

LOAN AGREEMENT

THIS LOAN AGREEMENT, in two Parts, Part I and Part II, is made and entered into this _____ day of _____, 2012, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and the **DENVER URBAN RENEWAL AUTHORITY**, a Colorado urban renewal authority whose address is 1555 California Street, Suite 200 Denver, Colorado 80202 ("DURA" or "Contractor").

WITNESSETH:

WHEREAS, the City has designated an area generally described as twenty (20) acres situated at the Northeast corner of the intersection of West 52st Avenue and Federal Boulevard in the Chaffee Park Neighborhood as an urban redevelopment area, a legal description and map of which is attached hereto as Exhibit A and incorporated herein by this reference (the "Marycrest Urban Redevelopment Area"); and

WHEREAS, pursuant to sections 31-25-101, et seq., C.R.S., (the "Act") DURA has the power and authority to undertake urban renewal projects, including the power (i) to make contracts for loans and grants from the federal government or any other source, and (ii) to arrange for the furnishing or repair by any person or public body of works, streets, roads, public utilities or other facilities in connection with an urban renewal project; and

WHEREAS, the City desires to loan Skyline and Neighborhood Stabilization Program 2 ("NSP 2") funds to DURA to enable the acquisition of property and construction of public improvements in the Marycrest Urban Redevelopment Area, described below, which will leverage significant private investment in the area; and

WHEREAS, the City is concurrently loaning \$360,817 to DURA for development related soft costs (the "Initial Cost Loan").

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties agree as follows:

1. **LOAN TO DURA**: The City agrees to lend DURA the sum of \$1,776,854 from Skyline funds and \$2,815,179 from NSP 2 funds, to be repaid over a term of

12-034

approximately twenty-five (25) years together with simple interest at the rate of two percent (2%) per annum. Principal and interest shall be due and payable, at such place as may be designated by the City, in quarterly installments on 10th day of January, April, July and October, consisting of the entirety of DURA's receipt of the TIF Revenues, defined below, as required in paragraph 5 below. DURA shall execute a promissory note evidencing this loan (the "Promissory Note") in substantially the form attached as Exhibit B hereto. Interest shall begin to accrue upon disbursement. Payments by DURA shall be made only to the extent of TIF Revenues are actually generated and as set forth in the Promissory Note. Payments shall be attributed first to the paydown of the Initial Cost Loan and then to amounts loaned from Skyline funds, and then to the NSP 2 funds loaned.

"TIF Revenues" means, for each calendar year, subsequent to inclusion of property into the Marycrest Urban Redevelopment Area, all property and sales tax revenues with respect to such property, in excess of the base amount for such sales tax revenues and property tax revenues, as described and required by § 31-25-101 et seq. C.R.S.; provided that (i) such amount shall be reduced by any lawful collection fee charged by the City and by DURA's fees, costs and expenses, including any DURA priority fees; and (ii) in the event of a general reassessment of taxable property in the Marycrest Urban Redevelopment Area, TIF Revenues shall be proportionately adjusted in the manner required by the Act.

2. **USE OF LOAN PROCEEDS:** Loan proceeds will be used to construct certain public improvements within the Marycrest Urban Redevelopment Area. The budget for the loan proceeds is as follows:

Total Acquisition Costs of the Property \$2,815,179.00

Phase 1 Infrastructure Improvements

Development soft costs \$ 536,992.00

Development hard costs \$1,239,862.00

The budget for the loan proceeds above may be revised within or among those categories with the prior written approval of the Director of the Office of Economic

Development or his or her designee. So long as the loan amount is not exceeded, written approval shall not be required for changes of less than 10% among budget items. The Phase 1 Infrastructure Improvements are those improvements that are eligible to be reimbursed through Skyline funds; they have been preliminarily identified in Exhibit C (but are not limited to those listed).

3. **CFDA NUMBERS:** Skyline funds are a non-federal funding source and do not have a CFDA number. Skyline funds, however, carry CDBG regulations and the CDBG CFDA number is 14.218. The NSP 2 funds have a CFDA number of 14.256.

4. **DISBURSEMENT OF FUNDS:** No NSP 2 funds will be disbursed until (i) DURA has entered into a redevelopment agreement with Marycrest Land, LLC or an affiliate thereof pursuant to which Marycrest Land, LLC commits to the investment of private funds not less than \$12,000,000.00 in Phase 1 of a development in the Marycrest Urban Redevelopment Area and (ii) for acquisition of the Property. No Skyline funds will be disbursed until (i) DURA has entered into a redevelopment agreement with Marycrest Land, LLC or an affiliate thereof pursuant to which Marycrest Land LLC commits to the investment of private funds not less than \$12,000,000.00 in Phase 1 of a development in the Marycrest Urban Redevelopment Area, and (ii) DURA has submitted receipts for reimbursement of costs eligible to be reimbursed pursuant to C.F.R. §570.201.. The City may at its option terminate this agreement if the redevelopment agreement has not been entered into and the Property has not been acquired by Marycrest Land LLC or one of its affiliates on or before September 1, 2012. To obtain funds hereunder, DURA shall submit to the City requisitions with documentation of incurred costs on Office of Economic Development approved forms. DURA shall monitor construction activities for the purpose of verifying costs eligible to be reimbursed pursuant to C.F.R. §570.201. DURA shall retain ten percent (10%) of each disbursement of funds used for development hard costs from the City, which retainage shall be released to Marycrest Land, LLC upon final inspection and approval of DURA and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers.

5. **SECURITY**: Repayment of the Promissory Note shall be secured (1) by the pledge by DURA of TIF Revenues to the City, as evidenced in paragraph 6 below and (2) by two Deeds of Trust (the "Deeds of Trust"), in form satisfactory to City, granted by Marycrest Land, LLC and encumbering the real property legally described as on Exhibit D for Phase 1 (describing the "Phase 1 Deed of Trust Property") and as on Exhibit E (describing the "Phase 2-4 Deed of Trust Property") and known and numbered as approximately 2800 West 52nd Avenue, Denver, Colorado (the "Property"). The Phase 1 Deed of Trust Property and the Phase 2-4 Deed of Trust Property shall comprise the Property.

The Deeds of Trust shall be released as to a parcel or part of parcel when DURA certifies completion of construction under the Redevelopment Agreement. A partial release of the Deed of Trust for the Phase 1 Deed of Trust Property will be made when the Low Income Housing Tax Credit (LIHTC) apartment project ("LIHTC Apartment Project") has received its Certificate of Occupancy. Additional releases of the Deed of Trust for the Phase 1 Deed of Trust Property will be made as the Townhomes, as set forth on Exhibit F, are sold. The LIHTC Apartment Project and the Townhomes are identified on the site map attached and incorporated as Exhibit F.

The Director of the Office of Economic Development ("OED") or permitted designee, is authorized to execute documents necessary to partially release the Deeds of Trust encumbering the property as set out in this paragraph 5, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) DURA is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deeds of Trust; (iii) Marycrest Land, LLC is not then in default of its obligations pursuant to the Redevelopment Agreement.

The Director of the Office of Economic Development ("OED") or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City's Deeds of Trust so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$16,000,000.00 for Phase 1 Deed of Trust Property and \$60,000,000.00 for Phase 2-4

Deed of Trust Property; and (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deeds of Trust.

6. **PLEDGE OF TIF REVENUES:** In consideration of the City extending the Loan, DURA hereby irrevocably pledges to the City all TIF Revenues which it receives during the Term. During the Term, as specified in Section 1 above, DURA shall remit to the City all TIF Revenues which it has received and the City shall apply such TIF Revenues as specified in paragraph 1 above, first to interest and then to principal.

The creation, perfection, enforcement, and priority of the pledge by DURA to secure or pay the TIF Revenues to the City shall be governed by Section 11-57-208 of the Supplemental Act and this Loan Agreement. The TIF Revenues, as received by or otherwise credited to the DURA, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the TIF Revenues and the obligation of DURA to perform the contractual provisions made herein shall have priority over any or all other obligations and liability of DURA except for the pledge of the TIF Revenues pursuant to the Initial Cost Loan entered into concurrently which shall have priority. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against DURA irrespective of whether such persons have notice of such liens.

7. **RESTRICTIONS ON USE OF PROPERTY:**

A. NSP 2 Funds

(1) **Affordability limitations.** Twenty-seven (27) of the units in Phase 1 LIHTC Apartment Project (the "NSP 2 Units"), the acquisition of the site of which was funded with NSP 2 funds, shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. By executing this Loan Agreement, DURA acknowledges receipt of HUD's current rent guidelines from the OED. It shall be DURA's responsibility to obtain updated guidelines from OED or HUD, and comply with same.

(2) **Occupancy/Income Limitations.** The NSP 2 Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median

income for the Denver area as determined by HUD pursuant to section 24 C.F.R. 5.609 or any successor regulation. By executing this Loan Agreement, DURA acknowledges receipt of HUD's current income guidelines from OED. It shall be DURA's responsibility to obtain updated guidelines from OED or HUD, and comply with same.

(3) Covenant Running with the Land. At closing, DURA shall cause a covenant to be executed in form satisfactory to the City ("Covenant"), setting forth the rental and occupancy limitations described in subparagraphs 1 and 2 above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period not less than twenty (20) years from the date of its recording. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

B. Skyline Funds. At least fifty-one percent (51%), of the units created in Phase 1, the infrastructure of which is to be funded in part with Skyline funds (44 units) shall be occupied by low/moderate income household ("Skyline Units"). "Low/moderate income household" means a family or household with an annual income less than 60% of the area median income, as established by HUD. Two (2) of the Skyline Units shall be occupied by households with incomes at or below 50% of the Area Median Income; 42 of the Skyline Units shall be occupied by households with incomes at or below 60% of the Area Median Income. Rents for the Skyline Units in this project must be set at levels which are affordable to low/moderate income households. DURA shall require Marycrest Land, LLC to adopt and make public its standards for determining "affordable rents." Units identified as Skyline Units shall not also be identified or restricted as NSP 2 Units.

8. **PROCUREMENT STANDARDS:** In procuring services, supplies, rental equipment or other property to be used for the design and construction of the Phase 1 infrastructure improvements under this Agreement, DURA agrees to follow or require the developer to follow the procurement methods set out in 24 C.F.R. Part 85.36. The "competitive negotiation" method of procurement must be followed in obtaining architectural or engineering services. The "formal advertising", sealed bid method of procurement or the competitive negotiation method of procurement must be followed in

obtaining construction contractors. DURA's, or its developer's, contracts with architects, engineers, and construction contractors must contain the provisions required by 24 C.F.R. Part 85.36.

9. **PROHIBITED LEASE TERMS:** Leases or other instruments pursuant to which NSP2 Units, all of which are in the LIHTC Apartment Project are occupied may not contain any of the following provisions:

a. **Agreement to Be Sued.** Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

b. **Treatment of Property.** Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. However, the owner may dispose of personal property remaining in the unit after the tenant has moved out, in accordance with Colorado law.

c. **Excusing Owner from Responsibility.** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

d. **Waiver of Notice.** Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.

e. **Waiver of Legal Proceedings.** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

f. **Waiver of Jury Trial.** Agreement by the tenant to waive any right to a trial by jury.

g. **Waiver of Right to Appeal.** Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge a court decision in connection with the lease.

h. **Tenant Chargeable with Cost of Legal Actions Regardless of Outcome.** Agreement by tenant to pay attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.

10. **FEDERAL LABOR STANDARDS** DURA must assure that its, and its developer's, contractors and subcontractors for development of Phase 1 Infrastructure Improvements comply with applicable federal labor standards, including payment of wages in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a to a-7 and Department of Labor Regulations, which shall apply only to the Phase 1 infrastructure funded by Skyline funds. DURA must obtain current Davis-Bacon wage rates from the Office of Economic Development, and include current wage rates in all bid specifications and construction contracts. The City shall have no responsibility for any failure by DURA or its contractors to pay current wage rates.

11. **OTHER CITY INSPECTIONS/REQUIREMENTS**: This agreement sets forth DURA's obligations with respect to its receipt of federal funds for the purposes described herein. The Agreement is not intended and shall not be construed to relieve DURA or any other party of other regulatory requirements applicable to its construction activities. Those include, without limitation, requirements imposed by the City's Department of Public Works.

12. **RECORDS AND REPORTS**: During development, DURA will provide the Office of Economic Development with a monthly narrative report on the progress of the rehabilitation by the fifth day of each month following acquisition of the Property contemplated by this Agreement. Such report shall include all information required by the Office of Economic Development, including ARRA job reporting specifically cited in Section 18 herein. After development, annual reports shall be required until the loan amount is no longer outstanding. The reports required herein are attached as Exhibit G.

13. **ARRA MONITORING REQUIREMENTS**: With regard to the expenditure of NSP 2 funds, DURA shall comply with all applicable reporting requirements established for funding under American Recovery and Reinvestment Act of 2009 ("ARRA"), including but not limited to, obtaining a Data Universal Numbering System (DUNS) number, registering with the Central Contractor Registration (CCR) database, complying with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), and requiring any of Contractor's subcontractors or sub-consultants to comply with the foregoing requirements as necessary. On a monthly basis, Contractor shall report

all jobs created or retained by the monies paid to Contractor under this Loan Agreement by completing and submitting to OED the ARRA Monthly Job Report Form provided by the City, until the NSP 2funds are expended.

14. **ENVIRONMENTAL AND HISTORIC CLEARANCE:** No loan proceeds may be obligated or spent until DURA or the Developer has received written environmental and historic clearance from the Office of Economic Development. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project. DURA covenants shall not generate, use, have manage, or release or allow the generation, use, presence, management or release of any hazardous substance above, in, on, under or from the Property, except in accordance with applicable law. DURA shall be solely responsible for and shall indemnify, to the extent permitted by law, and hold harmless the City, its officers, agents, and employees, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to DURA's use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous substances on, under or about the Property.

15. **SIGNAGE:** If requested by the Office of Economic Development, DURA agrees to post a sign, in a form approved by the Office of Economic Development, indicating that the project is receiving NSP/Skyline assistance.

16. **EXAMINATION OF RECORDS:** DURA agrees that with 2 business days notice the Comptroller General of the United States, the U.S. Department of Housing and Urban Development, the City, or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers and records of DURA involving transactions related to this Agreement. DURA must also require its contractors and subcontractors to provide access to such records when requested.

17. **CONDITIONS:**

(A.) This Agreement is subject to and incorporates the provisions attached as Part II, General Conditions and all other attachments.

(B.) This Agreement is also subject to the Housing and Community Development Act of 1974, as amended, regulations issued by HUD, 24 C.F.R. 570 et seq. (as applicable), Title XII of Division A of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5 (enacted February 17, 2009), and the NSP2 Agreements entered into by and between the City and HUD. Additionally, this Agreement is subject to the City's Charter and all applicable City ordinances, as the same may be amended from time to time. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

(C) The obligation of the City to make payments hereunder shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for purposes of this Agreement.

18. **REALLOCATION OF DEVELOPER'S ALLOCATION OF NSP 2 FUNDS.** If DURA fails to expend NSP 2 funds by September 1, 2012, the City in its sole discretion may reallocate a portion or all of DURA's total NSP 2 funding allocation. The portion to be reallocated will be equal to that amount not yet expended by DURA.

19. **DEFAULT AND ACCELERATION.** DURA expressly agrees that any breach of this Loan Agreement, the Promissory Note, or the Deed of Trust shall constitute a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of DURA in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by DURA, the City shall have the right to accelerate any outstanding obligations of the DURA, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust.

20. **ASSIGNMENT**: DURA shall not assign any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent of the City, except as set forth in Section 28 herein.

21. **NO THIRD PARTY BENEFICIARY**: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DURA, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and DURA that any person other than the City or DURA receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22. **INSURANCE**:

DURA or its contractor shall procure and maintain insurance in the following types and amounts:

A. Commercial General Liability Insurance with limits not less than \$1,000,000.00 per occurrence/\$2,000,000.00 general aggregate, with the City and County of Denver, its officers, officials and employees listed as additional insureds. DURA's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor.

B. Worker's Compensation Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of DURA and its contractor under Colorado law.

C. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the Deeds of Trust and Covenant, with the City named as loss payee.

D. Certificates of Insurance evidencing the above shall be submitted to the City's Office of Economic Development, prior to the disbursement of funds hereunder.

23. **INDEMNITY**: To the full extent permitted by law, DURA expressly agrees to defend, indemnify, and hold harmless the City, its officers, agents, employees, and insurers against any liability, loss, damage, demand, action, cause of action, or expense

of whatever nature (including court costs and attorneys' fees), which may result from any loss, injury, death, or damage allegedly sustained by any person, firm, corporation, or other entity which arises out of or is caused by any negligent or wrongful act or omission of DURA, its officers, agents, or employees in connection with, or in any way arising out of, this Agreement.

DURA shall cause Marycrest Land, LLC to expressly agree to defend, indemnify, and hold harmless the City, its officers, agents, employees, and insurers against any liability, loss, damage, demand, action, cause of action, or expense of whatever nature (including court costs and attorneys' fees), which may result from any loss, injury, death, or damage allegedly sustained by any person, firm, corporation, or other entity which arises out of or is caused by any negligent or wrongful act or omission of Marycrest Land, LLC, its officers, agents, or employees in connection with, or in any way arising out of, this Agreement or the Redevelopment Agreement between DURA and Marycrest Land, LLC.

24. **WAIVER**: No waiver of any breach or default under this Agreement shall be held to be a waiver of any other or subsequent breach or default. All remedies afforded in this Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

25. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, DURA agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

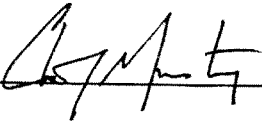
26. **BINDING EFFECT**: This Agreement shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

27. **"SECTION 3" COMPLIANCE:** This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

28. **IMPLEMENTATION OF DURA OBLIGATIONS:** The City acknowledges that DURA has entered into this Loan Agreement for the purpose of facilitating the acquisition and construction of public improvements in connection with the Marycrest Urban Redevelopment Plan, dated_____. Acquisition and construction activities will be undertaken by Marycrest Land, LLC or an affiliate pursuant to a Redevelopment Agreement between DURA and Marycrest Land, LLC or an affiliate. The City therefore acknowledges that to the extent DURA has required Marycrest Land, LLC or an affiliate to assume and undertake DURA's obligations hereunder, DURA's obligations to the City shall be limited to the exercise of reasonable care in assuring Marycrest Land, LLC or an affiliate's fulfillment of the obligations contained herein.

Exhibit A	Legal Description and Map of Marycrest Urban Renewal Area
Exhibit B	Form of Promissory Note
Exhibit C	Preliminary list of Phase 1 Infrastructure Improvements
Exhibit D	Legal description for Phase 1 Deed of Trust Property
Exhibit E	Legal description for Phase 2-4 Deed of Trust Property
Exhibit F	Site map identifying LIHTC Apartment Project and Townhomes
Exhibit G	Form of reports

DENVER URBAN RENEWAL AUTHORITY,
a Colorado urban renewal authority

By: 
Title: Chair

DESCRIPTION

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.

A PARCEL OF LAND LOCATED IN A PART OF RE-SUBDIVISION OF BERKELEY HILLS RECORDED IN BOOK 3 AT PAGE 68 IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER CORNER OF SAID SECTION 17;

THENCE NORTH 22°45'14" EAST, A DISTANCE OF 32.32 FEET TO A POINT OF INTERSECTION OF THE CENTERLINE OF FEDERAL BOULEVARD AND THE NORTH RIGHT OF WAY LINE OF WEST 52ND AVENUE EXTENDED AND THE POINT OF BEGINNING;

THENCE SOUTH 89°04'57" EAST ALONG SAID NORTH LINE EXTENDED WESTERLY, A DISTANCE OF 52.51 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID FEDERAL BOULEVARD;

THENCE NORTH 00°00'00" EAST ALONG SAID EAST LINE, A DISTANCE OF 1,033.27 FEET TO A POINT ON THE CENTERLINE OF COLUMBINE ROAD AND A POINT OF NON-TANGENT CURVATURE;

THENCE ALONG SAID CENTERLINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 275.00 FEET, A CENTRAL ANGLE OF 70°23'56", AN ARC LENGTH OF 337.89 FEET AND A CHORD WHICH BEARS SOUTH 74°34'49" EAST A CHORD LENGTH OF 317.03 FEET TO A POINT ON THE EASTERLY LINE OF AN EASEMENT DESCRIBED AT RECEPTION NO. 2001086657 EXTENDED NORTHERLY;

THENCE ALONG THE EASTERLY, NORTHERLY AND WESTERLY LINES OF SAID EASEMENT, AND SAID EASEMENT LINES EXTENDED NORTHERLY, THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 52°33'45" WEST, A DISTANCE OF 246.66 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 2) ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 32.50 FEET, A CENTRAL ANGLE OF 80°47'06", AN ARC LENGTH OF 45.82 FEET AND A CHORD WHICH BEARS SOUTH 12°10'13" WEST A CHORD LENGTH OF 42.12 FEET;
- 3) SOUTH 28°13'20" EAST, A DISTANCE OF 232.03 FEET TO A POINT OF CURVATURE;
- 4) ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 35.00 FEET, A CENTRAL ANGLE OF 21°00'59", AN ARC LENGTH OF 12.84 FEET AND A CHORD WHICH BEARS SOUTH 38°43'49" EAST A CHORD LENGTH OF 12.77 FEET;
- 5) SOUTH 49°14'19" EAST, A DISTANCE OF 21.37 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 6) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 160.00 FEET, A CENTRAL ANGLE OF 19°40'01", AN ARC LENGTH OF 54.92 FEET AND A CHORD WHICH BEARS NORTH 55°58'27" EAST A CHORD LENGTH OF 54.65 FEET TO A POINT OF COMPOUND CURVATURE;
- 7) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 280.00 FEET, A CENTRAL ANGLE OF 37°37'13", AN ARC LENGTH OF 183.85 FEET AND A CHORD WHICH BEARS NORTH 84°37'05" EAST A CHORD LENGTH OF 180.56 FEET;

8) NORTH 08°10'32" EAST, A DISTANCE OF 231.47 FEET TO A POINT ON THE CENTERLINE OF SAID COLUMBINE DRIVE AND A POINT OF NON-TANGENT CURVATURE;

THENCE ALONG SAID CENTERLINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 06°52'47", AN ARC LENGTH OF 30.02 FEET AND A CHORD WHICH BEARS SOUTH 81°49'28" EAST A CHORD LENGTH OF 30.00 FEET TO A POINT ON THE WESTERLY LINE OF SAID EASEMENT EXTENDED NORTHERLY; THENCE ALONG THE WESTERLY, NORTHERLY AND EASTERLY LINES OF SAID EASEMENT, AND SAID EASEMENT LINES EXTENDED NORTHERLY, THE FOLLOWING TEN (10) COURSES:

- 1) SOUTH 08°10'32" WEST, A DISTANCE OF 235.42 FEET;
- 2) SOUTH 73°37'24" EAST, A DISTANCE OF 46.89 FEET TO A POINT OF CURVATURE;
- 3) ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 310.00 FEET, A CENTRAL ANGLE OF 30°02'32", AN ARC LENGTH OF 162.54 FEET AND A CHORD WHICH BEARS SOUTH 88°38'40" EAST A CHORD LENGTH OF 160.69 FEET;
- 4) NORTH 76°20'04" EAST, A DISTANCE OF 33.88 FEET TO A POINT OF CURVATURE;
- 5) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 265.00 FEET, A CENTRAL ANGLE OF 09°44'31", AN ARC LENGTH OF 45.06 FEET AND A CHORD WHICH BEARS NORTH 81°12'19" EAST A CHORD LENGTH OF 45.00 FEET;
- 6) NORTH 00°40'43" WEST, A DISTANCE OF 40.14 FEET TO A POINT OF NON-TANGENT CURVE;
- 7) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 65.00 FEET, A CENTRAL ANGLE OF 12°50'15",

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH

DATE	REVISION COMMENTS	ARIA DENVER	DESCRIPTION URBAN RENEWAL DISTRICT PARCEL	HARRIS KOCHER SMITH 1391 Speer Blvd., Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311	ISSUE DATE 1-3-12
					CHKD BY: GGS
					DRAWN BY: AWM
					JOB NO. 111210
					SHEET NO. 1

DESCRIPTION

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.

AN ARC LENGTH OF 14.56 FEET AND A CHORD WHICH BEARS NORTH 05°44'23" EAST A CHORD LENGTH OF 14.53 FEET;
8) NORTH 12°09'31" EAST, A DISTANCE OF 20.63 FEET TO A POINT OF NON TANGENT CURVE;
9) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 115.00 FEET, A CENTRAL ANGLE OF 21°23'30",
AN ARC LENGTH OF 42.94 FEET AND A CHORD WHICH BEARS NORTH 22°51'17" EAST A CHORD LENGTH OF 42.69 FEET;
10) NORTH 33°33'02" EAST, A DISTANCE OF 52.27 FEET;
THENCE NORTH 56°26'58" WEST, A DISTANCE OF 170.60 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE
OF COLUMBINE DRIVE;
THENCE NORTH 30°36'39" WEST, A DISTANCE OF 20.00 FEET TO THE CENTERLINE OF SAID COLUMBINE DRIVE AND A
POINT OF NON-TANGENT CURVATURE;
THENCE ALONG SAID CENTERLINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 250.03
FEET, A CENTRAL ANGLE OF 15°26'28", AN ARC LENGTH OF 67.38 FEET AND A CHORD WHICH BEARS NORTH 51°40'07"
EAST A CHORD LENGTH OF 67.18 FEET;
THENCE NORTH 43°56'52" EAST, A DISTANCE OF 49.74 FEET;
THENCE SOUTH 46°03'08" EAST, A DISTANCE OF 20.00 FEET TO THE SOUTHWEST CORNER OF LOT 60, RE-SUBDIVISION
OF BERKELEY HILLS;
THENCE SOUTH 73°18'57" EAST ALONG THE SOUTH LINE OF SAID LOT 60, A DISTANCE OF 243.44 FEET TO THE
NORTHWEST CORNER OF LOT 66, RE-SUBDIVISION OF BERKELEY HILLS;
THENCE SOUTH 18°49'51" WEST ALONG THE WEST LINE OF SAID LOT 66, A DISTANCE OF 102.40 FEET TO THE
SOUTHWEST CORNER OF SAID LOT;
THENCE SOUTH 74°00'09" EAST ALONG THE SOUTH LINE OF SAID LOT, A DISTANCE OF 235.94 FEET TO A POINT ON
THE SOUTHWESTERLY RIGHT OF WAY LINE OF COLUMBINE DRIVE;
THENCE NORTH 69°34'39" EAST, A DISTANCE OF 20.00 FEET TO A POINT ON THE CENTERLINE OF SAID COLUMBINE
DRIVE AND A POINT OF NON-TANGENT CURVATURE;
THENCE ALONG SAID CENTERLINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 170.00
FEET, A CENTRAL ANGLE OF 30°30'54", AN ARC LENGTH OF 90.54 FEET AND A CHORD WHICH BEARS SOUTH 35°40'48"
EAST A CHORD LENGTH OF 89.47 FEET;
THENCE SOUTH 39°03'45" WEST, A DISTANCE OF 20.00 FEET TO A POINT ON THE NORTH LINE OF LOT 41, BERKELEY
HILLS SUBDIVISION;
THENCE NORTH 88°48'30" WEST ALONG SAID NORTH LINE, A DISTANCE OF 9.00 FEET;
THENCE SOUTH 00°38'10" WEST ALONG THE WEST LINE OF LOTS 41, 42 AND 44 OF SAID BERKELEY HILLS SUBDIVISION,
A DISTANCE OF 666.51 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF WEST 52ND AVENUE;
THENCE NORTH 89°04'57" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 1,293.60 FEET TO THE CENTERLINE OF SAID
FEDERAL BOULEVARD;
THENCE NORTH 00°00'00" EAST ALONG SAID CENTERLINE, A DISTANCE OF 60.01 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 990,357 SQUARE FEET OR 22.74 ACRES, MORE OR LESS.

PREPARED BY: GEORGE G. SMITH, JR.

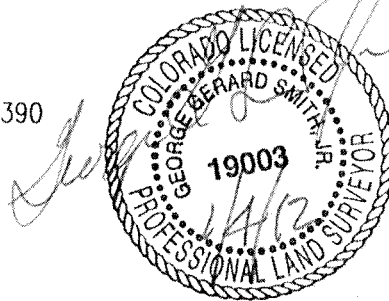
PLS 19003

ON BEHALF OF: HARRIS KOCHER SMITH

1391 SPEER BLVD. SUITE 390

DENVER, CO 80204

303-623-6300



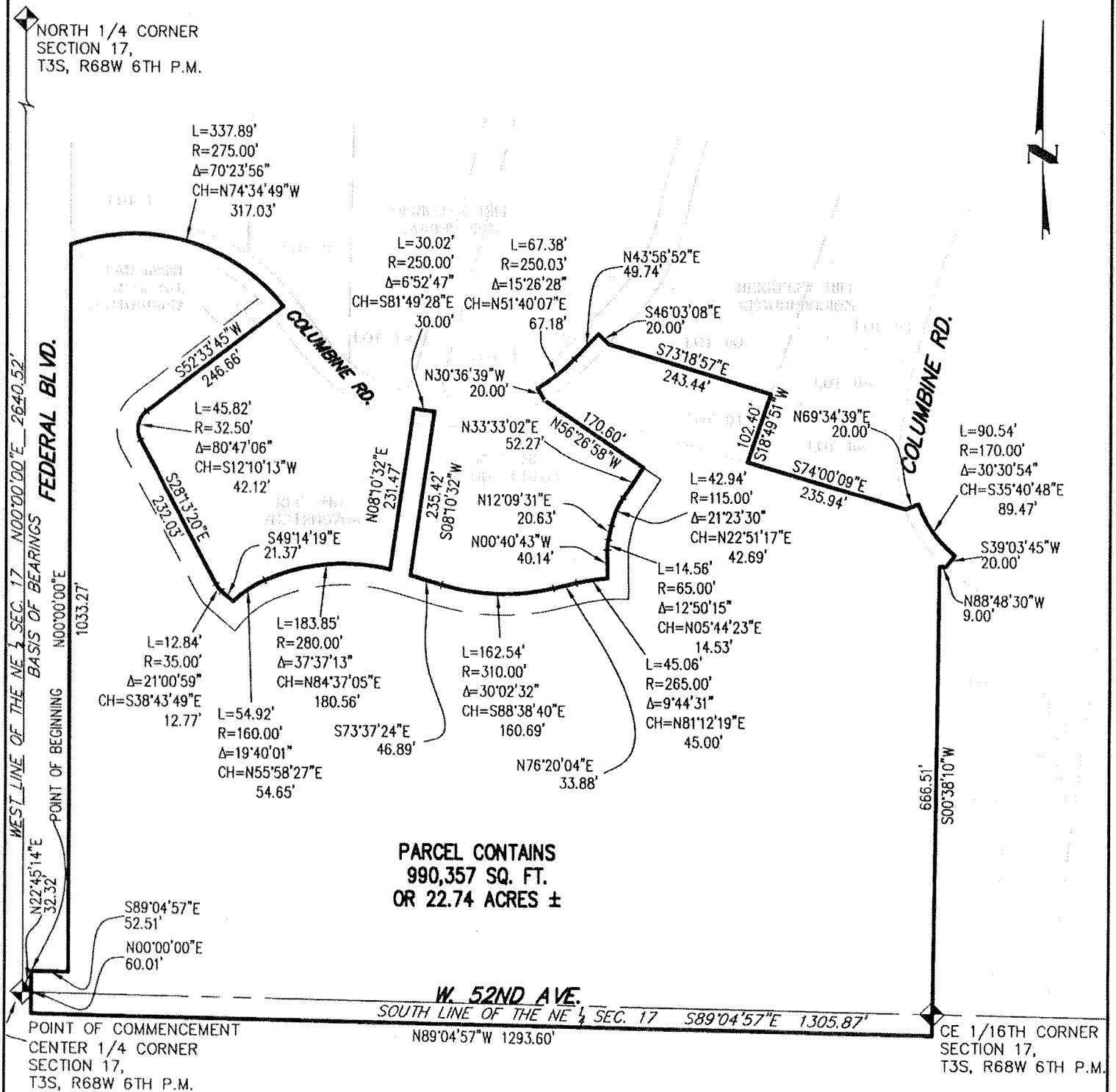
ALBERT J. SMITH, REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 19003, LICENSED BY THE STATE OF COLORADO

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH

DATE	REVISION COMMENTS	ARIA DENVER	DESCRIPTION URBAN RENEWAL DISTRICT PARCEL	HARRIS KOCHER SMITH 1391 Speer Blvd., Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311	ISSUE DATE 1-3-12 CHKD BY: GGS DRAWN BY: AWM JOB NUM: 111210
					2

EXHIBIT

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.



DATE	REVISION COMMENTS	ARIA DENVER	EXHIBIT URBAN RENEWAL DISTRICT PARCEL	HARRIS KOCHER SMITH 1391 Speer Blvd., Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311	ISSUE DATE 1-3-12 CHKD BY GGS DRAWN BY ANM JOB NO. 111210 SHEET NO. 3

EXHIBIT B

PROMISSORY NOTE

Borrower: Denver Urban Renewal Authority

Note Date: _____

Principal Amount: **\$4,592,033**

FOR VALUE RECEIVED, Borrower promises to pay to the order of the City and County of Denver, c/o Office of Economic Development, 201 West Colfax Avenue, Dept. 204, Denver, Colorado 80202 (the "City"), up to the principal sum of Four Million Five Hundred Ninety-Two Thousand Thirty-Three Dollars (\$4,592,033), for amounts advanced by the City pursuant to the Loan Agreement (the "Loan Agreement") between Borrower and the City dated _____, together with interest on the outstanding unpaid balance of such principal amount at the rate of Two percent (2%) per annum simple interest.

Principal and interest shall be due and payable, at such place as may be designated by the City, in quarterly installments on 10th day of January, April, July and October, consisting of the entirety of DURA's receipt of the TIF Revenues less the amounts paid to the City under the Loan Agreement made concurrently herewith in the amount of \$360,817. Payments by DURA shall be made only to the extent of available TIF Revenues. Payments of the TIF Revenues shall be attributed to the paydown of amounts from the Skyline funds first, and then to the amounts due under this Note funded by NSP2 funds, all as defined in the Loan Agreement, made by the City to DURA for the development of the Marycrest Urban Redevelopment Area.

"TIF Revenues" means, for each calendar year, subsequent to inclusion of property into the Marycrest Urban Redevelopment Area, all property and sales tax revenues with respect to such property, in excess of the base amount for such sales tax revenues and property tax revenues, as described and required by § 31-25-101 et seq. C.R.S.; provided that (i) such amount shall be reduced by any lawful collection fee charged by the City and by DURA's fees, costs and expenses, including any DURA priority fees; and (ii) in the event of a general reassessment of taxable property in the Marycrest Urban Redevelopment Area, TIF Revenues shall be proportionately adjusted in the manner required by the Act.

All payments of principal and interest shall be made at the City's offices at the address shown above, or at such other place as the City shall have designated to Borrower in writing. Interest shall begin to accrue upon disbursement.

This Promissory Note may be prepaid in whole or in part, at any time, without notice or penalty. Partial prepayments will not, unless agreed to by City in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule.

This Promissory Note is secured by, and the holder of this Promissory Note is entitled to the benefits of, two Deeds of Trust of even date herewith (the Deeds of Trust being referred to herein as the "Security Documents"). Reference is made to the Security Documents for a description of the property covered thereby and the rights, remedies and obligations of the holder hereof in respect thereto.

In the event of (i) any default in any payment of the principal or interest on this Promissory Note when due and payable, or (ii) any default or event of default under the provisions of the Loan Agreement then the unpaid principal balance of this Promissory Note, plus accrued interest and all other obligations of Borrower to City, direct or indirect, absolute or contingent, now existing or hereafter arising, shall, at the option of the City, become immediately due and payable without notice or demand, and the City shall have and may exercise any and all of the rights and remedies provided here or in the Loan Agreement or the Security Documents.

In the event of any such default, Borrower agrees to pay on demand all of the City's reasonable costs and expenses incurred for the recovery of all or any part of or for the protection of the indebtedness, or to enforce the City's rights under the Loan Agreement or Security Documents, including, without limitation, reasonable attorneys' fees.

Borrower waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extensions of time with respect to any payment due under this Promissory Note, to any substitution or release of collateral and to the addition or release of any party. No waiver of any payment or other right under this Promissory Note shall operate as a waiver of any other payment or right.

This Promissory Note is made and dated as of the date above written, and is to be governed by and construed according to the laws of the State of Colorado.

**DENVER URBAN RENEWAL
AUTHORITY,**
a Colorado urban renewal authority
I.R.S. No. _____

By: _____

Title: _____

"BORROWER"

Mary Crest Land Development Budget
Development Costs - Sources and Uses

11/16/2011

	USES: Phase 1 Budget	SOURCE: NSP2 Funds for Land	SOURCE: Design and Predevelopment Skyline Funds	SOURCE: Design and Construction Skyline Funds	SOURCE: Marycrest Land, LLC
USES					
Total Land Acquisition	\$ 2,815,179	\$ 2,815,179			
Schedule 3	\$ -				
Professional fees	\$ 572,374		\$ 267,197	96,850	\$ 208,327
Schedule 4	-				
Permits/Fees/inspect	\$ 65,880		\$ 38,781	\$ 13,384	\$ 13,716
Schedule 5	-				
Envirnomenta	\$ 46,225		\$ -	\$ 31,113	\$ 15,112
Schedule 6	-				
Infrastructure	\$ 1,056,829		\$ -	\$ 1,056,829	\$ -
Schedule 7	-				
Operating expenses/community outreach	\$ 209,702		\$ 30,839	\$ 178,863	\$ -
Schedule 8	-				
Project management costs	\$ 423,815		\$ 24,000	\$ 399,816	\$ -
Schedule 9	-				
Finance costs	\$ 7,831		\$ -	\$ -	\$ 7,831
Total Hard and Soft Costs	\$ 2,382,656	\$ -	\$ 360,816	\$ 1,776,854	\$ 244,986
Total Costs with Land	\$ 5,197,835	\$ 2,815,179	\$ 360,816	\$ 1,776,854	\$ 244,986

NSP2 Funds	\$	2,815,179
Total Skyline Funds	\$	2,137,671
Total NSP2/Skyline Funds	\$	4,952,850
Marycrest Equity	\$	244,985

Mary Crest Land Development Budget
Development Costs - Skyline 1 Funds - Design/Predevelopment

11/16/2011

	Skyline Design and Predevelopment
Schedule 3	
Professional Fees	
Feasibility Studies	
Traffic Study (w/ update)	\$ 7,500
Subtotal Feasibility Studies	\$ 7,500
Master Planning / Site Planning Fees	
Surveying - Boundary, Zone Lot Amendt & Easement	\$ 12,167
Green/Sustainability Plan	\$ 26,988
Pavement Design	\$ 8,000
Master Drainage Study	\$ 7,500
Traffic Impact Study Review and Approval	\$ 4,500
Design & Eng Fees for Infrastructure Plan	
Design for Infrastructure	\$ 58,000
Civil for Land Dev & Surface Impr - Site Plan	\$ 84,000
Landscape Architecture	\$ 16,607
Electrical Eng	\$ 6,375
Surveying	\$ 5,560
Other Fees	
Appraisal	\$ 30,000
Professional fees sub-total	\$ 267,197
Schedule 4	
Permits/Fees/inspection costs	
Water / Wastewater	
Area Drainage Study Reviews & Approval	\$ 3,356
Wastewtr San & Storm (Piping & Struct Rvws)	\$ 2,285
Denver Water Fees	\$ 2,042
Zoning / Surveys / Easements	
Initial Address Assignment Fee	\$ 300
Survey & Legal Descr Review & Approval	\$ 7,084
EIA	\$ 2,600
Easements	\$ 4,500
Phase 1 Env.	\$ 5,478
Zone Lot Amendments	\$ 250
Traffic & Streets	
TEP Full Engineered ROW Imprvmnt Plan	\$ 10,886
Permits/Fees/inspect sub-total	\$ 38,781
Schedule 7	
Operating Expenses	
Copies, Shipping Postage	\$ 8,709
Marketing & Community Outreach	\$ 17,381
Site Signage	\$ 4,750
Operating Expenses Sub-Total	\$ 30,840
Schedule 8	
Project Management Costs	
Project Management Costs	\$ 24,000
Fees and Sub-Total	\$ 24,000
Total Costs without Land	\$ 360,818

DESCRIPTION

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.

A PARCEL OF LAND BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER CORNER OF SAID SECTION 17;
THENCE NORTH 65°58'59" EAST, A DISTANCE OF 71.16 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WEST 52ND AVENUE;
THENCE SOUTH 89°04'57" EAST ALONG SAID NORTH LINE, A DISTANCE OF 579.88 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 00°55'03" EAST, A DISTANCE OF 101.60 FEET;
THENCE SOUTH 89°04'57" EAST, A DISTANCE OF 319.74 FEET;
THENCE NORTH 00°38'10" EAST, A DISTANCE OF 134.31 FEET TO A POINT OF CURVE;
THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 31°33'48", AN ARC LENGTH OF 96.41 FEET AND A CHORD WHICH BEARS NORTH 16°25'04" EAST A CHORD LENGTH OF 95.19 FEET;
THENCE SOUTH 89°04'57" EAST, A DISTANCE OF 315.75 FEET TO A POINT ON THE WEST LINE OF LOT 42, BERKELEY HILLS SUBDIVISION;
THENCE SOUTH 00°38'10" WEST ALONG THE WEST LINE OF LOTS 42 AND 44 OF SAID BERKELEY HILLS SUBDIVISION, A DISTANCE OF 327.64 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID WEST 52ND AVENUE;
THENCE NORTH 89°04'57" WEST ALONG SAID NORTH LINE, A DISTANCE OF 661.87 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 143,675 SQUARE FEET OR 3.30 ACRES, MORE OR LESS.

PREPARED BY: GEORGE G. SMITH, JR.
PLS 19003

ON BEHALF OF: HARRIS KOCHER SMITH
1391 SPEER BLVD. SUITE 390
DENVER, CO 80204
303-623-6300



THIS DRAWING IS THE PROPERTY OF HARRIS KOCHER SMITH. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM HARRIS KOCHER SMITH.

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH.

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH					
DATE	REVISION COMMENTS	ARIA DENVER	DESCRIPTION PHASE 1	HARRIS KOCHER SMITH 1391 Speer Blvd., Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311	ISSUE DATE: 1-3-12 CHKD BY: GGS DRAWN BY: AWM JOB NO: 111210
					SHEET NO 1

EXHIBIT

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.

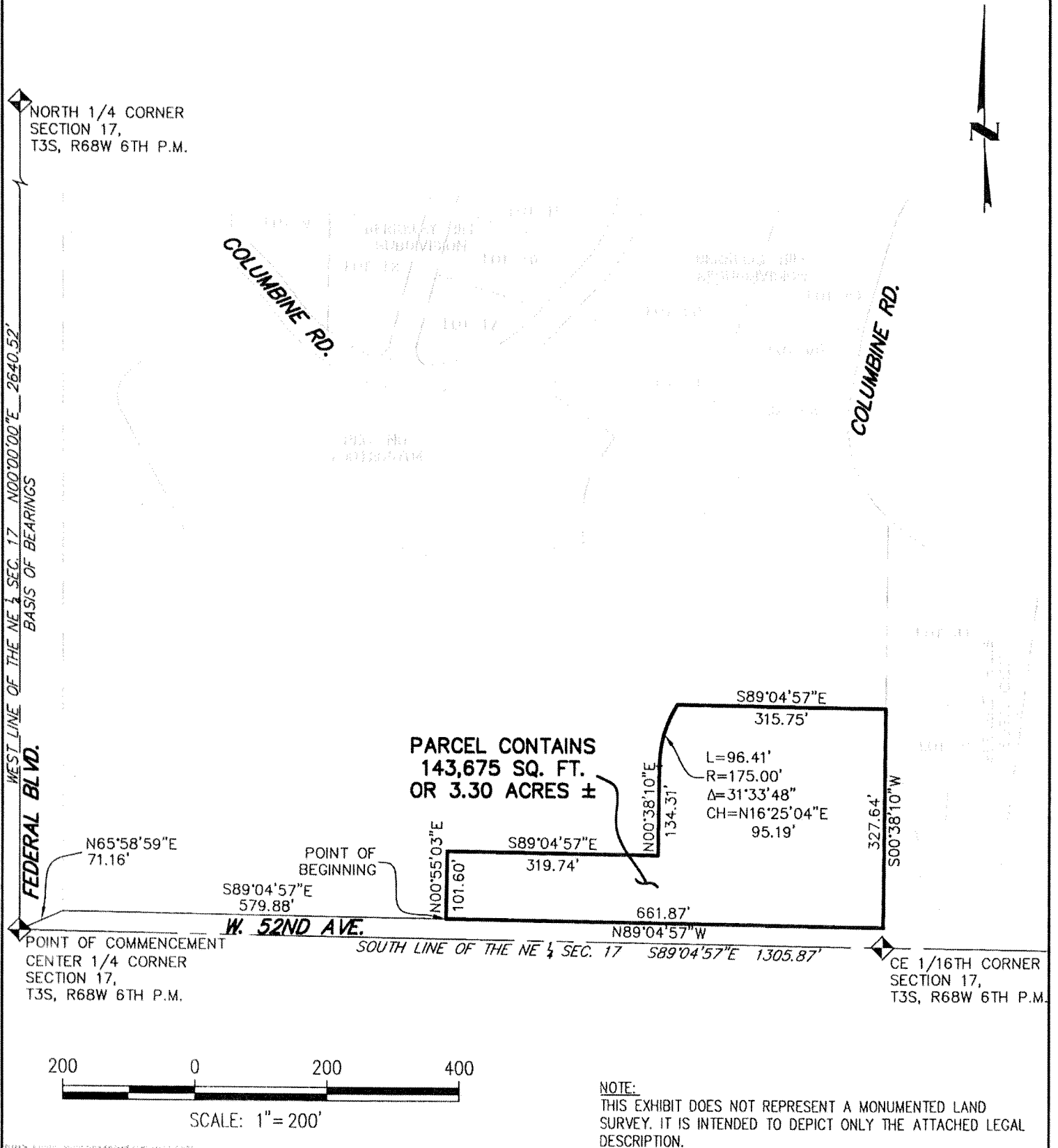


EXHIBIT 1-3-12 HARRIS KOCHER SMITH

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH

DATE		REVISION COMMENTS		ARIA DENVER		EXHIBIT PHASE 1		HARRIS KOCHER SMITH 1391 Speer Blvd., Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311		ISSUE DATE: 1-3-12 CHKD BY: GGS DRAWN BY: AWM JOB NUM: 111210	
										SHEET NO. 2 OF 2	

DESCRIPTION

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.

A PARCEL OF LAND BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER CORNER OF SAID SECTION 17;

THENCE NORTH 65°58'59" EAST, A DISTANCE OF 71.16 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WEST 52ND AVENUE AND ON THE EAST RIGHT OF WAY LINE OF FEDERAL BOULEVARD AND THE POINT OF BEGINNING;

THENCE NORTH 00°00'00" EAST ALONG SAID EAST LINE, A DISTANCE OF 557.20 FEET;

THENCE NORTH 65°59'16" EAST, A DISTANCE OF 169.24 FEET TO A POINT ON THE WEST LINE OF A PARCEL OF LAND DESCRIBED AT RECEPTION NO. 2001205704;

THENCE ALONG SAID WEST LINE THE FOLLOWING AND ALONG THE SOUTH AND EAST LINES OF PARCELS DESCRIBED AT SAID RECEPTION NO. 2001205704, THE FOLLOWING FOURTEEN (14) COURSES:

- 1) SOUTH 28°13'20" EAST, A DISTANCE OF 90.51 FEET TO A POINT OF CURVATURE;
- 2) ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 21°00'59", AN ARC LENGTH OF 18.34 FEET AND A CHORD WHICH BEARS SOUTH 38°43'49" EAST A CHORD LENGTH OF 18.24 FEET;
- 3) SOUTH 49°14'19" EAST, A DISTANCE OF 35.67 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 4) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 145.00 FEET, A CENTRAL ANGLE OF 25°02'47", AN ARC LENGTH OF 63.39 FEET AND A CHORD WHICH BEARS NORTH 53°17'05" EAST A CHORD LENGTH OF 62.88 FEET TO A POINT OF COMPOUND CURVATURE;
- 5) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 265.00 FEET, A CENTRAL ANGLE OF 40°34'08", AN ARC LENGTH OF 187.64 FEET AND A CHORD WHICH BEARS NORTH 86°05'32" EAST A CHORD LENGTH OF 183.74 FEET;
- 6) SOUTH 73°37'24" EAST, A DISTANCE OF 62.74 FEET TO A POINT OF CURVATURE;
- 7) ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 30°02'32", AN ARC LENGTH OF 170.41 FEET AND A CHORD WHICH BEARS SOUTH 88°38'40" EAST A CHORD LENGTH OF 168.46 FEET;
- 8) NORTH 76°20'04" EAST, A DISTANCE OF 33.88 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 9) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 12°59'13", AN ARC LENGTH OF 56.67 FEET AND A CHORD WHICH BEARS NORTH 82°49'40" EAST A CHORD LENGTH OF 56.55 FEET;
- 10) NORTH 00°40'43" WEST, A DISTANCE OF 54.72 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 11) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 12°50'15", AN ARC LENGTH OF 11.20 FEET AND A CHORD WHICH BEARS NORTH 05°44'23" EAST A CHORD LENGTH OF 11.18 FEET;
- 12) NORTH 12°09'31" EAST, A DISTANCE OF 20.63 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 13) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 21°23'30", AN ARC LENGTH OF 37.34 FEET AND A CHORD WHICH BEARS NORTH 22°51'17" EAST A CHORD LENGTH OF 37.12 FEET;
- 14) NORTH 33°33'02" EAST, A DISTANCE OF 52.27 FEET;

THENCE NORTH 83°05'51" EAST, A DISTANCE OF 137.89 FEET TO THE SOUTHWEST CORNER OF LOT 66, BERKELEY HILLS RE-SUBDIVISION;

THENCE SOUTH 74°00'09" EAST ALONG THE SOUTH LINE OF SAID LOT 66, A DISTANCE OF 235.94 FEET TO A POINT ON THE WEST LINE OF COLUMBINE DRIVE AND A POINT OF NON-TANGENT CURVATURE;

THENCE ALONG SAID WEST LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 190.00 FEET, A CENTRAL ANGLE OF 30°30'54", AN ARC LENGTH OF 101.19 FEET AND A CHORD WHICH BEARS SOUTH 35°40'48" EAST A CHORD LENGTH OF 100.00 FEET TO A POINT ON THE NORTH LINE OF LOT 41, BERKELEY HILLS SUBDIVISION;

THENCE NORTH 88°48'30" WEST ALONG SAID NORTH LINE, A DISTANCE OF 9.00 FEET;

THENCE SOUTH 00°38'10" WEST ALONG THE WEST LINE OF LOTS 41, 42 AND 44 OF SAID BERKELEY HILLS SUBDIVISION, A DISTANCE OF 606.51 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WEST 52ND AVENUE;

THENCE NORTH 89°04'57" WEST ALONG SAID NORTH LINE, A DISTANCE OF 1,241.76 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE CENTER CORNER OF SAID SECTION 17;

THENCE NORTH 65°58'59" EAST, A DISTANCE OF 71.16 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WEST 52ND AVENUE;

THENCE SOUTH 89°04'57" EAST ALONG SAID NORTH LINE, A DISTANCE OF 579.88 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°55'03" EAST, A DISTANCE OF 101.60 FEET;

THENCE SOUTH 89°04'57" EAST, A DISTANCE OF 319.74 FEET;

THENCE NORTH 00°38'10" EAST, A DISTANCE OF 134.31 FEET TO A POINT OF CURVE;

REVISION: 1. 10/12/10. 2. 10/12/10. 3. 10/12/10. 4. 10/12/10. 5. 10/12/10. 6. 10/12/10. 7. 10/12/10. 8. 10/12/10. 9. 10/12/10. 10. 10/12/10. 11. 10/12/10. 12. 10/12/10. 13. 10/12/10. 14. 10/12/10. 15. 10/12/10. 16. 10/12/10. 17. 10/12/10. 18. 10/12/10. 19. 10/12/10. 20. 10/12/10. 21. 10/12/10. 22. 10/12/10. 23. 10/12/10. 24. 10/12/10. 25. 10/12/10. 26. 10/12/10. 27. 10/12/10. 28. 10/12/10. 29. 10/12/10. 30. 10/12/10. 31. 10/12/10. 32. 10/12/10. 33. 10/12/10. 34. 10/12/10. 35. 10/12/10. 36. 10/12/10. 37. 10/12/10. 38. 10/12/10. 39. 10/12/10. 40. 10/12/10. 41. 10/12/10. 42. 10/12/10. 43. 10/12/10. 44. 10/12/10. 45. 10/12/10. 46. 10/12/10. 47. 10/12/10. 48. 10/12/10. 49. 10/12/10. 50. 10/12/10. 51. 10/12/10. 52. 10/12/10. 53. 10/12/10. 54. 10/12/10. 55. 10/12/10. 56. 10/12/10. 57. 10/12/10. 58. 10/12/10. 59. 10/12/10. 60. 10/12/10. 61. 10/12/10. 62. 10/12/10. 63. 10/12/10. 64. 10/12/10. 65. 10/12/10. 66. 10/12/10. 67. 10/12/10. 68. 10/12/10. 69. 10/12/10. 70. 10/12/10. 71. 10/12/10. 72. 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DESCRIPTION

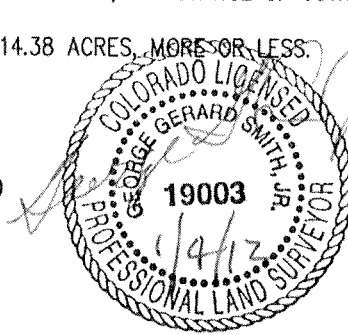
SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 31°33'48", AN ARC LENGTH OF 96.41 FEET AND A CHORD WHICH BEARS NORTH 16°25'04" EAST A CHORD LENGTH OF 95.19 FEET;
THENCE SOUTH 89°04'57" EAST, A DISTANCE OF 315.75 FEET TO A POINT ON THE WEST LINE OF LOT 42, BERKELEY HILLS SUBDIVISION;
THENCE SOUTH 00°38'10" WEST ALONG THE WEST LINE OF LOTS 42 AND 44 OF SAID BERKELEY HILLS SUBDIVISION, A DISTANCE OF 327.64 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID WEST 52ND AVENUE;
THENCE NORTH 89°04'57" WEST ALONG SAID NORTH LINE, A DISTANCE OF 661.87 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 626,328 SQUARE FEET OR 14.38 ACRES, MORE OR LESS.

PREPARED BY: GEORGE G. SMITH, JR.
PLS 19003

ON BEHALF OF: HARRIS KOCHER SMITH
1391 SPEER BLVD. SUITE 390
303-623-6300

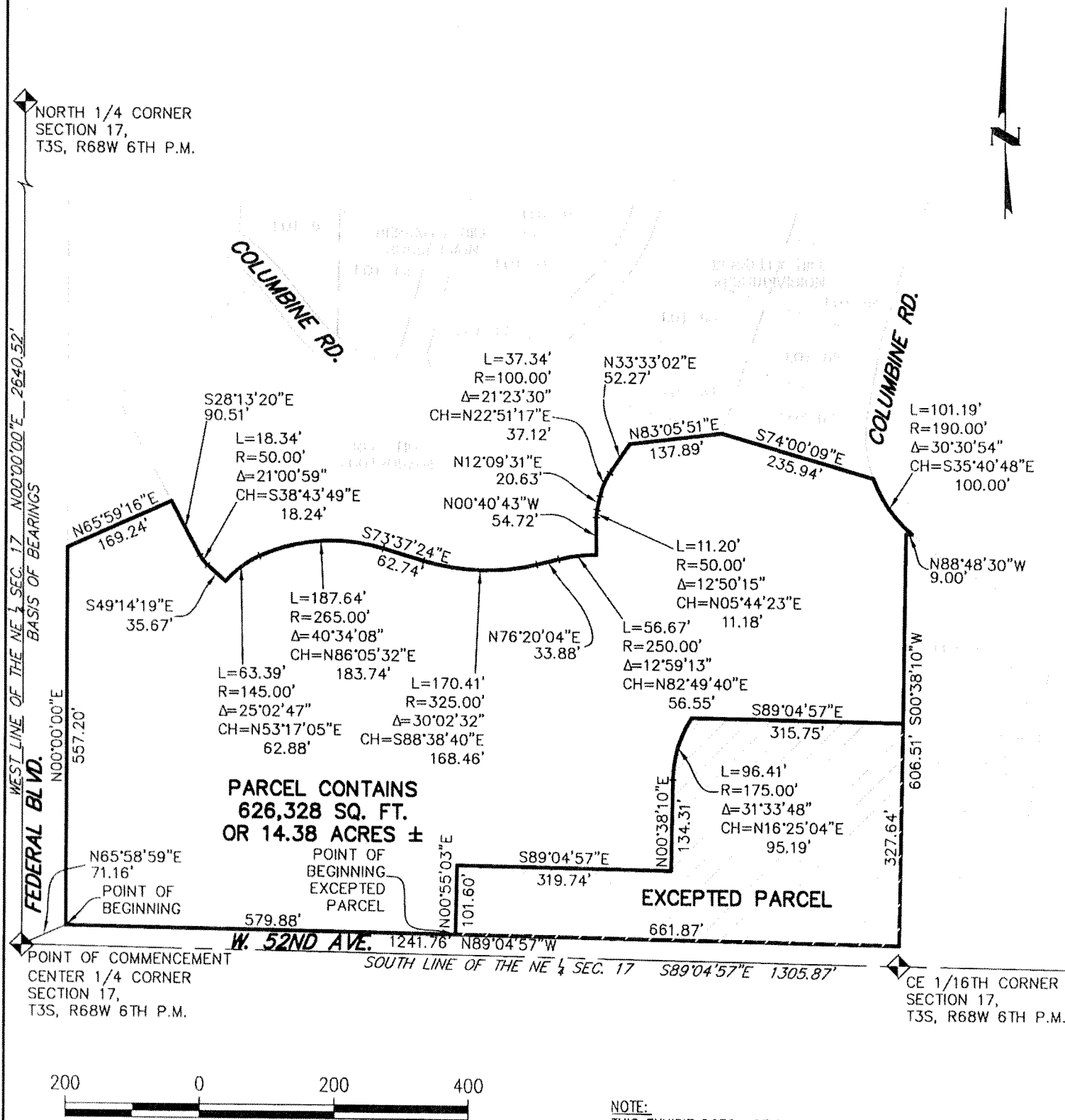


NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH

DATE	REVISION COMMENTS	ARIA DENVER	DESCRIPTION PURCHASE PARCEL LESS PHASE 1	HARRIS KOCHER SMITH 1391 Speer Blvd , Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311	ISSUE DATE: 1-3-12 CHKD BY: GGS DRAWN BY: AWM JOB NUM: 111210
					2

EXHIBIT

SITUATED IN THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO.



DATE	REVISION COMMENTS	ARIA DENVER	EXHIBIT PURCHASE PARCEL LESS PHASE 1	HARRIS KOCHER SMITH 1391 Speer Blvd., Suite 390 Denver, Colorado 80204 Phone (303) 623-6300 Fax (303) 623-6311	ISSUE DATE 1-3-12
					CHKD BY GGS
					DRAWN BY AWM
					JOB NO. 111210
					3

Outcome Performance Measurement Report Neighborhood Stabilization Program 2

Name of Organization: Denver Urban Renewal Authority
 GE #: OEDEV-201103686 (Skyline) Contract Amount: \$ 360,817.00
 GE #: OEDEV-2012TBD (NSP2) Contract Amount: \$4,592,033.00

Reporting Period: Month _____ Year _____
 DUNS#: 07-340-5623
 EIN#: 84-6011088
 Congressional District: 1

This report must be submitted monthly to document Outcome and measure Outcome Indicators as prescribed by Housing and Urban Development. List the agreed upon Objective and Outcome. Record Outcome Indicator figures for the reporting period and compute the cumulative totals. Briefly describe any qualitative indicators of the success of the program. Include any successes/opportunities or challenges, obstacles, significant changes and/or changes in timeline that may impact the ability to achieve program Objectives and Outcomes. The information is recorded in DRGR (Disaster Recovery Grant Reporting) and reported to federalreporting.gov, the U.S. government's official website for data related to Recovery Act spending.

PROGRAM OBJECTIVE: The project consists of the acquisition of the Marycrest campus in northwest Denver and the installation of the infrastructure to Phase 1 of the four phase development.

PROGRAM OUTCOME: The project will produce 72 units of affordable housing. The units restrictions are as follows:

NSP2	27 Units at 50% of the Area Median Income
Skyline	2 Units at 50% of the Area Median Income
Skyline	42 Units at 60% of the Area Median Income

Units will be restricted for a period of 20 years.

COMMON INDICATORS:

Amount of money leveraged :		Cumulative total:	
Number Assisted:		Cumulative total:	
Income levels of persons (% of area median income) per reporting period:		Cumulative total:	
<u>Number</u>		<u>Number</u>	
0-30% _____		0-30% _____	
30-50% _____		30-50% _____	
50-80% _____		50-80% _____	
<u>Race Category</u>	<u>Number served</u>	<u>Ethnicity: Hispanic/ Latino</u>	<u>Cumulative total</u>
White			
Black/African American			
Asian			
American Indian/Alaska Native			
Native Hawaiian/Other Pacific Islander			
American Indian/Alaska Native & White			

Asian & White			
Black/African American & White			
American Indian/Alaska Native & Black / African American			
Other Multi-race (Please explain)			
Total:			

ARRA JOB REPORTING:

			A	B	C	D	
Job Title & Description	Job Created ✓	Job Retained ✓	Monthly Hours in a Full-Time Schedule (4.33 * 40)	Monthly Hours Worked	% of Hours Funded by ARRA	# Hours Funded by ARRA (B * C)	FTE for Job Count Reporting (D / A)
Example: Construction Project Mngr	✓		173	160	50%	80	.46

Please provide a brief narrative of the types of indirect jobs you believe have resulted from the spending of ARRA dollars on this project.

<p>QUALITATIVE INDICATORS OF SUCCESS, OPPORTUNITIES, CHALLENGES, LESSONS LEARNED AND/OR SIGNIFICANT CHANGES (Narrative section)</p>
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EXPENSE CERTIFICATION

Date: _____

To: Office of Economic Development
Business and Housing Services
201 W. Colfax Ave. Dept. 204
Denver CO 80202

Invoice # _____

Attn. Project Specialist: Melissa StirdivantDHND # _____ City Contract # TBD HUD # _____Contractor's Name: Denver Urban Renewal Authority NSP2 and Skyline fundingProject Description/Property Location: Marycrest/Aria

Current Draw Reporting Period : _____

to _____

<u>Budget Item per Contract:</u>	<u>Budget Amount:</u>	<u>Total of prior draws:</u>	<u>Current Draw:</u>	<u>New Balance:</u>
Acquisition	\$2,815,179.00			
Development Soft Costs	\$573,749.00			
Development Hard Costs	\$1,203,105.00			
Total	\$4,592,033.00	\$0.00	\$0.00	\$0.00

If there are any questions please call : _____

We certify that the current expenses in the amount of \$0.00 were incurred for services provided as per the above contract, and/or that all labor and material were contributed to the construction or improvements at the above address. Also, we have not been reimbursed for these expenses prior to this time or by any other source, and that we will save the City of Denver harmless from any lien filed on the subject property as a result of its disbursement.

Certified by: _____ on _____
name and title of authorized person

Do not complete below - to be completed by DHND staff

Special Instructions:

- ☐ If first draw, Enviromental attached.
- ☐ Make warrant payable to contractor
- ☐ Hold warrant for pick up.
- ☐ **RESCIND BALANCE**
- ☐ Other: _____

- ☐ If construction Davis Bacon applies
- ☐ Approval for Davis Bacon _____
- ☐ FINAL DRAW-IDIS Approval req.
- ☐ Approval: IDIS Coordinator _____

I have reviewed the documentation and find it adequate to support payment.

Project Specialist signature: _____

Add'l instructions: _____

Manager signature: _____

Date: _____

Signature	Title	Date
-----------	-------	------

Key Provisions of OMB's Job Counting Process

1. **Recipients must report on Full-Time Equivalents (FTEs), not the number of persons employed.** In calculating an FTE, the number of actual hours worked in Recovery Act-funded jobs is divided by the number of hours representing a full work schedule for the kind of job being estimated. Thus, if a full-time work schedule for an organization is 40 hours a week, the full schedule for a month might be 176 hours (40 hours/week x 4 weeks + 8 hours/day x 2 days = 176 hours). If an employee worked 88 total hours during the month, that employee would account for 0.5 FTE's (88 hours worked / 176 hours in a full work schedule = 0.5 FTE's).
2. **FTE's should be reported for the reporting period only.** The recipient will now report job estimate totals by dividing the hours worked in the reporting period by the hours in a full-time schedule in that period.
3. **Recipients must include only created or retained jobs that are funded by the Recovery Act award.** Recipients should simply include all jobs that are funded by the Recovery Act award and exclude all other jobs. The OMB definitions are as follows:

- a. **A job created** is a new position created and filled, or an existing unfilled position that is filled, that is funded by the Recovery Act.
 - b. **A job retained** is an existing position that is now funded by the Recovery Act.
4. **A job is funded by the Recovery Act if Recovery Act funding will be used to reimburse the cost of the position.** A funded job is defined as one in which wages or salaries are either paid for or will be reimbursed with Recovery Act funding. Thus, a job that is paid initially with non-Recovery Act dollars may be reported as created or retained as long as such dollars eventually will be reimbursed with Recovery Act funds for the jobs being reported.
 5. **Jobs funded partially with Recovery Act funds must only be counted based on the proportion funded by the Recovery Act.** Thus, if a project receives 50% of its funds from the Recovery Act, employees funded by that project should only be counted at a 50% rate in the FTE formula. Further details on this process are included in OMB's guidance memo.

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

The following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Agreement:

A. “City” means City and County of Denver or a person authorized to act on its behalf.

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “OED” means the City’s Office of Economic Development or a person authorized to act on its behalf.

D. “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 C.F.R. 570 et seq., and 24 C.F.R. 85 et seq.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity

receiving federal funds.

Sec. 109. “Section 3” Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor’s obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD’s regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-

assisted contracts.

Sec. 110. Relocation Assistance and Property Acquisition Requirements.

This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

1) Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, consultants, officers, or elected or appointed officials of the City or of a sub-recipient, if applicable, who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2) The Contractor's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3) No employee, officer or agent of the Contractor shall perform or provide part-time services for compensation, monetary or otherwise, to a consultant or other subcontractor that has been retained by the Contractor under this Agreement.

4) In the event of a real or apparent conflict of interest, the person involved shall submit to the Contractor and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 C.F.R. 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by the City and/or HUD, the City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Sec. 112. Political Activity Prohibited. None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the

election or defeat of any candidate for public office.

Sec. 113. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 113(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121. Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sec. 114. Copyrights. If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

Sec. 115. Patents. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. Theft or embezzlement from OED funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

A. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;

B. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;

C. Willfully obstructs or impedes an investigation or inquiry under HUD;

D. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by OED funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;

E. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

ARTICLE II

DISBURSEMENTS AND ACCOUNTING

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by OMB Circular A-87 or A-122 as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (1) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (2) Be no more liberal than policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (3) Not be allocable to or included as a cost of any other Federally financed program; (4) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (5) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. Documentation of Costs. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from OED.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

Sec. 204. Method of Payment and Disbursements. The Contractor must submit properly executed invoices and requests for payment to OED. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence,

local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III

CONSTRUCTION CONTRACTS AND LABOR STANDARDS

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. Part 570.608. The Contractor is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010, by one of the following methods contained in the Labor Relations Letter No. LR 2006-03 at <http://www.hud.gov/offices/olr/library.cfm>.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 must comply with Department of Labor regulations (29 C.F.R. Part 5), and all federally assisted construction contracts of more than \$100,000.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 *et seq.*).

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland "Anti-Kickback" Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 3), prohibiting and prescribing penalties for "kickbacks" of wages. Wages must be paid in accordance with the requirements of 29 C.F.R. Part 3 and 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers’ representatives of the Contractor’s commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally

assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. Environmental Clearance. No funds under this Agreement may be obligated or spent for acquisition or construction until Contractor has received written environmental clearance from OED. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. If this Agreement provides assistance in excess of \$100,000, then the Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V

TERMINATION

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or

any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work completed and funds obligated at the effective date of the termination. Contractor shall provide BHS with a complete list of obligated funds within 30 days.

Sec. 505. Reversion of Assets. Upon termination of this Agreement as provided in this Article V, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds from this Agreement, inclusive of program income, must be returned to the City within 60 days. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI
MISCELLANEOUS

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and

enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. Intentionally Omitted.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be addressed to the Director of the Office of Economic Development. Either of the parties may designate in writing substitute addresses or persons to receive notices.