred to in the Title Commitment.

i. The Title Commitment shall commit to insure title to the Property in favor of the City, as the owner thereof, in the amount of the applicable Repurchase Price, under an owner’s policy (including extended coverage) in the ALTA form then in general use in Jefferson County, Colorado, subject only to: (a) those matters of record to which title to the Property was subject when the special warranty deed for the Property was delivered by the City to MJ Development on the date of the PSA Closing (as defined in the PSA) provided the same continue to affect the Property; and (b) any non-monetary matters to which the City consented in writing prior to such matters encumbering the Property (collectively, the “Permitted Exceptions”). MJ Development shall be solely responsible for providing an owner’s policy to the City pursuant to the Title Commitment, including MJ Development paying the premium therefor, including, without limitation, the cost for the deletion of the standard preprinted exceptions.

ii. Within fifteen (15) days after receiving the Title Commitment, the City may give MJ Development written notice (the "Title Objection Notice") of any matter affecting title (other than any Permitted Exceptions) to which the City objects (all of which are referred to herein as "Defects of Title"). If the City does not deliver a Title Objection Notice within such 15-day period, then the City shall be deemed to have waived all title matters revealed by the Title Commitment.

iii. After receipt of a timely Title Objection Notice, MJ Development shall attempt, at MJ Development's expense, to remove or cure all Defects of Title specified by the City in the Title Objection Notice. If MJ Development is unable to cure or remove all Defects of Title specified by City in the Title Objection Notice within fifteen (15) days after the City's delivery of the Title Objection Notice to MJ Development, then the City shall be entitled, in its sole discretion, to: (i) waive its objection to the Defects of Title and proceed with the Repurchase Closing (as defined below); (ii) terminate the Repurchase Option; or (iii) seek specific performance of the Repurchase Option in addition to actual damages from MJ Development without the Property being subject to such Defects of Title.

(c) Lien Indemnification. If the City exercises a Repurchase Option with regard to the Property, MJ Development acknowledges that MJ Development is liable and responsible for all costs necessary to convey the Property to the City free and clear of all liens and encumbrances (except those accepted by City under the procedure outlined above), including inchoate liens. At MJ Development's option, any liens on the Property may be satisfied at the Repurchase Closing from the Repurchase Closing proceeds. MJ Development shall defend, indemnify and hold City harmless from and against any and all costs, expenses, liabilities and damages (including reasonable attorney fees and expenses of litigation) incurred by City as a result of any claims or liens of mechanics, materialmen, architects, suppliers, laborers, or others for work performed or materials supplied to or for MJ Development, on its behalf, and that may or do attach to the Property.

(d) Closing. The closing of the City's repurchase of the Property pursuant to this Section 2 (the "Repurchase Closing") shall take place at the offices of the Title Company (or at such other place as the City may designate) on or before the 60th day after MJ Development's receipt of timely notice from the City exercising the applicable Repurchase Option. Notwithstanding anything contained herein to the contrary, as provided herein, the City may rescind and terminate its exercise of the applicable Repurchase Option at any time prior to the Repurchase Closing upon written notice to MJ Development, in which event, the terms and provisions of the applicable Repurchase Option will automatically and immediately terminate without further action of the parties, and the City shall, upon MJ Development's written request, promptly sign and record a release of such Repurchase Option.

(e) Closing Conditions. The following shall occur at the Repurchase Closing, each being a condition precedent to the others and all being considered occurring simultaneously:

(i) The City shall pay to MJ Development, in cash or other funds immediately available, the applicable Repurchase Price, reduced by the amount of real property taxes and other assessments of any governmental, quasi-governmental or private entity which are attributable to the Property for the period from January 1 of the year of the Repurchase Closing through the date of the Repurchase Closing. Such prorations shall be based upon the most current assessed

valuation and levy. The adjustment of real property taxes and other assessments made at the Repurchase Closing will be considered a final settlement.

(ii) MJ Development shall deliver to the City a special warranty deed for the Property subject only to the Permitted Exceptions and any Defects of Title accepted by the City pursuant to this Post-Closing Agreement, except that any lien for taxes or assessments shall be limited to those attributable to the year of the Repurchase Closing and subsequent years. Such special warranty deed shall expressly state that the Property, and all improvements thereon, are conveyed in an “as is” condition, without warranty or representation.

(iii) The City and MJ Development will execute and deliver such other documents and take such other actions as may be necessary to accomplish the Repurchase Closing and carry out their obligations under this Post-Closing Agreement.

(iv) The closing costs charged by Title Company, all recording and documentary fees, and all other closing costs and expenses collected by the Title Company shall be divided between the parties as is customary in real estate closings in Jefferson County as determined by the Title Company.

3. Construction Activities. During any construction on the Property, MJ Development 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 MJ Development. MJ Development covenants that it shall repair any such damage in a timely manner and shall, during and upon the completion of construction on the Property, remove from and about the construction site any unnecessary debris, refuse, trash and construction materials. If MJ Development does not perform one or more of the maintenance measures required by this Section 4 or causes any damage to adjacent property prohibited by this Section 3, then MJ Development shall cure such matter as promptly as practicable after receiving notice thereof from the City. If MJ Development does not cure such matter within a reasonable time after receiving notice from the City, then the City may undertake such cure at MJ Development’s expense, and MJ Development shall reimburse the City for the expense of undertaking such curative actions within twenty (20) days after receiving an invoice therefor from the City. MJ Development will provide the City with reasonable updates on not less than a monthly basis of MJ Development’s construction schedule for the Project. In addition, MJ Development shall, at all times, and in good faith coordinate MJ Development’s construction, maintenance and other related activities on the Property with the City.

4. Redevelopment. At any time beginning prior to the end of the 15th year following the date of recording this Post-Closing Agreement, if MJ Development intends to redevelop any part of the Property, MJ Development shall submit any plans for redevelopment to the City for approval prior to submission of an Official Development Plan (“ODP”), Amended ODP or other request for approval by the City.

5. Term. Notwithstanding anything to the contrary, this Post-Closing Agreement, and all rights and obligations hereunder, shall automatically terminate and be of no further force or effect on that date is fifteen (15) years following the date of the recording of this Post-Closing

Agreement. After termination hereof, upon MJ Development's written request, the City shall promptly sign and record a termination of this Post-Closing Agreement and all Repurchase Options.

6. **Successors/Assigns; Binding Effect; Enforcement.** This Post-Closing Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. As long as this Post-Closing Agreement is in effect, MJ Development's obligations under this Post-Closing 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, MJ Development and the City hereby agree that the City and its affiliates, successors and assigns may enforce this Post-Closing 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.

7. **No Obligation to Exercise Option.** Notwithstanding any provision of the PSA or this Post-Closing Agreement to the contrary, under no circumstances shall the City have any obligation to exercise any Repurchase Option. The City's election to exercise any Repurchase Option shall, at all times, remain at the City's sole and absolute discretion. However, if the City gives notice of exercise of any Repurchase Option and fails to close on the repurchase pursuant to such Repurchase Option, the City shall have waived its right to exercise such Repurchase Option.

8. **Severability.** If any term, covenant or provision of this Post-Closing 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 Post-Closing Agreement will remain in full force and effect.

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

10. **Notices.** Any notices required or permitted to be sent pursuant to this Post-Closing 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 MJ Development at the appropriate address or facsimile number as set forth below. Any party hereto 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: 303-658-2231

If to MJ Development:

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

with a copy to:

Hatch Ray Olsen Conant LLC
Attn: Christopher J. Conant
730 17th Street
Suite 200
Denver, CO 80202
cconant@hatchlawyers.com
Phone: 303-298-1800

11. Governing Law and Venue. This Post-Closing Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action or proceeding against any party hereto relating in any way to this Post-Closing Agreement or the obligations of any party hereto 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 hereto irrevocably submits to the jurisdiction of each such court in respect of any such action or proceeding. Each party hereto 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.

12. 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 hereto.

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

14. Governmental Immunity. No term or condition of this Post-Closing Agreement shall be construed or interpreted as a waiver by MJ Development, 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

15. Counterparts. This Post-Closing 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.

[Remainder of page intentionally blank - signatures follow]

IN WITNESS WHEREOF, the parties hereto have executed this Repurchase Option and Post-Closing Agreement (Shoenberg Farms Project) as of the date first written above.

**CITY OF WESTMINSTER, a Colorado home
rule municipal corporation**

By: _____

Name: _____

Title: _____

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)
) :ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2024, 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