



**AGENDA**  
**WHEAT RIDGE URBAN RENEWAL AUTHORITY**  
**JANUARY 24, 2017**

**Notice is hereby given of a Public Meeting to be held before the City of Wheat Ridge Urban Renewal Authority on Tuesday, January 24, 2017, at 6:00 pm., in the Council Chambers of the Municipal Building at 7500 West 29th Avenue, Wheat Ridge, Colorado.**

**1. General**

- 1.1 Call the Meeting to Order
- 1.2 Roll Call of Members
- 1.3 Approval of Minutes – December 20, 2016
- 1.4 Public Forum (This is the time for any person to speak on any subject not appearing on the agenda. Public comments may be limited to 3 minutes).

**2. Presentations**

**3. Action Items**

- 3.1 Resolution 01-2017. A resolution adopting a Declaration of Covenants Imposing and Implementing the Corners Public Improvement Fee. *Motion: See staff memo*
- 3.2 Resolution 02-2017. A resolution authorizing the execution of a Subdivision Improvement Agreement. *Motion: See staff memo*
- 3.3 Consent for Chair to execute a Declaration of Covenant and Restrictions and a Concept Plan for The Corners at Wheat Ridge. *Consent item only*
- 3.4 Circle K Redevelopment's non-conflict with the I-70 Kipling Corridors Urban Renewal Plan. *Motion: See staff report*
- 3.5 Resolution 03-2017 – Public Postings. *Motion: See staff report*

**4. Other Matters**

- 4.1 Board and Staff Updates

**5. Adjournment**



**MINUTES  
RENEWAL WHEAT RIDGE  
DECEMBER 20, 2016**

**1. GENERAL**

**1.1 Call the Meeting to Order**

The meeting of Renewal Wheat Ridge was called to order by Chair Rogers at 6:04 p.m. in the Council Chambers of the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**1.2 Roll Call of Members**

Board Members Present:           James Bahrenburg  
  Tim Rogers  
  Walt Pettit  
  Kelly Brooks  
  Shane Nicolson  
  Kristi Davis  
  Jesse Hill

Board Members Absent:           None

Also Attending:                   Hillary Graham – Legal Counsel  
  Steve Art – Executive Director  
  Patrick Goff – City Manager  
  Bob Turner  
  Linda Sweetman

**1.0 Approval of Minutes**

It was moved by Bahrenberg and seconded by Davis to approve the minutes of December 6, 2016. The motion carried 5-0.

**1.4 Public Forum:**

None

**2.0 Presentations**

None

**3.0 Action Items**

**3.1 Resolution 12-2016.** A resolution approving the sale of property at 7690 W. 38<sup>th</sup> Avenue. Art presented information on the proposed sale of the property to Quadrant

Development and their desire to enter into the purchase and sale, but not actually take ownership of the property until such time as RWR receives a No Action Determination letter from the Colorado Dept. of Health and Public Safety. Art told the board that the purchase price for this property is \$353,720 which is a prorated amount based on a \$400,000 sale for this property and the Yukon Court property. Art told the Board that when purchased, this site will then be used as a developable pad for a retail establishment.

Bahrenberg asked how long will it take for the NAD to be released. Art and Turner reported that four quarters of monitoring with reduced levels need to be present in order for the NAD to be issued.

Brooks asked if these parcels were key to the development. Turner reported that they are vital parts of the development, particularly the smaller Yukon Court parcel which provides access to the center.

Goff mentioned that we are marketing the site. Rogers asked who is marketing. Turner reported that Quadrant is looking for tenants.

Davis asked if the price negotiated is fair. Art and Turner said it is a fair market price. Hill asked if the board was aware of the negotiated price and wondered why the board had not seen this before. Art explained the board had seen the Letter of Intent in 2014 for a price of \$400,000. Davis explained this deal does not change the TIF agreement that had been approved. Hill wanted the board to have more 'say' in Hill the purchase price. Goff explained that a letter of intent was submitted to the board. Rogers said the purchase price was in the budget and it was agreed upon; regardless of where the market is at the time. Hill wanted to know if there was an expiration on the Letter of Intent. There was no date according to staff. Hill would have liked to have this come the board for more discussion.

It was motioned by Pettit and seconded by Bahrenberg to adopt Resolution 12-2016. Passed unanimously 6-0.

3.2 Resolution 13-2016. A resolution approving the sale of property at 3790 Yukon Court. Art presented information on the proposed sale of the property to Quadrant Development and their desire to enter into the purchase and sale. Art told the board that the purchase price for this property is \$46,280 which is a prorated amount based on a \$400,000 sale for this property and the West 38<sup>th</sup> Avenue property. Art told the Board that when purchased, this site will be used for an access into the new Corner and Wheat Ridge project.

It was motioned by Pettit and seconded by Bahrenberg to adopt Resolution 13-2016. Passed unanimously 7-0.

**3.2 Resolution 17-2016.** A resolution approving an Easement Agreement with Quadrant Wheat Ridge Corners. Art presented on the request for the Easement Agreement. Quadrant has asked it be allowed to use the West 38<sup>th</sup> Avenue property for a staging area for the remainder of the shopping center. The site will still be under active remediation and all monitoring wells will be maintained during the process. Sweetman added that Quadrant would also be able to construct utilities on the site. Turner also said that sidewalks and horizontal improvements could be completed. Turner told the board that utilities will be stubbed to the site as well as underground the power at the site and for the entire center

It was motioned by Bahrenberg and seconded by Nicolson to adopt Resolution 17-2016. Passed unanimously 7-0.

**3.3** Art explained that the Corner at Wheat Ridge Project's Plat had recently been approved by City Council. He told the Board that the Mylar copies will soon be delivered to City Hall for signature by all the property owners as well as the Mayor. Art explained that a Resolution is not required for this action, only a consensus of the Board. Art and Sweetman explained what a plat is.

Rogers asked if there were any comments from the other directors and then asked for a consensus authorizing the Board Chair to sign a Plat for The Corners at Wheat Ridge. A majority consensus was shown by a show of hands. Consent was approved 7-0.

**3.5 Resolution 15-2016.** Art and Rogers briefly spoke about the new board Chair and Vice Chair. The Board was reminded that members, at their December 6 meeting, spoke about any other members who may wish to take the chair or vice chair positions. No other members desired the Chair position

It was motioned by and seconded by to adopt resolution 15-2016. A resolution appointing Tim Rogers as Chair and Kristi Davis as Vice-Chair for Renewal Wheat Ridge 2017 was motioned by Pettit and seconded by Bahrenberg. Passed unanimously 7-0.

**3.6 Case Nos. MS-16-08, WCP-16-04, WSP-16-07, and CUP-16-02.** Non Conflict to the West End 38<sup>th</sup> Redevelopment Plan for four related land use applications. Art spoke about the West End 38 project that had previously been approved for a Tax Increment Financing deal with Wazee Partners. Art reminded the board of the projects proposed 150 market rate rental units and up to 8,000 sq. ft. of retail along 38<sup>th</sup> Avenue. He also told them about the new re-built Vectra Bank. Art detailed components of the West End 38 Urban Renewal Plan and the goals of the plan. Art told the board that staff believes the new development does not conflict with the West End 38 Redevelopment Plan and encouraged the Board to find that the plan does not conflict with the plan.

Hill was happy to see the parking ratios were in line with our desire. Rogers said the project will impact the neighborhood. All agreed.

It was motioned by Pettit and seconded by Bahrenberg that the proposed case numbers do not conflict with the West End 38 Urban Renewal Plan. Passed unanimously 7-0.

**3.7 Case No. WZ-16-07 – Clear Creek Crossing. Non Conflict to the I70/Kipling Corridors Urban Renewal Plan for a zone change at Clare Creek Crossing.** Art spoke about the proposed development in Clear Creek Crossing and the desire for a change to the Outline Development Plan (ODP) to Mixed-Use allowing for more options when they develop the site. The board is to determine whether this action would then conflict with the I70/Kipling Corridors Urban Renewal Plan. Art told the Board that staff does not believe this change will have any negative effect on the Plan and encouraged the Board to find the same.

Pettit asked if the neighborhood meeting held on December 6 went okay. Art responded that all went well. Brooks asked what new uses could be done with this change. Art responded that the residential and office will be permitted.

Rogers wanted to make sure that the developer attempts to obtain all trails and paths for the development. He also asked that Wheat Ridge is made prominent for the project. Davis asked about the offramps on 32<sup>nd</sup>. Will anything move? Art to get Davis information on this.

It was motioned by Davis and seconded Nicolson by that the proposed case numbers do not conflict with the I70/Kipling Corridor Urban Renewal Plan. Passed unanimously 7-0.

## **Other Matters**

Board and Staff Updates.

Art told the board that he began making inquiries into the City's new PIO to assist with a marketing plan. She wasn't sure that was in her scope of work and not sure if she could take that lead. Art also said he has a upcoming meeting with the video staff to talk about the production of a Channel 8 story on URA activities. Nicolson said he would assist if needed. Art will involve Nicolson.

Davis asked about the property south of the Recreation Center. Art told the board that access and site improvements need to be addressed.

Hill asked about 38<sup>th</sup> and Wadsworth – Art told about the 7-11 development.

Hill would like to see future agreements have some time element to them.

The Board adjourned the meeting at 7:04 pm.

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**Tim Rogers, Chair**

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**Steve Art, Executive Director**



3.1



**TO:** Renewal Wheat Ridge Board Members

**FROM/PREPARED BY:** Steve Art, Executive Director

**RE:** Adoption of Resolution 01-2017 adopting a Declaration of Covenants and Imposing and Implementing the Corners Public Improvement Fee

**DATE:** January 24, 2017

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**ISSUE:**

A redevelopment agreement executed by the developers of the Corners at Wheat Ridge (Corners) require the use of a Public Improvement Fee (PIF) as part of the reimbursement of toward the development. As a current landowner in the development, Renewal Wheat Ridge (RWR) is required to be a signatory on the Declaration of Covenants and Imposing and Implementing the Corners Public Improvement Fee (Declaration).

**PRIOR ACTION:**

A Redevelopment Agreement was executed via Resolution 01-2015 on June 16, 2015.

**FINANCIAL IMPACT:**

At the January 26, 2015 City Council meeting, staff was directed to require the addition of an Add-on Public Improvement Fee (PIF) of one-cent to the Corners development. A PIF is a fee that developers may require their tenants to collect on sales transactions to pay for on-site improvements.

In a previous arrangement with the Walmart Neighborhood Grocer, Walmart was to be exempt from the PIF. Walmart argued that a PIF would put them at a competitive disadvantage. Since that time, Walmart has opted not to be part of the development. A new anchor tenant will occupy the space previously dedicated to Walmart. This tenant as well as the other tenants will be part of the PIF.

Generally, these improvements are financed through a Public Improvement Corporation or a Special District. The Public Improvement Fee collected repays the PIF debt incurred by the developers. Examples of these improvements include curbs and sidewalks, parking facilities, storm management system, sanitary sewer systems, road development (within the site) and outdoor public plaza. The PIF will be terminated once all the bonds have been serviced on the project. The PIF is not a City imposed tax or levy. It is a private agreement between the developer and the tenants.

## **BACKGROUND:**

### **Proposed Project**

TKG has proposed to develop a 15-acre mixed-use development at the southwest corner of Wadsworth Boulevard and 38<sup>th</sup> Avenue (the Project). TKG has obtained purchase options on all three parcels and has executed a Purchase and Sales Agreement with RWR for the purchase of the two remaining lots, which comprise the entire development. The Project site is within the Wadsworth Boulevard Corridor Redevelopment Plan area. At one time was an auto dealership. The redevelopment plan includes the following elements:

- 35,000 sq. ft. grocery store
- 45,000 sq. ft. of retail shops which include fast food and other restaurants, and
- Up to 231 market-rate, Texas-style wrap apartments.

The proposed development conforms to the land use concept of the Wadsworth Boulevard Corridor Redevelopment Plan for a commercial retail center.

The adopted Redevelopment Agreement of June 16, 2015 provides for up to \$6.25 million to be utilized solely for public infrastructure that include abatement and demolition of all existing structures, improvements to both Wadsworth Boulevard and 38<sup>th</sup> Avenue, public spaces within the project.

The proposed development is estimated to generate incremental property and sales tax revenues of about \$12.4 million over a 12-year period. Estimates of property tax revenues were derived using market value data from various sources to determine prevailing market value per square foot and then applied to the square footage of each proposed new building.

The TIF would be funded through future sales tax generation utilizing one-cent of the City's three-cent sales tax rate. Two cents of sales tax would flow to the City's general fund and one cent would flow to a special account of RWR to service the Project debt. One hundred percent of the incremental property tax, minus the Wheat Ridge Fire Districts mill levy, would service the debt.

### **Declaration of Covenants and Imposing and Implementing the Corners Public Improvement**

#### **Fee:**

The Declaration defines the terms of the PIF and how it shall be implemented and collected by the developer and remitted to the City/RWR for reimbursement to the developer. Because RWR currently owns a portion of the entire development, it is required to be a signatory on the Declaration.

**RECOMMENDATIONS:**

Staff recommends the adoption of Resolution 01-2017 authorizing the execution of a Declaration of Covenants and Imposing and Implementing the Corners public Improvement Fee.

**RECOMMENDED MOTION:**

“I move to adopt Resolution No. 01-2017 authorizing the execution of a Declaration of Covenants and Imposing and Implementing the Corners public Improvement Fee ”

Or,

I move to deny Resolution No. 01-2017 for the following reasons...”

**REPORT PREPARED/REVIEWED BY:**

Steve Art, Executive Director

**ATTACHMENTS:**

1. Resolution 01-2017
2. Declaration of Covenants and Imposing and Implementing the Corners public Improvement Fee



# ATTACHMENT 1

## WHEAT RIDGE URBAN RENEWAL AUTHORITY RESOLUTION NO. 01-2017

**TITLE: A RESOLUTION ADOPTING A DECLARATION OF COVENANTS  
IMPOSING AND IMPLEMENTING THE CORNERS PUBLIC  
IMPROVEMENT FEE**

THEREFORE, BE IT RESOLVED by the Wheat Ridge Urban Renewal Authority as follows:

The Wheat Ridge Urban Renewal Authority dba Renewal Wheat Ridge does hereby authorize the Board Chair or Executive Director to enter into a Declaration of Covenants Imposing and Implementing the Corners Public Improvement Fee. All terms of the Agreement, attached hereinto as **Exhibit A** shall be enforced and acted upon by both parties. The Board Chair or Executive Director are also authorized to execute any non-substantive amendments to the Declaration of Covenants Imposing and Implementing the Corners Public Improvement Fee.

**ADOPTED** the 24<sup>th</sup> day of January, 2017.

WHEAT RIDGE URBAN RENEWAL  
AUTHORITY

\_\_\_\_\_  
Tim Rogers, Chairperson

ATTEST:

\_\_\_\_\_  
Steve Art, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, WRURA Attorney



# ATTACHMENT 2

## DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE CORNERS PUBLIC IMPROVEMENT FEE

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE CORNERS PUBLIC IMPROVEMENT FEE (the "PIF Covenant") is made as of the 24<sup>th</sup> day of January, 2017, by Quadrant Wheat Ridge Corners, LLC, a Missouri limited liability company ("Declarant").

### RECITALS

This PIF Covenant is made with respect to the following facts:

A. The Declarant is the owner of the real property set forth on Exhibit "A" attached hereto and incorporated herein by reference (the "Declarant's Property"), all of which real property is included in the development generally known as "The Corners."

B. The Renewal Authority (as defined herein) is the owner of the real property set forth on Exhibit "B" attached hereto and incorporated herein by reference ("Lot 2", together with Declarant's Property, the "PIF Property"); Lot 2 is included in The Corners.

C. Declarant and the Renewal Authority entered into that certain Redevelopment Agreement (as defined herein) pursuant to which (1) Declarant will construct and install the Eligible Improvements (as defined herein), and (2) the Renewal Authority will reimburse Declarant for the Eligible Costs (as defined herein).

D. The Declarant is recording this covenant (which burdens the entirety of the PIF Property) concerning the collection of the Public Improvement Fee (defined herein) to pay the Eligible Costs, including the Note and any Bonds (defined herein).

E. The Renewal Authority has previously consented to the recording of this PIF Covenant against Lot 2 pursuant to that certain Consent to Declaration of Covenants Imposing and Implementing The Corners Public Improvement Fee recorded on January \_\_, 2017 at Reception No. \_\_\_\_\_ in the Office of the Jefferson County Clerk and Recorder.

F. The Public Improvement Fee will be in the amount of one percent (1%), unless terminated in accordance with the provisions herein, of any PIF Sales (as defined herein). From and after the date hereof, each Retailer (as defined herein) shall be obligated to pay the Public Improvement Fee in the amount of one percent (1.00%) on all PIF Sales, as set forth in Section 2 hereof.

G. So long as the Note and any Bonds are outstanding and except as otherwise set forth in the Redevelopment Agreement, all Public Improvement Fee revenues are payable to the Renewal Authority or to the Renewal Authority's designee (the "Primary PIF Recipient," as further defined herein).

H. Pursuant and subject to the terms of this PIF Covenant, the Public Improvement Fee will be required to be collected by all sellers or providers of goods or services who engage in PIF Sales transactions within the PIF Property subject to this PIF Covenant from the purchaser or

recipient of such goods or services and then paid over to a PIF Collection Agent (as defined herein) designated by Declarant.

I. Subject to and in accordance with the terms and provisions of this PIF Covenant, the Declarant now desires to impose the obligation to collect and pay, and to provide for the implementation of the collection and payment of, a Public Improvement Fee on all PIF Sales that occur within the real property subject to this PIF Covenant.

### DECLARATION

In consideration of the facts set forth in the recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Declarant, the Declarant hereby declares as follows:

1. Defined Terms. The following terms, when used in this PIF Covenant, will have the following meanings:

1.1 “Add-On PIF Collection Services Agreement” shall have the meaning set forth in the Redevelopment Agreement.

1.2 “Bonds” shall have the meaning set forth in the Redevelopment Agreement.

1.3 “City” shall mean and refer to the City of Wheat Ridge, a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State of Colorado.

1.4 “Confidential Information” shall have the meaning ascribed to such term as set forth in Section 6 below.

1.5 “Construct”, “Constructed” and/or “Construction” shall mean refer to and include the design, construction, installation, maintenance, repair, replacement, reconstruction, improvement, expansion and operation of the described improvements.

1.6 “Declarant” shall mean Quadrant Wheat Ridge Corners, LLC, a Missouri limited liability company, or its assignee.

1.7 “Declarant’s Property” shall mean and refer to the real property described on Exhibit “A” attached hereto and incorporated herein by reference.

1.8 “Default Rate” shall mean and refer to interest charged on delinquent payments hereunder at the rate of one percent (1%) per month.

1.9 “Dissemination Agent” shall mean and refer to any entity charged with providing information to purchasers of any Bonds.

1.10 “Eligible Costs” shall have the meaning set forth in the Redevelopment Agreement.

1.11 “Eligible Improvements” shall have the meaning set forth in the Redevelopment Agreement.

1.12 “Enforcing Party” shall have the meaning ascribed to such term as set forth in Section 7 below.

1.13 “Lot 2” shall mean and refer to the real property described on Exhibit “B” attached hereto and incorporated herein by reference.

1.14 “Note” shall have the meaning set forth in the Redevelopment Agreement.

1.15 “Occupant” shall mean and refer to any Person who has the legal right, pursuant to a deed, lease, sublease, license, concession, easement or other occupancy agreement of any type or nature, to possess or occupy any portion of the PIF Property, including, without limitation, any space within any building Constructed on any PIF Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such a right of possession primarily for the purpose of securing a debt or other obligation owed to such Person, will not constitute an “Occupant” unless and until such Person becomes an Owner or a mortgagee in possession or otherwise possesses or occupies a portion of the PIF Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person will be an “Occupant” hereunder.

1.16 “Owned/Leased PIF Property” shall mean and refer, with respect to any Owner, to the portion of the PIF Property to which such Owner owns fee title and, with respect to any Occupant, the portion of the PIF Property which such Occupant has the right to possess or occupy pursuant to its lease, sublease, license, concession or other occupancy agreement.

1.17 “Owner” shall mean and refer to any Person who owns fee title to any portion of the PIF Property.

1.18 “Person” shall mean and refer to any individual, partnership, corporation, limited liability company, limited liability limited partnership, association, trust or other type of entity or organization.

1.19 “PIF Collection Agent” shall mean and refer to any entity designated by Declarant from time to time to receive, from Retailers, the Public Improvement Fee revenues and perform any other functions in connection with the Public Improvement Fee revenues as designated by the Add-On PIF Collection Services Agreement (as defined herein). Notice of any PIF Collection Agent shall be given by Declarant in accordance with Section 4(c) hereof.

1.20 “PIF Covenant” shall mean and refer to this Declaration of Covenants Imposing and Implementing the Public Improvement Fee.

1.21 “PIF Property” shall mean and refer to the real property described on Exhibit “A” and Exhibit “B” attached hereto and incorporated herein by reference.

1.22 “PIF Reports” shall have the meaning ascribed to such term as set forth in Section 4 below.

1.23 “PIF Sales” shall mean and refer to any and all retail sales transactions by any Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are on the date of recording of this PIF Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances. PIF Sales shall also include PIF Services; however, PIF Sales shall at no time include internet sales made from internet terminals in the PIF Property or catalog sales placed by telephone from the PIF Property.

1.24 “PIF Services” shall mean and refer to any and all services by any Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property, with the exception of medical services (including dental services), financial services, legal services, and accounting services. A detailed listing of such PIF Services, as the same may be modified from time to time by the Declarant, shall be provided to the PIF Collection Agent by the Declarant, and subject to the Sales Tax pursuant to the Sales Tax Ordinances.

1.25 “Pledge” or “Pledged” shall mean and refer to any assignment, conveyance, pledge, remittance or other transfer as may be customary and necessary or appropriate to make fully available the Public Improvement Fee revenue for payment of the Note or any Bonds.

1.26 “Primary PIF Recipient” shall mean the Renewal Authority or its designee, or any entity to whom the Primary PIF Recipient has assigned its rights in and control over, as provided herein, the Public Improvement Fee revenues.

1.27 “Public Improvement Fee” shall mean and refer to a fee assessed pursuant to this PIF Covenant against all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the PIF Property in the amount of 1.0 percent (1%) of PIF Sales for so long as the Note or any Bonds are outstanding.

1.28 “Reasonable” or “Reasonably” shall mean and refer to what would generally be considered just, fair, proper, usual, customary and appropriate by a prudent person under the same, or substantially similar, circumstances.

1.29 “Redevelopment Agreement” shall mean and refer to that certain Redevelopment Agreement, entered into by and among the Renewal Authority and TKG Wheat Ridge, LLC, a Missouri limited liability company (as predecessor in interest to Declarant), dated as of June 22, 2015, as supplemented by that certain letter from the Renewal Authority to Declarant dated February 23, 2016, as the same may subsequently be amended, modified, or supplemented from time to time.

1.30 “Renewal Authority” shall mean the Wheat Ridge Urban Renewal Authority d/b/a Renewal Wheat Ridge, a Colorado urban renewal authority and body corporate and politic.

1.31 “Report Recipients” shall mean and refer to: (i) the Primary PIF Recipient, Declarant, and the City, (ii) with respect to the specific information of any particular Retailer, Owner or Occupant leasing, subleasing or otherwise granting rights to such Retailer to occupy such Owner’s or Occupant’s Owned/Leased PIF Property, (iii) any Dissemination Agent; and (iv) any investor or potential investor in The Corners and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of The Corners or a prospective purchaser of any interest in the Declarant.

1.32 “Retailer” shall mean and refer to any Occupant who is a seller or provider of goods or services who engages in any PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property.

1.33 “Sales Tax” shall mean and refer to that tax levied by the City pursuant to the Sales Tax Ordinances.

1.34 “Sales Tax Ordinances” shall mean and refer to the Chapter 22, Article I of the City’s Municipal Code, and regulations promulgated thereto, but only to the extent such ordinance and regulations pertain to sales tax and not use tax, as amended from time to time.

1.35 “State” means State of Colorado.

1.36 “Tax Reports” shall have the meaning ascribed to such term as set forth in Section 5 below.

2. Assessment of Public Improvement Fee. Subject to subparagraph (C) hereof, following the recording in the County Clerk and Recorder’s office for the County of Jefferson, Colorado of this PIF Covenant:

A. Every Occupant who constitutes a Retailer will collect from the purchaser or the recipient of goods or services in each PIF Sales transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of such Occupant’s Owned/Leased PIF Property that is possessed or occupied by such Occupant in its capacity as a Retailer, and pay to the PIF Collection Agent, the Public Improvement Fee with respect to such transaction; and

B. Every Owner or Occupant who leases or subleases any portion of its Owned/Leased PIF Property to a Retailer, or who permits a Retailer to occupy any portion of its Owned/Leased PIF Property by license, concession or otherwise, will require, pursuant to the lease, sublease, license, concession or other occupancy agreement between such Owner or Occupant and such Retailer by virtue of which such Retailer is given the right to possess or occupy any portion of such Owned/Leased PIF Property, that such Retailer collect from the purchaser or the recipient of goods or services in each PIF Sales transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the PIF Property possessed or occupied by such Retailer pursuant to such lease, sublease, license, concession or other occupancy agreement, and pay to the PIF Collection Agent, the Public Improvement Fee with respect to such transaction.

C. The obligations of each Occupant, Owner and Retailer hereunder shall terminate only at such time as the Declarant provides written notice of such termination to each (provided that such notice shall also be recorded in the real property records of Jefferson County, Colorado, and further provided that this PIF Covenant may not be terminated while the Note and any Bonds are outstanding).

D. Retailers shall notify customers of the imposition of the Public Improvement Fee by permanently posting signage, satisfactory to the Primary PIF Recipient and Declarant, during the term of this Covenant identifying the rate of the Public Improvement Fee and reciting that THE PUBLIC IMPROVEMENT FEE IS NOT A TAX IN ANY FORM AND THAT THE AUTHORITY OF THE PRIMARY PIF RECIPIENT OR ANY OTHER RECIPIENT OF PIF REVENUES TO RECEIVE THE PIF REVENUES IS DERIVED THROUGH THIS COVENANT AND CERTAIN OTHER CONTRACTUAL AGREEMENTS AND NOT THROUGH THE EXERCISE OF ANY GOVERNMENTAL TAXING AUTHORITY. In addition, Retailers shall cause any receipts provided in connection with PIF Sales to specify the Public Improvement Fee on such transaction as a separate line item, separate and apart from any Sales Tax of the City or sales tax of any other governmental entity.

3. PIF Sales Guidelines. The PIF Collection Agent, in its sole discretion (subject to the provisions of the following sentence), may from time to time establish uniform guidelines relating to the calculation and payment of the Public Improvement Fee due hereunder to the extent consistent with the definition of “PIF Sales” in Section 1 hereof. The PIF Collection Agent shall provide a copy of such guidelines to the City for its review and approval, which such approval shall not be unreasonably withheld, conditioned or delayed. Such guidelines will be delivered by the PIF Collection Agent to all Retailers in writing (and for purposes of determining the names and addresses of Retailers, any Owner will, within ten (10) business days after receipt of a written request therefor from the PIF Collection Agent, provide the PIF Collection Agent with the name and address of all Retailers that then occupy any PIF Property owned by such Owner). Each Retailer will be entitled to rely on such guidelines for purposes of compliance with this PIF Covenant. In all events, in addition to the Public Improvement Fee, each Retailer will be subject to all sales taxes that may be imposed by the State of Colorado, the City and any other applicable taxing authority. In the event of conflict between the PIF Sales guidelines and the Sales Tax Ordinances, the Sales Tax Ordinances shall prevail.

4. Payment of the Public Improvement Fee.

A. Whether or not collected from customers, each Retailer will pay the Public Improvement Fee monthly in arrears, in an amount equal to the applicable percentage set forth in the definition of “Public Improvement Fee” in Section 1 above, of all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring during the immediately preceding month from or within the portion of the PIF Property occupied by such Retailer during such month. The Public Improvement Fee, together with the related reporting forms (“PIF Reports”), will be due and payable without notice within twenty (20) days after the close of each calendar month and each Retailer shall pay such Public Improvement Fees directly to the location of the PIF Collection Agent, in funds payable to the Primary PIF Recipient or other payee in accordance with the guidelines provided by the PIF Collection Agent. Specific instructions regarding reporting forms and payment procedures will be provided to all Retailers by the PIF Collection Agent and each

Retailer will be entitled to rely thereon for purposes of compliance with this Section 4. In order to facilitate compliance for remitters of the Public Improvement Fee, the procedures for reporting, assessment, collection and segregation of the Public Improvement Fee (but not the calculation or, necessarily, payment location) are intended to be substantially similar in all material respects to those set forth in the Sales Tax Ordinances and, unless otherwise advised by the PIF Collection Agent, each Retailer will report PIF Sales and remit the Public Improvement Fee to the PIF Collection Agent on a monthly basis when such Retailer reports and remits Sales Taxes to the City, employing reporting forms and following procedures provided by the PIF Collection Agent intended to be substantially similar to those used and required by the City for the remittance of Sales Tax.

B. The Public Improvement Fee will be calculated and imposed on transactions at the rate stated above (in the definition of “Public Improvement Fee”) prior to the calculation and assessment of any City or State sales tax, and before any sales taxes of any other taxing entity required to be imposed by law. The Public Improvement Fee will be added to the sales price for transactions subject to sales tax prior to the calculation of sales taxes such that all City Sales Tax and sales taxes of other taxing entities will be calculated and assessed on the sum of the PIF Sales price plus the amount of the Public Improvement Fee. The Declarant hereby acknowledges and any other Owner (by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant) and any Occupant (by acquiring the right to possess or occupy any portion of the PIF Property subject to this PIF Covenant) will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant permits to possess or occupy (by lease or otherwise) any portion of its Owned/Leased PIF Property to acknowledge, prior to conducting any business at any PIF Property, THAT THE PUBLIC IMPROVEMENT FEE IS NOT A TAX IN ANY FORM AND THAT, TO THE EXTENT THAT THE PRIMARY PIF RECIPIENT, ANY PIF COLLECTION AGENT OR ANY OTHER ENTITY ENTITLED TO PUBLIC IMPROVEMENT FEE REVENUES UNDER ANY AGREEMENT IS ENTITLED TO RECEIVE THE PUBLIC IMPROVEMENT FEE, SUCH AUTHORITY IS DERIVED THROUGH THIS PIF COVENANT, AN ADD-ON PIF COLLECTION SERVICES AGREEMENT TO BE EXECUTED BY THE DECLARANT AND ANY PIF COLLECTION AGENT, AND THE REDEVELOPMENT AGREEMENT, AND NOT THROUGH ANY EXERCISE OF GOVERNMENTAL POWERS.

C. Declarant will promptly notify each Retailer of the designation of any PIF Collection Agent, or successor thereto, and provide appropriate direction for payment and reporting of the Public Improvement Fee thereafter. For purposes of compliance with this Section 4, each Retailer will be entitled to rely upon written notice from Declarant as to the identity of any such PIF Collection Agent and, in such event, each Retailer will be entitled to rely upon the specific instructions regarding reporting forms and payment procedures for the Public Improvement Fee provided in writing to such Retailer by the Declarant or the specified PIF Collection Agent.

5. Additional Reporting Requirements. Each Retailer will deliver to the PIF Collection Agent true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (collectively, “Tax Reports”) made or provided to the City and the State by such Retailer in connection with all sales tax of the City and the State for the corresponding sales tax period at the same time such Tax Reports are delivered to the City or the State, respectively; provided that, if available at the time that Public

Improvement Fees are to be paid in accordance with Section 4 hereof, such Tax Reports for the corresponding sales tax period shall be submitted to the PIF Collection Agent together with the Public Improvement Fee and PIF Reports for such period. If any subsequent adjustments, additions or modifications are made to any City or State sales taxes reported, remitted or paid, or Tax Reports made, by a Retailer to the City or the State with respect to sales taxes, such Retailer will provide the PIF Collection Agent with true and complete copies of all revised Tax Reports or other written material issued or received by such Retailer in regard thereto. If any such adjustment increases the amount of the Public Improvement Fee which a Retailer is required to remit or pay, or results in a refund of such Public Improvement Fee, such Retailer will immediately pay such additional Public Improvement Fee in the amount due, or will receive an appropriate credit against the next Public Improvement Fee due from such Retailer in the amount of such excess Public Improvement Fee. Such Retailer will claim such credits or pay such additional Public Improvement Fee in the next monthly reporting period by use of the standard PIF Reports relating to reporting and remittance forms. All PIF Reports and Tax Reports made or provided by a Retailer will be maintained by such Retailer for at least three (3) years from the date of submission thereof to the PIF Collection Agent, the City and/or State, and upon written request, will be made available to the PIF Collection Agent and any Enforcing Party for inspection and audit. Subject to Section 6 hereof, reports received by the PIF Collection Agent will remain confidential and be used only for purposes of collecting the Public Improvement Fee due, enforcing Retailers' obligations hereunder and otherwise monitoring compliance with the provisions of this PIF Covenant.

6. Audits and Release of Information by PIF Collection Agent. By acquiring its possessory interest in and to its Owned/Leased PIF Property subject to the terms and conditions of this PIF Covenant, each Retailer hereby specifically authorizes the PIF Collection Agent and any Enforcing Party to audit the books and records of such Retailer to determine compliance with the Public Improvement Fee collection and remittance obligations of such Retailer under this PIF Covenant and, subject to the restrictions of the following sentence, to release to the Report Recipients (but not to any other person or entity, except as required by law) such audited information, PIF Reports, Tax Reports, returns (including sales tax returns) and other documents as are delivered to the PIF Collection Agent by such Retailer and any relevant information gathered by the PIF Collection Agent or any Enforcing Party during an audit or in reviewing such reports, returns or other documents (collectively, "Confidential Information"); provided, however, that all Confidential Information, together with the contents thereof, will be kept strictly confidential, will not be disclosed or otherwise published by any person to whom the PIF Collection Agent so releases Confidential Information, and will be used only for purposes of collecting the Public Improvement Fee due, enforcing Retailers' obligations hereunder and otherwise monitoring compliance with the provisions of this PIF Covenant, except with respect to information provided to Report Recipients described in Section 1.31(iii) or (iv) (including Dissemination Agents), and except for such disclosures or publications as may be required by applicable laws. Without limiting the foregoing confidentiality and non-disclosure requirements, to the fullest extent permitted under applicable laws, any Confidential Information submitted by or pertaining to a specific Retailer (or the contents of such Confidential Information) provided by the PIF Collection Agent to Report Recipients described in Section 1.31(iii) or (iv) (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other Retailers in the same retail center within The Corners and/or all Retailers, and without separate identification (direct or indirect) of the Public Improvement Fee, the PIF Sales or City or State sales taxes of such specific Retailer. Dissemination Agents may distribute such aggregated information to

purchasers of any Bonds or any other debt or obligation secured in whole or in part by the Public Improvement Fee revenues. Each Retailer agrees to execute, upon request, a Waiver of Confidentiality further evidencing the authorizations provided herein with respect to use and disclosure of the information described in this paragraph.

7. Compliance and Enforcement. Each Retailer will comply with all policies and requirements of the PIF Collection Agent regarding notification to customers of the assessment and collection of the Public Improvement Fee as such policies and requirements are communicated by the PIF Collection Agent to such Retailer in writing from time to time. The failure or refusal of any Retailer to assess, collect or remit the Public Improvement Fee, or to comply with the requirements concerning notification to customers as required in this PIF Covenant, will constitute a default by such Retailer under the terms of this PIF Covenant. DECLARANT, THE RENEWAL AUTHORITY, THE PRIMARY PIF RECIPIENT, THE CITY, AND ANY PIF COLLECTION AGENT ARE HEREBY EXPRESSLY MADE THIRD PARTY BENEFICIARIES OF RETAILERS' OBLIGATIONS UNDER THIS PIF COVENANT, INCLUDING, BUT NOT LIMITED TO, THE ASSESSMENT, COLLECTION AND REMITTANCE OF THE PUBLIC IMPROVEMENT FEE. The Declarant hereby acknowledges and any other Owner (by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant) and any Occupant (by acquiring the right to possess or occupy any portion of the PIF Property subject to this PIF Covenant) will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant permits to possess or occupy (by lease or otherwise) any portion of its Owned/Leased PIF Property to acknowledge, prior to conducting any business at any PIF Property, THAT IN ADDITION TO ANY ONE (1) OR MORE OF THE DECLARANT, THE RENEWAL AUTHORITY, THE PRIMARY PIF RECIPIENT, THE CITY, OR ANY PIF COLLECTION AGENT WILL HAVE A DIRECT CAUSE OF ACTION AND FULL RIGHT AND AUTHORITY TO ENFORCE EACH RETAILER'S OBLIGATIONS UNDER THIS PIF COVENANT, AND THAT NO DEFAULT BY AN OCCUPANT UNDER ANY PROVISION OF A LEASE OR OTHER OCCUPANCY AGREEMENT PURSUANT TO WHICH A RETAILER OCCUPIES ANY PORTION OF SUCH OCCUPANT'S OWNED/LEASED PIF PROPERTY WILL ENTITLE SUCH RETAILER TO ANY OFFSET, DEDUCTION OR OTHER DEFENSE TO PAYMENT OF THE PUBLIC IMPROVEMENT FEE DUE HEREUNDER. Any payment of the Public Improvement Fee not paid when due hereunder will bear interest at the Default Rate, and the defaulting Retailer will bear all costs of enforcement and collection thereof, including Reasonable attorneys' fees. In addition, if a Retailer fails to assess, collect and or remit the Public Improvement Fee as provided herein, such Retailer will be obligated to pay a late fee in an amount equal to the greater of 10% of the delinquent Public Improvement Fees or \$100.00, plus interest at the Default Rate. The PIF Collection Agent will have the right to take any lawful action to collect the Public Improvement Fee, default interest or late fees due hereunder. Notwithstanding anything to the contrary contained in this PIF Covenant, any one (1) or more of the Declarant, the Renewal Authority, the City, the Primary PIF Recipient, any PIF Collection Agent, or any third party designated by any of the foregoing (each, an "Enforcing Party"), will have the right to enforce the provisions of this PIF Covenant against any Retailer that fails to abide by any of the terms and conditions of this PIF Covenant. An Enforcing Party will be awarded and recover from a defaulting Retailer all costs and expenses incurred by such Enforcing

Party in successfully enforcing the obligations of such Retailer under this PIF Covenant in any legal proceedings brought (or defended) by such Enforcing Party.

8. Use and Pledge of Public Improvement Fee Revenues. The Public Improvement Fee revenues generated by the Public Improvement Fee imposed pursuant to this PIF Covenant shall be used for payment of the Note and any Bonds so long as the Note and any Bonds are outstanding. Any right, title and interest of the Declarant, the Renewal Authority, the Primary PIF Recipient, or any other Enforcing Party that may be entitled to receive Public Improvement Fee revenues pursuant to any other agreement, in the Public Improvement Fee and the obligations of the Retailers as set forth in this PIF Covenant, may be assigned by such parties to any other entity; *provided, however*, notwithstanding any such assignment, the Enforcing Parties will continue to be entitled to enforce this PIF Covenant against any Retailer in the event such Retailer fails to comply with the provisions hereof. Without limiting the foregoing, the Renewal Authority is hereby expressly authorized to Pledge for the payment of the Note and any Bonds all Public Improvement Fee revenues, or any portion thereof, generated by the Public Improvement Fee imposed pursuant to this PIF Covenant in accordance with the Redevelopment Agreement.

9. PIF Collection Agent Succession. The PIF Collection Agent is responsible for the collection and disbursement of the Public Improvement Fee. Declarant shall appoint another entity (referred to herein as the “PIF Collection Agent”) to receive the Public Improvement Fee revenues and perform certain other functions in connection with the Public Improvement Fee on behalf of the Primary PIF Recipient or the terms of the Add-On PIF Collection Services Agreement. Upon such appointment, the Primary PIF Recipient will notify all Retailers thereof pursuant to Section 4 above.

10. General Acknowledgement and Amendment Provisions. The Declarant hereby acknowledges and any other Owner (by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant) and any Occupant (by acquiring the right to possess or occupy any portion of the PIF Property subject to this PIF Covenant) will be deemed to have acknowledged, prior to conducting any business at any PIF Property, THAT THE PROVISIONS OF THIS PIF COVENANT HAVE BEEN APPROVED OR AGREED TO BY THE ENFORCING PARTIES AND THAT THE ENFORCING PARTIES ARE OR WILL BE RELYING UPON THESE PROVISIONS IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENT FEE, THE NOTE, ANY BONDS, AND THE ELIGIBLE COSTS WITH THE EXPRESS CONDITION THAT THIS PIF COVENANT WILL NOT BE AMENDED, MODIFIED OR WAIVED WITHOUT THE PRIOR WRITTEN CONSENT OF THE PRIMARY PIF RECIPIENT, THE RENEWAL AUTHORITY, AND THE DECLARANT; ACCORDINGLY, THE DECLARANT HEREBY AGREES AND ALL OTHER OWNERS AND OCCUPANTS WILL BE DEEMED TO HAVE AGREED THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY THE DECLARANT, ANY OWNER OR ANY OCCUPANT WITH RESPECT TO THIS PIF COVENANT WITHOUT THE PRIOR WRITTEN CONSENT OF THE PRIMARY PIF RECIPIENT, THE RENEWAL AUTHORITY, AND DECLARANT, AND THAT ANY SUCH PURPORTED AMENDMENT, MODIFICATION OR WAIVER IN THE ABSENCE OF SUCH CONSENT WILL BE VOID AND OF NO FORCE AND EFFECT. EACH OWNER AND OCCUPANT WILL CAUSE ANY RETAILER WHOM SUCH OWNER OR OCCUPANT PERMITS TO POSSESS OR OCCUPY (BY LEASE OR OTHERWISE) ANY PORTION OF

ITS OWNED/LEASED PIF PROPERTY TO ACKNOWLEDGE, PRIOR TO CONDUCTING ANY BUSINESS AT ANY PIF PROPERTY, THAT THE PROVISIONS OF THIS PIF COVENANT THAT PERTAIN TO RETAILERS HAVE BEEN APPROVED OR AGREED TO BY THE ENFORCING PARTIES AND THAT SUCH PARTIES ARE OR WILL BE RELYING UPON SUCH PROVISIONS IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENT FEE, THE NOTE, ANY BONDS, AND THE ELIGIBLE COSTS WITH THE EXPRESS CONDITION THAT THE PROVISIONS OF THIS PIF COVENANT THAT PERTAIN TO RETAILERS MAY NOT BE AMENDED, MODIFIED OR WAIVED WITHOUT THE PRIOR WRITTEN CONSENT OF THE PRIMARY PIF RECIPIENT, THE RENEWAL AUTHORITY, AND DECLARANT; ACCORDINGLY, SUCH RETAILER WILL BE DEEMED TO HAVE AGREED THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY SUCH RETAILER WITH RESPECT TO THE PROVISIONS OF THIS PIF COVENANT THAT PERTAIN TO RETAILERS UNLESS CONSENTED TO IN WRITING BY THE PRIMARY PIF RECIPIENT AND THE RENEWAL AUTHORITY AND DECLARANT, AND THAT ANY SUCH PURPORTED AMENDMENT, MODIFICATION OR WAIVER WITHOUT SUCH CONSENT WILL BE VOID AND OF NO FORCE AND EFFECT.

11. Owner/Occupant Obligations. Each Owner and Occupant will cause any Retailer to whom such Owner or Occupant leases or whom such Owner or Occupant otherwise permits to occupy any portion of its Owned/Leased PIF Property, in its lease, sublease, consent to assignment of lease or other occupancy agreement with such Retailer pursuant to which such Retailer occupies any portion of such Owner's or Occupant's Owned/Leased PIF Property, to acknowledge and agree to (in a manner that causes such Retailer to be bound by) all provisions of this PIF Covenant that pertain to such Retailer. In addition, each Owner and Occupant will take all actions reasonably necessary to assist the Primary PIF Recipient and any other Enforcing Party in collecting the Public Improvement Fees due hereunder and causing compliance with the provision hereof by any Retailer occupying such Owner's or Occupant's Owned/Leased PIF Property, including but not limited to specifically assigning the rights to enforce the provisions of its lease, consent to assignment of lease, sublease or other occupancy agreement relating to the Public Improvement Fee to any Enforcing Party upon written request.

12. Intentionally Deleted.

13. No Dominion or Control by Declarant. Notwithstanding anything contained in this PIF Covenant to the contrary or in any other document related to the PIF Property, neither the Declarant nor the PIF Collection Agent (except as expressly set forth in the Add-On PIF Collection Services Agreement) shall have and will not be legally entitled, authorized or empowered to exercise any dominion or control over any of the Public Improvement Fee revenues imposed or collected pursuant to this PIF Covenant unless such entity is specifically assigned rights to such revenues. To the extent any Public Improvement Fee revenue is collected by the Declarant or the PIF Collection Agent, such parties shall be acting as agent for, and on behalf of, the Primary PIF Recipient in implementing this PIF Covenant and providing for the collection and payment of Public Improvement Fee revenues pursuant to this PIF Covenant. Subject to the express terms of this Section 13: (a) the Public Improvement Fee is a fee imposed on Retailers to be used as provided herein; (b) the nature of the Public Improvement Fee is that of a fee imposed for the benefit of the Declarant, the City, the Renewal Authority, and the Primary PIF Recipient under

private contract and not through the exercise of the taxing authority of the City or any other governmental entity; (c) the Public Improvement Fee revenues are not tax revenues in any form; (d) any Pledged Public Improvement Fee revenues shall be the property of the party to whom they have been pledged and as otherwise may be provided in this PIF Covenant, or the Redevelopment Agreement; and (e) the authority of the Declarant, the City, the Renewal Authority, the Primary PIF Recipient or the PIF Collection Agent to receive the Public Improvement Fee revenues is derived through this PIF Covenant, the Add-On PIF Collection Services Agreement and the Redevelopment Agreement.

14. Notices to Retailers. Whenever a party is required pursuant to the provisions of this PIF Covenant to give notice to “all” Retailers, the notice given will be deemed sufficient if given to all Retailers, the names and addresses of which were known to the party giving such notice after a Reasonably diligent effort to ascertain the names and addresses of all Retailers.

15. Governing Laws and Venue. This PIF Covenant will be governed by, and enforced in accordance with, the laws of the State of Colorado. In the event of any dispute arising out of this PIF Covenant, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall be in the Jefferson County District Courts.

16. Covenants Run With Land. The covenants, agreements, promises and duties as set forth in this PIF Covenant will be construed as covenants and not as conditions and, to the fullest extent legally possible, all such covenants will run with and be enforceable against any Owner, Occupant and Retailer and the land and will constitute equitable servitudes burdening such respective parties and the PIF Property for the benefit of the Declarant, the Renewal Authority and the Primary PIF Recipient. Each covenant to do or refrain from doing some act on or with respect to activities on any portion of the PIF Property under this PIF Covenant (i) is a burden upon such portion of the PIF Property and is for the benefit of the remainder of the PIF Property, (ii) will be a covenant running with the land with respect to both the burdened and benefited portions of the PIF Property, and (iii) will be binding upon each Owner, Occupant and Retailer and each successor and assign to their respective interests in the PIF Property and will inure to the benefit of each of the Declarant, the other Owners, the Renewal Authority, the Primary PIF Recipient and the PIF Collection Agent, and their successors and assigns. If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until \_\_\_\_\_, 2106].

17. No Unintended Beneficiaries to Ancillary Agreements. Notwithstanding any provision contained in this PIF Covenant, no Retailer, Owner or Occupant, shall, by virtue of this PIF Covenant, be a third party beneficiary or otherwise be entitled to enforce any terms or condition of any agreement to which the Declarant, the Primary PIF Recipient, the Renewal Authority, the City or any other Enforcing Party is a party, pertaining to the imposition, collection, disbursement or assignment of the Public Improvement Fees, including but not limited to the Redevelopment Agreement, the Add-On PIF Collection Services Agreement and any other collection agreement entered into by the Declarant with a PIF Collection Agent. Any such

agreement may be modified, amended, waived or terminated without the consent of any Retailer, Owner or Occupant.

18. Severability. Invalidation of any of the provisions contained in this PIF Covenant, or of the application thereof to any Person, by judgment or court order, will in no way affect any of the other provisions of this PIF Covenant or the application thereof to any other Person or circumstance and the remainder of this PIF Covenant will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this PIF Covenant ineffective to carry out the material intentions of the Declarant as expressed or implied by this PIF Covenant, then the objectionable provision(s) hereof will be construed, and this PIF Covenant will be deemed amended, as if such provision were replaced with an enforceable provision which effectuates, as nearly as possible, the material intentions of the Declarant.

*[Remainder of Page Intentionally Left Blank]*



**EXHIBIT A**

**Declarant's Property**

Legal Description

Lots 1, 3, 4, and 5, The Corners Filing No. 1 in the City of Wheat Ridge, State of Colorado, as shown on that certain plat recorded \_\_\_\_\_, at Reception No. \_\_\_\_\_, County of Jefferson, State of Colorado. **[To be revised to match the legal description contained within the title commitment following recording of The Corners Filing No. 1 subdivision plat]**

**EXHIBIT B**

**Lot 2**

Legal Description

Lot 2, The Corners Filing No. 1 in the City of Wheat Ridge, State of Colorado, as shown on that certain plat recorded \_\_\_\_\_, at Reception No. \_\_\_\_\_, County of Jefferson, State of Colorado. **[To be revised to match the legal description contained within the title commitment following recording of The Corners Filing No. 1 subdivision plat]**

**CONSENT TO DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE CORNERS PUBLIC IMPROVEMENT FEE**

The Wheat Ridge Urban Renewal Authority, d/b/a Renewal Wheat Ridge, a Colorado urban renewal authority and body corporate and politic, hereby consents to the recording and imposition of the covenants contained in the Declaration of Covenants Imposing and Implementing the Public Improvement Fee ("Declaration") on the following land:

Lot 2, The Corners Filing No. 1 in the City of Wheat Ridge, State of Colorado, as shown on that certain plat recorded \_\_\_\_\_, at Reception No. \_\_\_\_\_, County of Jefferson, State of Colorado. [To be revised to match the legal description contained within the title commitment following recording of The Corners Filing No. 1 subdivision plat].

**Wheat Ridge Urban Renewal Authority,  
d/b/a Renewal Wheat Ridge**  
a Colorado urban renewal authority and body corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ Wheat Ridge Urban Renewal Authority, d/b/a Renewal Wheat Ridge, a Colorado urban renewal authority and body corporate and politic.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public





3.2

**TO:** Renewal Wheat Ridge Board Members

**FROM/PREPARED BY:** Steve Art, Executive Director

**RE:** Adoption of Resolution 02-2017 authorizing the execution of a Subdivision Improvement Agreement between the City of Wheat Ridge and Quadrant Wheat Ridge Corners, LLC

**DATE:** January 24, 2017

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**ISSUE:**

The Corners at Wheat Ridge (Corners) is ready to break ground on the 15-acre mixed-use development. Prior to the initiation of construction, the City requires a Subdivision Improvement Agreement (SIA) detailing how the public Improvement are to be constructed. As an owner of a parcel in the development, Renewal Wheat Ridge (RWR) is required to be a signatory on the SIA.

**PRIOR ACTION:**

On June 16, 2015 RWR adopted Resolution 01-2015 authorizing the execution of a Redevelopment Agreement with Quadrant Wheat Ridge Corners, LLC which provided for the use of Tax Increment Financing (TIF).

**FINANCIAL IMPACT:**

None

**BACKGROUND:**

TKG has proposed to develop a 15-acre mixed-use development at the southwest corner of Wadsworth Boulevard and 38<sup>th</sup> Avenue (the Project). TKG has obtained purchase options on all three parcels and has executed a Purchase and Sales Agreement with RWR for the purchase of the two remaining lots, which comprise the entire development. The Project site is within the Wadsworth Boulevard Corridor Redevelopment Plan area. At one time was an auto dealership. The redevelopment plan includes the following elements:

- 35,000 sq. ft. grocery store
- 45,000 sq. ft. of retail shops which include fast food and other restaurants, and
- Up to 231 market-rate, Texas-style wrap apartments.

The proposed development conforms to the land use concept of the Wadsworth Boulevard Corridor Redevelopment Plan for a commercial retail center.

The adopted Redevelopment Agreement of June 16, 2015 provides for up to \$6.25 million to be utilized solely for public infrastructure that include abatement and demolition of all existing



structures, Improvement to both Wadsworth Boulevard and 38<sup>th</sup> Avenue, public spaces within the project.

The proposed development is estimated to generate incremental property and sales tax revenues of about \$12.4 million over a 12-year period. Estimates of property tax revenues were derived using market value data from various sources to determine prevailing market value per square foot and then applied to the square footage of each proposed new building.

The TIF would be funded through future sales tax generation utilizing one-cent of the City's three-cent sales tax rate. Two cents of sales tax would flow to the City's general fund and one cent would flow to a special account of RWR to service the Project debt. One hundred percent of the incremental property tax, minus the Wheat Ridge Fire Districts mill levy, would service the debt.

**Subdivision Improvement Agreement:**

The SIA sets forth the terms, conditions, and fees to be paid by the Developer upon subdivision of the Property. All conditions in the SIA are in addition to any and all requirements of the City of Wheat Ridge Subdivision Ordinance and Zoning Ordinance, the City of Wheat Ridge Charter, any and all state statutes, and any other sections of the City of Wheat Ridge Municipal Code.

**RECOMMENDATIONS:**

Staff recommends the adoption of Resolution 02-2017 authorizing the execution of a SIA.

**RECOMMENDED MOTION:**

"I move to adopt Resolution No. 02-2017 authorizing the execution of a Subdivision Improvement Agreement between the City of Wheat Ridge and Quadrant Wheat Ridge Corners, LLC"

Or,

I move to deny Resolution No. 02-2017 for the following reasons..."

**REPORT PREPARED/REVIEWED BY:**

Steve Art, Executive Director

**ATTACHMENTS:**

1. Resolution 02-2017
2. Subdivision Improvement Agreement

# ATTACHMENT 1

WHEAT RIDGE URBAN RENEWAL AUTHORITY  
RESOLUTION NO. 02-2017

**TITLE: A RESOLUTION AUTHORIZING THE EXECUTION OF A SUBDIVISION IMPROVEMENT AGREEMENT BETWEEN THE CITY OF WHEAT RIDGE AND QUADRANT WHEAT RIDGE CORNERS, LLC**

THEREFORE, BE IT RESOLVED by the Wheat Ridge Urban Renewal Authority as follows:

The Wheat Ridge Urban Renewal Authority dba Renewal Wheat Ridge does hereby authorize the Board Chair or Executive Director to execute a Subdivision Improvement Agreement between the City of Wheat Ridge and with Quadrant Wheat Ridge Corners, LLC. All terms of the Agreement, attached hereinto as **Exhibit A** shall be enforced and acted upon by both parties. The Board Chair or Executive Director are also authorized to execute any non-substantive amendments to the above said agreement.

**ADOPTED** the 24<sup>th</sup> day of January, 2017.

WHEAT RIDGE URBAN RENEWAL  
AUTHORITY

\_\_\_\_\_  
Tim Rogers, Chairperson

ATTEST:

\_\_\_\_\_  
Steve Art, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, WRURA Attorney



## SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT made this 24<sup>th</sup> day of January, 2017 (the "Effective Date") by and among the CITY OF WHEAT RIDGE, COLORADO, a home rule municipal corporation (the "City"), the WHEAT RIDGE URBAN RENEWAL AUTHORITY d/b/a RENEWAL WHEAT RIDGE, a Colorado urban renewal authority ("RWR"), and QUADRANT WHEAT RIDGE CORNERS, LLC, a Missouri limited liability company (the "Developer"), together referred to as the "Parties".

### RECITALS:

A. The Developer is the owner of certain real property located in the City of Wheat Ridge, which is more particularly described in **Exhibit A** and made a part hereof (the "Developer Property"). In addition, the Developer is party to that certain Purchase and Sale Agreement (the "Purchase Agreement") with RWR to purchase fee interest certain real property located in the City of Wheat Ridge, which is more particularly described in **Exhibit A-1** and made a part hereof (the "RWR Property" and together with the Developer Property, collectively, the "Property"). The conveyance of the RWR Property to Developer shall occur following RWR obtaining a no further action letter from the Colorado Department of Public Health and Environment as more particularly set forth in the Purchase Agreement. In addition, the Developer, pursuant to that certain Easement Agreement dated as of January 3, 2017, between the Developer and RWR and recorded in the real estate records of Jefferson County, Colorado at Reception No. \_\_\_\_\_, has a nonexclusive, perpetual easement on, over, under, through and across the RWR Property to construct any Public Improvements (as defined below) required under this Agreement.

B. The project is commonly known as The Corners at Wheat Ridge (the "Project").

C. On December 12, 2016, the City Council of the City of Wheat Ridge, after holding all required public hearings, approved the final plat for the Property titled The Corners Filing No. 1 (the "Final Plat"). A copy of the Final Plat is attached hereto as **Exhibit B** and incorporated herein.

D. The approvals cited above are contingent upon the express condition that all duties created by this Agreement be faithfully performed by the Developer.

E. RWR, as a current owner of the RWR Property, is executing this Agreement for the purpose of compliance with the Wheat Ridge Subdivision Regulations that owners execute subdivision improvement agreements. However, the Parties agree RWR has no obligations under this Agreement.

### AGREEMENT

NOW, therefore, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties

hereto agree as follows:

1. Purpose; Incorporation of Recitals. The purpose of this Agreement is to set forth the terms, conditions, and fees to be paid by the Developer upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the City of Wheat Ridge Subdivision Ordinance and Zoning Ordinance, the City of Wheat Ridge Charter, any and all state statutes, and any other sections of the City of Wheat Ridge Municipal Code and are not intended to supersede any requirements contained therein. The Recitals set forth above are hereby incorporated into this Agreement.

2. Related Agreements and Approvals. The Project is subject to that certain Redevelopment Agreement dated June 22, 2015 between RWR and TKG Wheat Ridge, LLC, a Missouri limited liability company (as predecessor in interest to the Developer), recorded with the Jefferson County Clerk and Recorder under reception number \_\_\_\_\_, as supplemented by that certain letter from RWR to the Developer dated February 23, 2016, as the same may subsequently be amended, modified or supplemented from time to time, which outlines commitments for the design, acquisition, construction, and installation of certain improvements.

The Project is subject to that certain Concept Plan for the Project titled The Corners at Wheat Ridge Concept Plan recorded with the Jefferson County Clerk and Recorder under reception number \_\_\_\_\_ and will be subject to future review and approval of site plan(s), civil construction documents, right-of-way permit application(s), and building permit application(s). Through such approvals, the City will review and approve the final design of the Project and Public Improvements related thereto. This Agreement is based on information that was available at the time of approval of the Final Plat and shall not constitute approval of the Public Improvement designs.

3. Fees. The Developer hereby agrees to pay City Development Review fees to the City for engineering, hydrological, surveying, legal, and other services rendered in connection with the review of the subdivision of the Property.

4. Parkland dedication fee-in lieu. Fees in lieu of land dedication, when required, shall be calculated pursuant to the formula in Section 26-413 and shall be paid at the time the building permit for any residential development is issued.

5. Title Policy. Prior to recording of the Final Plat, title commitment for all those portions of the Property, as well as any other interests in real property (easements, etc.), to be reserved for public purposes or dedicated to the City shall be provided to the City. The title commitment shall show that all such property is or shall be, subsequent to the execution and recording of this Agreement, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and

payable) which would make the dedication or reservation unacceptable as the City determines in its reasonable discretion. The City, in its sole discretion, may accept any dedication regardless of encumbrances. The title policy evidenced by the title commitment shall be provided within thirty (30) days after the recording of this Agreement, in an amount equal to the fair market value of the property so dedicated or reserved. **[Following up with FATCO regarding issuance of title policy.]**

6. Breach by the Developer; the City's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the City shall be notified immediately and the City may take such action as permitted and/or authorized by law, this Agreement, or the ordinances and Charter of the City as the City deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the City from hardship and undue risk. These remedies include, but are not limited to:

- (a) The refusal to issue any building permit or certificate of occupancy;
- (b) The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party,
- (c) A demand that the security given for the completion of the Public Improvements be paid or honored, or
- (d) Any other remedy available at law or in equity.

Unless necessary to protect the immediate health, safety and welfare of the City or to protect the City's interest with regard to security given for the completion of the Public Improvements, the City shall provide the Developer thirty (30) days prior written notice of its intent to take any action under this paragraph during which thirty (30) day period the Developer may cure the breach described in the notice.

7. Installation and Phasing of Public Improvements. All storm sewer lines, drainage structures, paved streets, curb, gutter, streetscape and sidewalk, including the undergrounding of all overhead utilities, and necessary appurtenances as shown on the Final Plat and the associated construction documents (the "Public Improvements" or "Improvements") as approved by the City's Director of Public Works or his or her designee (the "Director"), shall be installed and completed at the expense of the Developer in two phases (each, a "Phase") within the timeframes set forth in Section 11 and **Exhibit C** of this Agreement.

The itemized costs of the Public Improvements required by this Agreement and to be shown on the construction documents approved by the Director are set forth on **Exhibit D** (the "Preliminary Cost Estimate"). All Public Improvements covered by this Agreement shall be made in accordance with the construction documents drawn according to regulations and construction standards for such Improvement and approved by the Director. It is understood by the Parties that the description of the

Public Improvements may be general in nature, and that Exhibit D represents a Preliminary Cost Estimate based on information that was available at the time of approval of the Final Plat. Additional Public Improvements may be required, and Developer shall be responsible for submitting construction documents for review of all Public Improvements and/or revisions to the Final Plat approved by the City.

The Public Improvements within the applicable Phase set forth in **Exhibit C** shall be complete, with only such exceptions as shall be approved in advance by the Director in the exercise of his or her sole discretion, prior to the issuance of the first Certificate of Occupancy for a building within that same Phase.

8. Warranty of Public Improvements. The Developer shall warrant any and all Public Improvements which are conveyed to the City pursuant to this Agreement for a period of two (2) years from the date the Director certifies that the same conform to the specifications approved by the City (the "Warranty Period"). Specifically, but not by way of limitation, the Developer shall warrant the following:

- (a) That the title conveyed shall be marketable and its transfer rightful;
- (b) Any and all Public Improvements conveyed shall be free from any security interest or other lien or encumbrance;
- (c) Any and all Public Improvements so conveyed shall be free of defects in materials or workmanship for the Warranty Period; and
- (d) To the degree the Developer is required to install and maintain landscaping on public or private property, it is the obligation of Developer and its successors and assigns, to maintain the required landscaping in perpetuity.

The City will finally accept for maintenance all Public Improvements, exclusive of landscaping materials, after the Warranty Period has expired provided all warranty work has been completed. The City shall accept for snow removal purposes only, all dedicated public streets after the City issues the first certificate of occupancy.

9. Installation of Traffic Signal on 38<sup>th</sup> Avenue. A traffic signal on 38<sup>th</sup> Avenue at Yukon Court will serve this Project. Costs associated with the signal shall be included in Exhibit D, and traffic signal plans shall be submitted with the civil construction documents for review and approval by the City. In addition, prior to fabrication of signal poles and mast arm components, the Developer shall provide shop drawings to the City for review and approval. Traffic signal equipment list shall also be provided for review and approval prior to procuring for installation.

10. Observation, Inspection and Testing. The City shall have the right to require reasonable engineering observations and testing at the Developer's expense. Observation and testing, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the City of any portion of the construction of such Public Improvements. Such approval shall be made by the City, only after completion of construction and in the manner hereinafter set forth.

The Director is designated by the City to exercise authority on its behalf under this Agreement and to see that this Agreement is performed according to its terms. Work under this Agreement may, without cost or claim against the City, be suspended by the Director for substantial cause.

The Director shall, within a reasonable time after presentation, make decisions in writing on all claims of Developer and on all other matters relating to the execution and progress of the work or the interpretation of this Agreement, the master plan and specifications. All such decisions of the Director shall be final.

The Director shall make all determinations of amounts and quantities of work performed hereunder. To assist the Director in this work, Developer shall make available for inspection any records kept by Developer in connection with the construction of the Public Improvements.

The Director and his authorized representatives shall have free access to the work at all times, and Developer shall furnish them with facilities for ascertaining whether the work being performed, or the work which has been completed, is in accordance with the requirements of the Agreement.

The Director will make periodic observations of construction (sometimes commonly referred to as "supervision"). The purpose of these observations and construction checking is to determine the progress of the work and to see if the work is being performed in accordance with the plans and specifications. The Director will in no way be responsible for how the work is performed, safety in, on, or about the job site, methods of performance, or timeliness in the performance of the work.

Inspectors may be appointed to inspect materials used and work done. Inspections may extend to all or any part of the work and to the preparation or manufacture of the materials to be used. The inspectors will not be authorized to alter the provisions of this Agreement or any specifications or to act as foreman for Developer. The inspector will have authority to reject defective materials and suspend any work that is being done improperly, subject to the final decision of the Director.

11. Completion of Public Improvements. The obligations of the Developer provided for in paragraph 7 of this Agreement, including the inspections hereof, shall be

performed on or before the date that is three (3) years after the City's approval of construction documents, and proper application for acceptance of the Public Improvements shall be made on or before such date. Upon completion of construction by the Developer of any Improvements, the Director shall promptly inspect the Improvements and certify with specificity its conformity or lack thereof to the City's specifications. The Developer shall make all corrections necessary to bring the Improvements into conformity with the City's specifications. Once approved by the Director, the City shall accept said Improvements upon conveyance; provided, however, the City shall not be obligated to accept the Public Improvements until the actual costs described in this Agreement are paid in full by the Developer.

12. Deferred Installation of Landscaping and Financial Guarantee. The obligations of the Developer provided for in paragraph 7 and **Exhibit C** of this Agreement allow issuance of a Certificate of Occupancy prior to completion of landscaping and irrigation system. If occupancy is requested prior to completion of landscaping and irrigation, an irrevocable letter of credit or escrow account shall be accepted for the completion of necessary landscaping and irrigation. Said financial guarantee shall be in the amount of one hundred and twenty five percent (125%) of the cost of installation. Letters of credit or escrows shall not be released until all planting and finish materials shown on the approved landscape plan are installed and accepted and the irrigation is installed and functional.

The amount of the escrow or letter of credit shall be based on an itemized cost estimate provided at the time the deferred installation is requested and based on the approved construction/landscape plans. Should the required landscaping not be properly installed upon the expiration of the letter of credit or escrow account, the City reserves the right to use such funds to have the required landscaping placed upon the subject premises. Any costs incurred by the City in excess of the funds provided by the letter of credit or escrow shall be recovered by the City through normal lien proceedings.

13. Protection. Developer, at its expense, shall continuously maintain adequate protection of all Improvements from damage prior to acceptance by the City and shall protect the City's property from injury and loss arising in connection with this Agreement. Developer shall make good any such damage, injury or loss except such as may be caused directly by authorized agents or employees of the City. Developer shall adequately protect adjacent property and shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.

Developer shall be responsible for damage to any public and private property on and adjacent to the site of the Improvements caused by negligent or willful acts of Developer, its agents or subcontractors. Developer shall take all reasonable effort necessary to prevent damage to pipes, conduits, and other underground structures and to overhead wires, and to water quality improvements. Developer shall protect carefully

from disturbance or damage all land monuments and property marks until an authorized agent of the City has witnessed or otherwise referenced their location, and shall not remove them until directed. When any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the construction of Improvements, or in consequence of the non-execution thereof on Developer's part, such damaged property shall be restored by Developer at its own expense to a condition similar or equal to that existing before such damage or injury.

Developer shall at all times, whether or not so specifically directed by the Director, take necessary precautions to insure the protection of the public. Developer shall furnish, erect and maintain, at its own expense, all necessary barricades, suitable and sufficient red lights, construction signs, provide a sufficient number of watchmen, and take all necessary precautions for the protection of the work and safety of the public through or around the Director's construction operations as Developer and the Director shall deem reasonably necessary.

14. Related Costs - Public Improvements. The Developer shall provide all necessary engineering designs, surveys, field surveys, testing and incidental services related to the construction of the Public Improvements at its sole cost and expense, including final drainage study letter certified accurate by a professional engineer registered in the State of Colorado.

15. Improvements to be the Property of the City. All Public Improvements for roads, concrete curb and gutters, public storm sewers and public drainage improvements accepted by the City shall be dedicated to the City and warranted during the Warranty Period.

16. Performance Guarantee. In order to secure the construction and installation of the Public Improvements, the Developer shall, on or before the date that is ninety (90) days after the recording of this Agreement with the Jefferson County Clerk and Recorder, furnish the City, at the Developer's expense, with the performance guarantee described herein. The performance guarantee provided by the Developer shall be an irrevocable letter of credit in which the City is designated as beneficiary, for one hundred twenty-five percent (125%) of the Preliminary Cost Estimate of the Public Improvements to be constructed and installed as set forth in **Exhibit D**, to secure the performance and completion of the Public Improvements as required by Section 26-418 Security for Required Improvements, of the Wheat Ridge Subdivision Regulations. The Developer agrees that approval of this Agreement by the City is contingent upon the Developer's timely provision of an irrevocable letter of credit to the City in accordance with the terms hereof. Failure of the Developer to provide an irrevocable letter of credit to the City in the manner provided herein shall negate the City's approval of this Agreement. Letters of credit shall be substantially in the form and content set forth in **Exhibit E**, and shall be subject to the review and approval of the City Attorney. The Developer shall not start any construction of any public or private improvement on the

Property including, but not limited to, staking, earthwork, overlot grading or the erection of any structure, temporary or otherwise, until the City has received and approved the irrevocable letter of credit. Notwithstanding the foregoing, the Developer may commence any demolition and/or remediation of the Property prior to the City's receipt and approval of the irrevocable letter of credit.

The Preliminary Cost Estimate of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Director, as set forth in **Exhibit D**. If, however, they are unable to agree, the Director's estimate shall govern after giving consideration to information provided by the Developer including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of the performance guarantee. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

Subsequent to approval of construction plans, the Developer shall provide a final cost estimate for the Public Improvements. Prior to issuance of any building or right-of-way permits, the Developer shall provide the City with a new or amended letter of credit in the amount of the final cost estimate.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the City reserves the right to review and adjust the cost estimate on an annual basis. If the City adjusts the cost estimate for the Public Improvements, the City shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the City with a new or amended letter of credit in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the City with a new or amended letter of credit, the City may exercise the remedies provided for in this Agreement. Prior to increasing the amount of additional security required hereunder, the City shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of security required at all times shall relate to the cost of required Public Improvements not yet constructed.

From time to time, as required Public Improvements are completed, the Developer may request that the amount of security be reduced by increments of not less than twenty-five percent (25%) of the original amount of the performance guarantee, except for the last release requested hereunder. Requests for release shall be made by the Developer in writing to the City, and shall include: (a) work description and cost estimate of original performance guarantee; (b) updated work description and cost estimate of complete Improvements; (c) updated work description and cost estimate of incomplete Improvements; (d) summary of previous releases; and (e) amount of performance guarantee requested to be released. Upon receipt of any release request hereunder, the City shall inspect the Improvements. If after such inspection, the City approves the Developer's release request, the corresponding

portion of the performance guarantee shall be released and the Developer shall deliver to the City a new or amended letter of credit reflecting the reduction in the performance guarantee. Any release approved hereunder by the City shall be in writing signed by the Director.

In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 11 of this Agreement or a written extension of time mutually agreed upon by the Parties to this Agreement and subject to the notice and cure provisions set forth in Section 6 above, the City may draw on the letter of credit to complete the Public Improvements called for in this Agreement. In the event the letter of credit is set to expire within fourteen (14) calendar days and the Developer has not yet provided a satisfactory replacement, the City may draw on the letter of credit and either hold such funds as security for performance of this Agreement or spend such funds to finish Public Improvements or correct problems with the Public Improvements as the City deems appropriate.

Upon completion of construction of the Public Improvements within the required time, the Developer shall issue an irrevocable letter of credit to the City in the amount of twenty-five percent (25%) of the total cost of construction and installation of the Public Improvements, to be held by the City during the Warranty Period. Upon expiration of the Warranty Period, the City shall release the letter of credit to the Developer.

17. Indemnification. The Developer shall indemnify and hold harmless the City, RWR and their respective officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of this Agreement or any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to the Public Improvements; and the Developer shall pay any and all judgments rendered against the City and/or RWR as a result of any such suit, action, or claim, together with all reasonable expenses and attorney's fees and costs incurred by the City and/or RWR in defending any such suit, action or claim.

The Developer shall pay all property taxes due and owing on any portion of the Property dedicated to the City prior to the Developer's dedication of such property to the City and shall indemnify and hold harmless the City for any property tax liability in connection therewith.

18. Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the City to impose conditions on the Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

19. Third Party Beneficiaries. There are and shall be no third party beneficiaries to this Agreement.

20. Modifications. This instrument embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the Parties. There shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

21. Release of Liability. It is expressly understood that the City cannot be legally bound by the representations of any of its agents or their designees except in accordance with the City of Wheat Ridge Code of Ordinances and the laws of the State of Colorado.

22. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

23. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns as the case may be.

24. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

25. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

26. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, venue of such suit or action shall be in Jefferson County, Colorado.

27. Attorneys Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance or payment by the Developer and a court of

competent jurisdiction finds in favor of the City and/or RWR, the Developer shall pay the City's and/or RWR's attorney's fees and court costs.

28. Notice. All notices required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, in the United States mail to the addresses as set forth below. Any party by notice so given may change the address to which future notices shall be sent.

Notice to Developer:            Quadrant Wheat Ridge Corners, LLC  
   c/o Quadrant Properties  
   981 Southpark Drive  
   Littleton, CO 80120  
   Attn: Robert Turner

With a copy to:

Quadrant Properties  
353 Marshall Ave., Suite i  
St. Louis, MO 63119  
Attn: Rodney Jones

TKG Management Inc.  
211 N. Stadium Blvd., Suite 201  
Columbia, MO 65203  
Attn: Jason Meyerpeter

Husch Blackwell LLP  
1700 Lincoln Street, Suite 4700  
Denver, CO 80203-4547  
Attn: Robert Detrick

Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Attn: J. Andrew Crossett

Notice to City:

Director of Public Works  
7500 West 29<sup>th</sup> Avenue  
Wheat Ridge, CO 80033

City Attorney  
7500 West 29<sup>th</sup> Avenue  
Wheat Ridge, CO 80033

Notice to RWR:

Wheat Ridge Urban Renewal Authority  
7500 West 29<sup>th</sup> Avenue  
Wheat Ridge, CO 80033  
Attn: Executive Director

29. Force Majeure. Whenever the Developer is required to complete the construction, repair, or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing due to unforeseeable causes beyond the control and without the fault or negligence of the Developer including, but not restricted to, acts of God, weather, fires and strikes.

30. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement without the prior written approval of the City.

31. Recording of Agreement. This Agreement shall be recorded in the real estate records of Jefferson County and shall be a covenant running with the Property in order to put prospective purchases or other interested parties on notice as to the terms and provisions hereof.

32. Title and Authority. The Developer expressly warrants and represents to the City that it is the record owner of the Developer Property and has an easement interest in the RWR Property (as well as rights to purchase the RWR Property, as more particularly set forth in the Purchase Agreement) and further represents and warrants that the undersigned individual(s) has or have full power and authority to enter into this Agreement on behalf of the Developer. The Developer understands that the City is relying on such representations and warranties in entering into this Agreement.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Parties hereto have executed this Agreement as of the Effective Date.

**CITY OF WHEAT RIDGE, COLORADO**

By: \_\_\_\_\_  
Joyce Jay, Mayor

ATTEST:

\_\_\_\_\_  
Janelle Shaver, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gerald Dahl, City Attorney

**WHEAT RIDGE URBAN RENEWAL  
AUTHORITY, d/b/a RENEWAL WHEAT  
RIDGE, a Colorado urban renewal authority**

By: \_\_\_\_\_  
Tim Rogers, Chair

ATTEST:

\_\_\_\_\_  
Secretary to the Authority



**EXHIBIT A**

Legal Description of Developer Property

LOTS 1, 3, 4, AND 5 AND TRACT A; THE CORNERS FILING NO. 1; COUNTY OF JEFFERSON; STATE OF COLORADO

Ex. A

**EXHIBIT A-1**

Legal Description of RWR Property

LOT 2, THE CORNERS FILING NO. 1, COUNTY OF JEFFERSON, STATE OF  
COLORADO

**EXHIBIT B**

Final Plat

(see attached)

## EXHIBIT C

### Phasing Plan

Installation of Public Improvements will be in two phases:

#### North Phase –

Prior to issuance of any Certificate of Occupancy (C.O.) on Lot 1, Lot 2, or Lot 5, the following Public Improvements shall be completed:

- All improvements to and along Wadsworth Boulevard;
- All improvements to and along W. 38<sup>th</sup> Avenue;
- All improvements to and along Yukon Court and the private extension of Yukon to 35<sup>th</sup> Avenue, including but not limited to drive aisles, sidewalks, landscaping, and the signal installation;
- All improvements for the mid-block east-west drive aisle, including but not limited to drive aisles, sidewalks, and landscaping;
- All drainage facilities; and
- All public improvements within Lot 1, including but not limited to drive aisles, sidewalks, landscaping, and the plaza area;

With the following exception:

- Installation of landscaping, street trees, and irrigation is not required prior to Certificate of Occupancy if issuance of the C.O. is prior to June 1 of the calendar year. Refer to Section 12 of the Subdivision Improvement Agreement.

#### South Phase –

Prior to issuance of any Certificate of Occupancy (C.O.) on Lot 2, Lot 3, Lot 4 or Lot 5, the following Public Improvements shall be completed:

- All improvements to and along Wadsworth Boulevard;
- All improvements to and along W. 35<sup>th</sup> Avenue;
- All improvements to and along Yukon Court and the private extension of Yukon to 35<sup>th</sup> Avenue, including but not limited to drive aisles, sidewalks, landscaping, and the signal installation;
- All improvements for the mid-block east-west drive aisle, including but not limited to drive aisles, sidewalks, and landscaping;
- All drainage facilities; and
- All public improvements within Lot 3 and the perimeter of Lot 4, including but not limited to drive aisles, sidewalks, and landscaping;

With the following exception:

- Installation of landscaping, street trees, and irrigation is not required prior to Certificate of Occupancy if issuance of the C.O. is prior to June 1 of the calendar year. Refer to Section 12 of the Subdivision Improvement Agreement.

(see attached graphics)

Ex. C

**EXHIBIT D**

**Preliminary Cost Estimate**

(see attached)

**EXHIBIT E**

Letter of Credit Template

(see attached)





## MEMORANDUM

**TO:** Urban Renewal Authority Board Members

**FROM:** Steve Art, Executive Director

**RE:** Consent approving the Board Chair to execute two documents pertaining to the development of the Corner at Wheat Ridge. 1) a Declaration of Covenant and Restrictions; and 2) A Concept Plan.

**DATE:** January 24, 2017

---

### **ISSUE:**

With its partial ownership in the development at the southwest corner of Wadsworth Boulevard and West 38<sup>th</sup> Avenue, Renewal Wheat Ridge (RWR) has a signature block on two documents pertaining to the redevelopment project. The Board is asked to provide consent to its Chair to execute a Declaration of Covenants (Declaration) and a Concept Plan (Concept) for the development.

### **PRIOR ACTION:**

None

### **BACKGROUND:**

The Corners at Wheat Ridge consists of approximately 80,000 sq. ft. of retail which includes a 30,000 – 35,000 sq. ft. grocery store user. The grocer will be located mid site along Wadsworth Boulevard. This user is not the Walmart Neighborhood Grocery Store which was contemplated in previous site iterations. The remaining 45,000 – 50,000 of retail will be located along Wadsworth Boulevard and West 38<sup>th</sup> Avenue. The Property will be included as part of this portion of the retail development.

The larger parcel, the 38<sup>th</sup> Avenue address, is being remediated for on-site contamination as detailed above in the background section of this report. The Corners at Wheat Ridge wishes to purchase this site, but lenders are hesitant to provide long-term financing on a parcel under active remediation. WRC has asked if RWR would be willing to sell the lots in two different transactions. Upon RWR receiving a NAD from CDPHE, The Corners at Wheat Ridge will authorize escrow to release the remaining funds.

When this request was granted, RWR became party to City required documents before development could progress forward. These two documents are; 1) a Declaration of Covenant and Restrictions that defines how a drive-through could be developed on the mixed-use parcels, and 2) a Concept Plan describing the proposed character of the project and contemplates the inclusion of drive-through/drive-up uses, such as banks or eating establishments.



**FINANCIAL IMPACT:**

None

**RECOMMENDATIONS:**

Staff recommends the board provide consent for the board chair to sign both documents. At the time of this report, both documents are substantially complete. Upon completion of the final documents, if RWR counsel should deem there are substantial modifications to the attached, the items will be returned to RWR for re-ratification.

**RECOMMENDED MOTION:**

“I move to consent for the Board Chair to sign 1) a Declaration of Covenant and Restrictions, and 2) A Concept Plan pertaining to the Corners at Wheat Ridge project”

**REPORT PREPARED/REVIEWED BY:**

Steve Art – Executive Director

**ATTACHMENTS:**

1. Declaration of Covenant and Restrictions
2. Concept Plan

# ATTACHMENT 1

## DECLARATION OF COVENANT AND RESTRICTION

THIS DECLARATION OF COVENANT AND RESTRICTION (this "Covenant") is made and entered into as of the 24<sup>th</sup> day of January, 2017 by and among the CITY OF WHEAT RIDGE, COLORADO, a home rule municipal corporation (the "City"), the Wheat Ridge Urban Renewal Authority d/b/a Renewal Wheat Ridge, a Colorado urban renewal authority ("RWR"), and the QUADRANT WHEAT RIDGE CORNERS, LLC, a Missouri limited liability company (the "Developer"), together referred to as each a "Party" and collectively the "Parties."

### RECITALS

1. The Developer is the owner of certain real property located in the City of Wheat Ridge, which is more particularly described in **Exhibit A** and made a part hereof (the "Developer Property"). In addition, the Developer is party to that certain Purchase and Sale Agreement dated January 3, 2017, (the "Purchase Agreement") with RWR to purchase from RWR the fee interest in certain real property located in the City of Wheat Ridge, which is more particularly described in **Exhibit B** and made a part hereof (the "RWR Property" and together with the Developer Property, collectively, the "Property").

2. The Parties intend that the conveyance of the RWR Property to Developer shall occur following RWR obtaining a no further action letter from the Colorado Department of Public Health and Environment as more particularly set forth in the Purchase Agreement.

3. The Developer intends to develop the Property as a mixed use development to be known as The Corners at Wheat Ridge (the "Project").

4. On \_\_\_\_\_, the Wheat Ridge Community Development Director approved a Concept Plan for the Project titled The Corners at Wheat Ridge Concept Plan. A copy of the Concept Plan is recorded with the Jefferson County Clerk and Recorder under Reception No. \_\_\_\_\_ (the "Concept Plan") and attached hereto as **Exhibit C**.

5. The Concept Plan describes the proposed character of the Project and contemplates the inclusion of drive-through/drive-up uses, such as banks or eating establishments.

6. Section 26-1111.C of the Wheat Ridge Code of Laws (the "Code") provides for separation requirements between drive-through/drive-up uses, but states that such separation requirements do not apply to any mixed use development under an approved concept plan.

7. Approval of the Concept Plan was contingent upon recordation of this Covenant placing certain restrictions upon the future use of the Property in the event a drive-through/drive-up use is developed.

8. The Parties agree that such restrictions shall take the form of this Covenant, execution and recording of which shall take place simultaneously with recording of the Concept Plan.

NOW, THEREFORE in consideration of the above recitals, which are fully incorporated herein by this reference, the delivery, receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### COVENANT AND RESTRICTION

1. The entirety of the Property is hereby declared to be the "Burdened Property."
2. **Imposition of Restriction.** The Developer and RWR for themselves and their heirs, successors and assigns, hereby covenant and agree that the Burdened Property shall be subject to the following restriction:
  - To the extent that drive-through and/or drive-up uses are developed on the Burdened Property which would otherwise be in conflict with the separation requirements of Section 26-1111.C of the Code, then subsequent development shall fulfill the requirements for "mixed use development" of the Burdened Property as defined in Section 26-1119 of the Code, compliance with which shall be determined at the sole discretion of the Community Development Director.
3. **Burdens Run with Land.** Developer and RWR declare that this Covenant shall pass with and burden each and every tract, lot, and parcel of land within and which is a part of the Burdened Property, and shall apply to and be binding upon the heirs, successors in interest and assigns of the Developer and RWR and any owner hereafter of said tracts, lots and parcels, and shall run with the land at law and in equity. Each person acquiring any interest in the Burdened Property shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance to it, to the provisions of this Covenant, to have agreed to comply with this Covenant and to have waived any right to challenge or contest the provisions hereof except as permitted herein. The benefits and burdens of this Covenant are acknowledged by the Parties as touching and concerning the Developer Property and RWR Property. They shall be perpetual unless released by written instrument executed by the City, acting in its sole but reasonable discretion upon a written request by the Developer or any successor.
4. **Termination.** This Covenant shall terminate upon the earlier of: (a) December 31, 2050 in the event no drive-through or drive-up use is developed on the Burdened Property prior to such date; or (b) the date that the City agrees to release the Covenant as permitted by Paragraph 3 above.
5. **Enforcement.** The benefited party herein shall be the City. The rights, duties and obligations contained in this Covenant may be enforced by the filing of an appropriate action in law or in equity in the District Court for Jefferson County, Colorado whose jurisdiction over this Covenant is hereby acknowledged. Such action and remedies may include, but is not limited to specific performance, mandatory injunction, damages, forfeiture or other relief. In the event of any litigation under this Covenant, the court shall award reasonable attorneys' fees and costs to the prevailing party.
6. **Governing Law.** This Covenant shall be governed and construed in accordance with the laws of the state of Colorado. Venue and jurisdiction for any action arising under this Covenant shall be property and exclusive in the District Court for Jefferson County, Colorado.

7. **Entire Agreement.** This Covenant shall constitute the whole agreement between the Parties on the subjects contained herein, and no additional or different oral representation, promise or agreement shall be binding on the Parties with respect to the subject matter of this Covenant.

8. **No Waiver.** No provision of this Covenant may be waived except by written instrument signed by the Party to be charged with such waiver. Failure of any Party to this Covenant to enforce any provision of this Covenant shall not constitute a waiver of such provision, and no waiver by any Party to this Covenant, or of any provision of this Covenant, shall be constitute a waiver of any other provision or of the same provision.

9. **Recording.** This Covenant shall be recorded simultaneously with the Concept Plan for the Property and shall be filed for record with the Office of the Jefferson County Clerk & Recorder.

IN WITNESS WHEREOF, the Parties have executed this Covenant on the dates set forth below, intending that it be valid and effective from and after the date of such execution and recording.

**CITY OF WHEAT RIDGE, COLORADO**

By: \_\_\_\_\_  
Joyce Jay, Mayor

**ATTEST:**

\_\_\_\_\_  
Janelle Shaver, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gerald Dahl, City Attorney

**WHEAT RIDGE URBAN RENEWAL AUTHORITY**

By: \_\_\_\_\_  
Tim Rogers, Chair

**ATTEST:**

\_\_\_\_\_  
Secretary to the Authority



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY**

LOT 1, LOT 3, LOT 4, AND LOT 5; THE CORNERS FILING NO. 1; COUNTY OF JEFFERSON; STATE OF COLORADO

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE RWR PROPERTY**

LOT 2, THE CORNERS FILING NO. 1, COUNTY OF JEFFERSON, STATE OF  
COLORADO

**EXHIBIT C**

**THE CORNERS AT WHEAT RIDGE CONCEPT PLAN**

[see attached]





# THE CORNERS AT WHEAT RIDGE CONCEPT PLAN

## AN OFFICIAL CONCEPT PLAN IN THE CITY OF WHEAT RIDGE

### A PORTION OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF WHEAT RIDGE, COUNTY OF JEFFERSON, STATE OF COLORADO

#### OPEN SPACE CONCEPTS:

OPEN SPACE WILL BE CONSIDERED FROM AN AGGREGATE PERSPECTIVE FOR THE TOTAL DEVELOPMENT AREA. OPEN SPACE WILL MEET THE MINIMUM REQUIREMENTS FOUND IN THE M.U.C. ZONE DISTRICT. A MINIMUM OF 20% OF THE NET DEVELOPMENT AREA SHALL BE PROVIDED AS OPEN SPACE. TO MEET THESE REQUIREMENTS THE FOLLOWING IS ANTICIPATED: LANDSCAPE MATERIAL AND 75% OF USABLE OPEN SPACE. TO MEET THESE REQUIREMENTS THE FOLLOWING IS ANTICIPATED: THE OVERALL DEVELOPMENT WILL PROVIDE PLAZA SPACE, POCKET PARK WITH ACTIVE, PASSIVE AND COMMUNITY USE, AND LANDSCAPE MATERIAL. THE DEVELOPMENT WILL BE DESIGNED TO PROVIDE OPEN SPACE THROUGHOUT THE DEVELOPMENT. THESE OPEN SPACE FEATURES AND PUBLIC AMENITIES WILL BE ADDRESSED IN THE SUBDIVISION IMPROVEMENT AGREEMENT.

#### DRAINAGE CONSIDERATIONS:

A FINAL DRAINAGE REPORT WILL BE PROVIDED IN CONJUNCTION WITH THE SUBDIVISION APPLICATION. DETENTION AND TREATMENT REQUIREMENTS FOR THE DEVELOPMENT SHALL BE DETERMINED BY THE CITY OF WHEAT RIDGE. THE DEVELOPMENT SHALL BE DESIGNED TO PREVENT EXCESSIVE RUNOFF FROM THE DEVELOPMENT TO CAPTURE, TREAT AND RELEASE THE ON-SITE STORMWATER IN A MANNER THAT WILL NOT ADVERSELY AFFECT THE SURROUNDING AREA.

#### CHARACTER OF DEVELOPMENT:

THE FOCUS OF THIS CONCEPT PLAN APPLICATION IS TO PROVIDE A GENERAL DEVELOPMENT OUTLINE FOR THE DEVELOPMENT OF THE CORNERS AT WHEAT RIDGE. THE DEVELOPMENT WILL BE DESIGNED TO PROVIDE OPEN SPACE THROUGHOUT THE DEVELOPMENT. THIS CONCEPT PLAN IS IN THE INTEREST OF PROVIDING FLEXIBILITY IN FUTURE USE AND DESIGN. REQUIREMENTS OF THE FUTURE DEVELOPMENT RELATED TO ACCESS, DRAINAGE, OPEN SPACE AND ZONING ARE SHOWN TO ESTABLISH THE OVERALL DEVELOPMENT CONCEPTS, LAND USE AND CIRCULATION FRAMEWORK.

SITE PLANS IDENTIFYING THE DEVELOPMENT DETAIL WILL BE IN CONFORMANCE WITH THE CITY'S ESTABLISHED ZONING CRITERIA AND THE CONCEPT PLAN. ARCHITECTURAL ELEMENTS AND DEVELOPMENT OF INDIVIDUAL BUILDINGS ARE NOT REQUIRED TO BE SHOWN AS PART OF THIS CONCEPT PLAN, BUT WILL BE REVIEWED AND APPROVED AS PART OF SUBSEQUENT SITE PLANS.

THE SITES OVERALL VISION IS TO BE A HIGH-QUALITY PEDESTRIAN-FRIENDLY CENTER, PROVIDING RETAIL, RESTAURANT AND COMMERCIAL USES. THE DEVELOPMENT WILL BE DESIGNED TO PROVIDE OPEN SPACE THROUGHOUT THE DEVELOPMENT. THE SITES OVERALL VISION IS TO BE A HIGH-QUALITY PEDESTRIAN-FRIENDLY CENTER, PROVIDING RETAIL, RESTAURANT AND COMMERCIAL USES. THE DEVELOPMENT WILL BE DESIGNED TO PROVIDE OPEN SPACE THROUGHOUT THE DEVELOPMENT.

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#### ACCESS AND CIRCULATION:

FUTURE DEVELOPMENT SHOULD CONNECT TO THE EXISTING STREET NETWORK IN A GRID FASHION WITH INTERNAL SIDEWALKS WILL CONNECT ALL LAND USES ON THE SITE. PRELIMINARY SIDEWALK LOCATIONS ARE SHOWN ON SHEET 3: FINAL PEDESTRIAN CIRCULATION WILL BE REVIEWED WITH SUBSEQUENT SITE PLAN APPLICATIONS.

THE INTERSECTION OF 38TH AVENUE AND YUKON COURT IS PROPOSED TO BE SIGNALIZED. THE PROJECT ANTICIPATES SOUTH ACCESS POINTS FROM PUBLIC STREETS AS SHOWN ON THE PLAN. TWO FULL MOVEMENTS AT YUKON COURT, ONE RIGHT IN RIGHT OUT AT 38TH AVENUE, ONE FULL MOVEMENT AT 38TH AVENUE AND THREE MOVEMENTS AT WADSWORTH BOULEVARD: (NORTH MOVEMENT SINGLE MOVEMENT, CENTRAL 3/4 MOVEMENT WITH SIGNAL, SOUTH MOVEMENT RIGHT IN RIGHT OUT).

AN INTERNAL STREET GRID WILL BE ESTABLISHED BY PUBLIC ACCESS EASEMENTS IN FULFILLMENT OF BLOCK SIZE REQUIREMENTS IN SECTION 26-1106. THIS CONCEPT PLAN ANTICIPATES SHARED USE OF INTERIOR DRIVES, SIDEWALKS, AND PARKING VIA A BLANKET ACCESS EASEMENT TO BE DEDICATED ON THE FINAL PLAN.

#### DEVELOPMENT CRITERIA:

GROSS AREA OF DEVELOPMENT:  
 14.23 ACRES (619,947 S.F.)  
 13.55 ACRES (584,281 S.F.)

MAXIMUM BUILDING AND LANDSCAPE COVERAGE:  
 MAXIMUM BUILDING HEIGHT:  
 BUILDING ORIENTATION:

ALL BUILDING DESIGN SHALL BE IN CONFORMANCE WITH SECTION 26-1106 OF THE CITY OF WHEAT RIDGE ZONING AND DEVELOPMENT CODE.

ALL FENCINGS SHALL BE IN CONFORMANCE WITH SECTION 26-603 OF THE CITY OF WHEAT RIDGE ZONING AND DEVELOPMENT CODE.

ALL SIGNAGE SHALL BE IN CONFORMANCE WITH SECTION 26-1113 AND ARTICLE VII OF THE CITY OF WHEAT RIDGE ZONING AND DEVELOPMENT CODE. MASTER SIGN PLAN MAY BE PROVIDED AS A SUBSEQUENT APPLICATION.

ALL LIGHTING SHALL BE IN CONFORMANCE WITH SECTION 26-403 OF THE CITY OF WHEAT RIDGE ZONING AND DEVELOPMENT CODE.

ALL LANDSCAPE SHALL BE IN CONFORMANCE WITH ARTICLE XI AND SECTION 26-503 OF THE CITY OF WHEAT RIDGE ZONING AND DEVELOPMENT CODE.

ALL DRIVE THROUGH AND DRIVE UP USES WILL BE IN CONFORMANCE WITH SECTION 26-1106.

#### SITE DATA TABLE:

PHASE #	USE	BUILDING DATA
1	RESIDENTIAL	1 BUILDING APPROX. 125,000 S.F. 47'-220 TO 240 UNITS 47'-150,000 S.F. LAND AREA FAR - 0.80
2	RETAIL/COMMERCIAL	2 BUILDINGS APPROX. 40,000 S.F. FAR - 0.26
3	RETAIL/COMMERCIAL	6 BUILDINGS APPROX. 40,000 S.F. FAR - 0.23

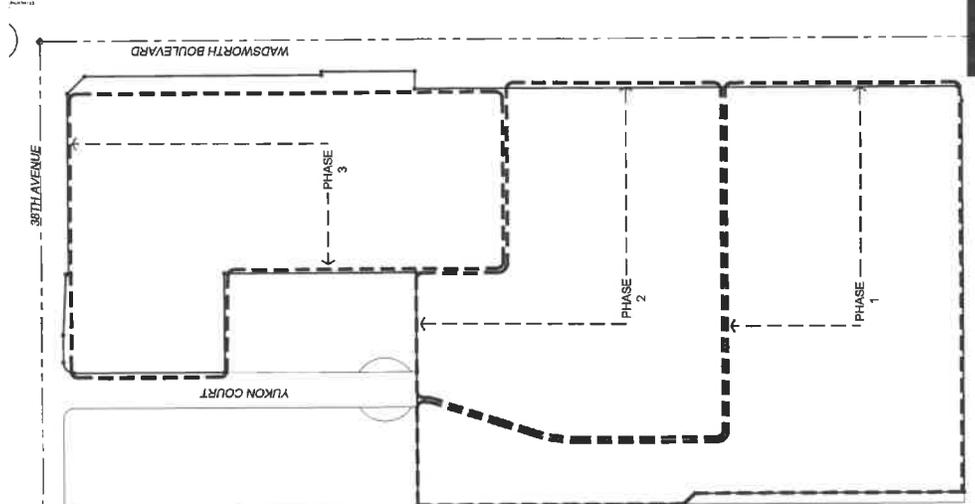
#### BUILD TO REQUIREMENTS:

BUILD TO REQUIREMENTS ARE ANTICIPATED TO BE MET FOR THE DEVELOPMENT AS A WHOLE. THE CURRENT PLAN CONTEMPLATES THE FOLLOWING PORTIONS OF THE BUILD-TO AREA WILL CONTAIN BUILDING FACADES:

38TH AVENUE	377' PROPERTY LINE MINIMUM 30%
YUKON STREET	207' PROPERTY LINE MINIMUM 30%
WADSWORTH BLVD.	1249' PROPERTY LINE MINIMUM 30%
35TH AVENUE	570' PROPERTY LINE MINIMUM 30%

#### POTENTIAL PHASING:

THE DEVELOPMENT OF THE SITE IS ANTICIPATED IN THREE PHASES AS SHOWN IN THE PHASING PLAN. THIS PHASING PLAN IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT REPRESENT A COMMITMENT TO DEVELOP THE PROJECT. THE PRIMARY INFRASTRUCTURE UTILITIES, WATER, SANITARY SEWER AND STORM DRAINAGE, AND ALL SITE ACCESS POINTS AND MAJOR DRIVEWAYS TO SERVE THE PROJECT. EACH PHASE OF DEVELOPMENT WILL REQUIRE SITE PLAN REVIEW WHICH WILL BE PROVIDED BY INDIVIDUAL USERS OR DEVELOPER AND WILL INCLUDE MORE SPECIFIC ARCHITECTURAL AND SITE DESIGN DETAIL.



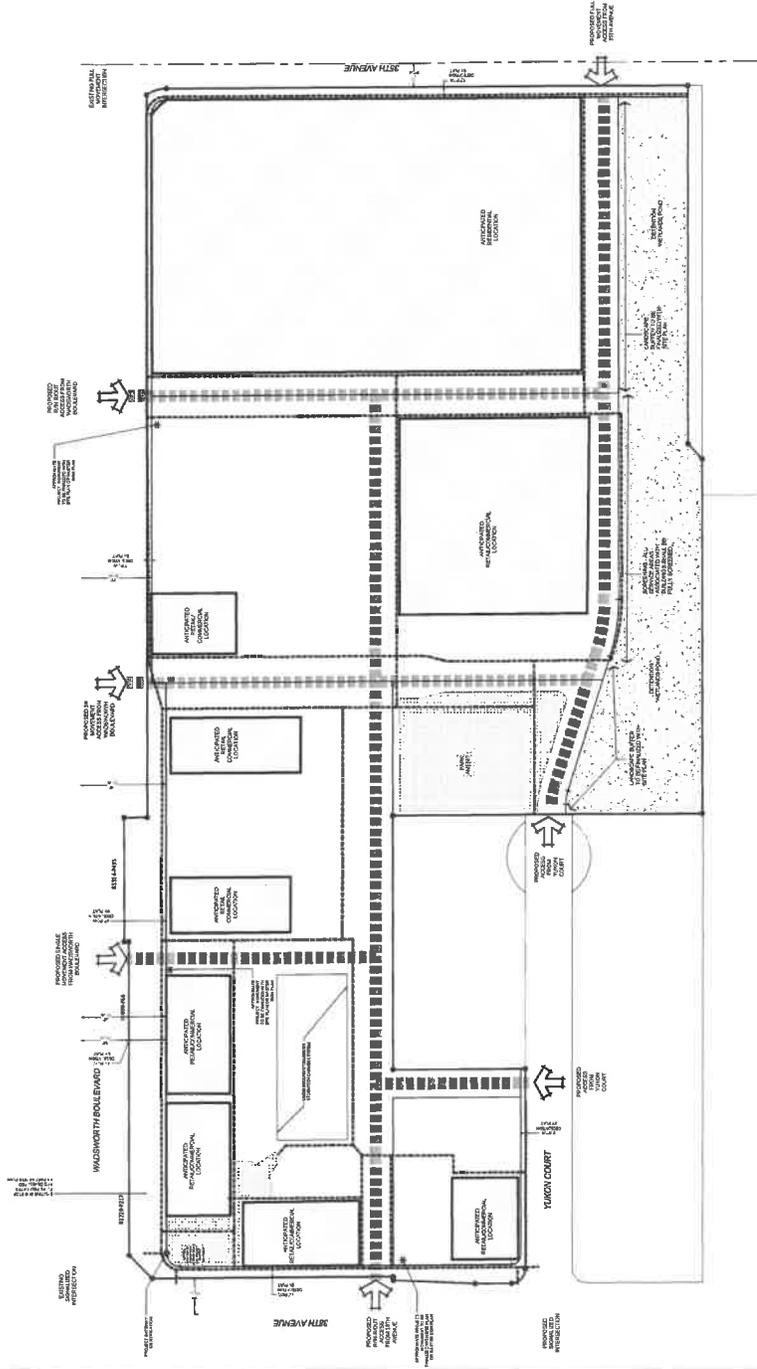
**QUADRANT**

**PHASING PLAN**

SCALE: 1" = 30'

DATE	DESCRIPTION
09/15/14	PRELIMINARY DEVELOPMENT
07/21/15	2ND SUBMITTAL
09/19/16	3RD SUBMITTAL
11/02/16	FINAL

THE CORNERS AT WHEAT RIDGE CONCEPT PLAN  
 AN OFFICIAL CONCEPT PLAN IN THE CITY OF WHEAT RIDGE  
 A PORTION OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 69 WEST  
 OF THE 6TH P.M., CITY OF WHEAT RIDGE, COUNTY OF JEFFERSON, STATE OF COLORADO



- LEGEND**
- PROPERTY LINE
  - ACCESS POINT
  - INTERNAL STREET GRID
  - BUILDING ENVELOPE
  - DEVELOPER METLANDS POND
  - PEDESTRIAN ACTIVITY SPACE
  - PEDESTRIAN CONNECTION
  - TOPOGRAPHY LINE
- TEXTURING STRUCTURES AND PARKING LOT IMPROVEMENTS ARE PROPOSED TO BE SHOWN AND ARE NOT SHOWN IN THIS PLAN



DATE	DESCRIPTION
09.16.14	ORIGINAL PREPARATION
02.15.15	2ND SUBMITTAL
09.19.15	3RD SUBMITTAL
10.14.16	4TH SUBMITTAL
11.02.16	FINAL

CONCEPT PLAN  
 THE  
 CORNERS  
 AT WHEAT RIDGE  
 WHEAT RIDGE, COLORADO

SITE PLAN JOB NO. 1404.032

9460 W KEN CARL AVENUE  
 LITTLETON, CO 80127  
 720-585-8564  
 www.pcllc.com  
 PLANNING | ENGINEERING  
 LANDSCAPE ARCHITECTURE  
 LAND SURVEYING  
**Point Consulting, LLC**

SHEET 3/3





**TO:** Renewal Wheat Ridge Board Members

**FROM/PREPARED BY:** Steve Art, Urban Renewal Manager

**RE:** Conformance to the I-70/Kipling Corridors Urban Renewal Plan regarding Case No. SUP-17-01 and WSP-17-01

**DATE:** January 24, 2017

---

The Wheat Ridge Community Development Department has received a request for approval of a Special Use Permit and a Site Plan at 3805 Kipling Street.

The applicant is requesting to scrape the existing Circle K gas station on the subject property and to redevelop with a new station and convenience store meeting the mixed-use zoning standards.

Circle K is requesting an approval of an Administrative Subdivision and a Concept Plan that will result in the creation of two lots.

The subject property is 1.77 acres in size, and the proposed convenience store will have a gross floor area of 4,351 square feet. The site will be accessible from Kipling Street and W. 38<sup>th</sup> Avenue. The site will also contain a 920 sq. ft. car wash facility and an eight pump fueling canopy

**The I-70/Kipling Corridors Urban Renewal Plan – *Adopted May 2009***

The I-70/Kipling Corridors Urban Renewal Plan references many of the goals and policies including the redevelopment of blighted parcels in the project area. This includes the use of public/private partnerships to stimulate development of under-utilized land in the project area. The plan encourages uses that increase property values, expand commercial activity, and enhance Wheat Ridge's identity. This project meets all those definitions.

Staff and RWR have reviewed the concept plan and special use permit requirements. Staff believes this redevelopment project does not conflict with the I-70/Kipling Corridors Urban Renewal Plan.

**Recommended Findings:**

The requested special use permit and site plan for the project will not hinder the purposes of the I-70/Kipling Corridors Urban Renewal Plan and are consistent with the findings it that plan. Based on these issues, staff recommends the Board approve the recommendation stating the special use permit and site plan for SUP-17-01 and WSP-17-01 does not conflict with the Plan.

**Recommended Motion:**



1. "I move to direct staff to report to the Community Development Department that Case No. SUP-17-01 and WSP-17-01 does not conflict with the I-70/Kipling Corridors Urban Renewal Plan."

Or

2. "I move to direct staff to report to the Community Development Department that the case does conflict with the I-70/Kipling Corridors Urban Renewal Plan in the following manner..."

**Attachments:**

1. Site Plan
2. Concept Plan
3. Site plans and elevations





**EQUINOX SUBDIVISION FILING NO. 1**  
**A PORTION OF THE SE 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH,**  
**RANGE 69 WEST OF THE 6TH P.M., CITY OF WHEATRIEDE,**  
**COUNTY OF JEFFERSON, STATE OF COLORADO**  
**SHEET 1 OF 2**



**VICINITY MAP**  
**NOT TO SCALE**

**OWNER'S CERTIFICATE:**  
 WE, CIRCLE K STORES INC., AND EQUINOX PROPERTIES, LLC, BEING THE OWNERS OF THE REAL PROPERTY OF 3,051 ACRES DESCRIBED AS FOLLOWS:

PARCEL 1:  
 THAT PART OF THE EAST 1/2 EAST 1/2 SOUTHWEST 1/4 SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THAT PART OF THE EAST 1/2 EAST 1/2 SOUTHWEST 1/4 SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THAT PART OF THE EAST 1/2 EAST 1/2 SOUTHWEST 1/4 SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

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THAT PART OF THE EAST 1/2 EAST 1/2 SOUTHWEST 1/4 SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THAT PART OF THE EAST 1/2 EAST 1/2 SOUTHWEST 1/4 SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THAT PART OF THE EAST 1/2 EAST 1/2 SOUTHWEST 1/4 SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

**GENERAL NOTES:**

1. NOTICE, ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON THIS SURVEY WITHIN TWO YEARS FROM THE DATE OF THE CERTIFICATE SHOWN HEREIN.

2. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY RUBINO SURVEYING TO DETERMINE SURVIVING ELDERS UPON LAND THE SURVIVOR COMPANY, COMPANY NO. 2007090304.

3. THE BASIS OF BEARINGS IS THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 21 ASSUMED TO BEAR 88°25'18" W BETWEEN MONUMENTS FOUND AND DESCRIBED HEREIN.

4. THE LINEAL UNITS SHOWN HEREIN ARE BASED ON THE US SURVEY FOOT.

5. ALL EASEMENTS SHOWN ON THE "EXISTING CONDITIONS" PORTION OF THIS PLAN ARE HEREBY REMOVED, TERMINATED AND EXTINGUISHED BY THIS PLAN.

**SURVEYOR'S CERTIFICATE:**  
 I, RUBINO, DO HEREBY CERTIFY THAT THE SURVEY OF THE BOUNDARY OF THE EQUINOX SUBDIVISION WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, IN ACCORDANCE WITH THE REQUIREMENTS OF THE COLORADO SURVEYING ACT, AS AMENDED, THE ACCOMPANYING PLAN ACCURATELY REPRESENTS SAID SURVEY.

**PLANNING COMMISSION CERTIFICATION:**  
 RECOMMENDED FOR APPROVAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ BY THE \_\_\_\_\_ CHAIRPERSON \_\_\_\_\_

**CITY CERTIFICATION:**  
 APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ BY THE CITY OF WHEATRIEDE \_\_\_\_\_ MAYOR \_\_\_\_\_

**COUNTY CLERK AND RECORDERS CERTIFICATE:**  
 STATE OF COLORADO }  
 COUNTY OF JEFFERSON } SS  
 I HEREBY CERTIFY THAT THIS PLAN WAS FILED IN THE OFFICE OF THE COUNTY CLERK AND RECORDERS OF COUNTY OF JEFFERSON, COLORADO, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D., N \_\_\_\_\_ RECEPTION NO. \_\_\_\_\_

JEFFERSON COUNTY CLERK AND RECORDER  
 BY: \_\_\_\_\_ DEPUTY

Prepared by: Rubino  
 3112 Airport Road  
 Boulder, Colorado 80501  
 (303) 447-8818



CASE HISTORY  
 WC-16-05  
 WC-16-02

DATE OF REVISION: 4/10/17









**Community Development**  
**7500 West 29th Avenue**  
**Wheat Ridge, Colorado 80033**  
**Ph: 303.235.2846 Fax: 303.235.2857**

---

### **Community Development Referral Form**

**Date Mailed:** November 4, 2016

**Response Due:** November 21, 2016

The Wheat Ridge Community Development Department has received a request for approval of a Subdivision and Concept Plan at 3805 Kipling Street.

No response from you will constitute having no objections or concerns regarding this proposal.

**Case No.:** MS-16-05 / Circle K and WCP-16-02/Circle K

**Request:** The applicant is requesting approval of an Administrative Subdivision and a Concept Plan. The subdivision will result in two lots. The Concept Plan is to allow phased development of property.

Please respond to this request in writing regarding your ability to serve the property. Please specify any new infrastructure needed or improvements to existing infrastructure that will be required. Include any easements that will be essential to serve the property as a result of this development. Please detail the requirements for development in respect to your rules and regulations. If you need further clarification, contact the case manager:

**Case Manager:** Lisa Ritchie

**Phone:** 303.235.2852

**Email:** lritchie@ci.wheatridge.co.us

**Fax:** 303.235.2857

**DISTRIBUTION:**

**Westridge Sanitation District**  
**Consolidated Mutual Water District**  
**Colorado Department of Transportation**  
**West Metro Fire District**  
**Wheat Ridge Post Office**  
**Wheat Ridge Police Department**  
**Xcel Energy**  
**Wheat Ridge Economic Development**  
**Comcast Cable**

**Wheat Ridge Economic Development**  
**Comcast Cable**  
**Colorado Department of Transportation**  
**Wheat Ridge Public Works**  
**Wheat Ridge Parks & Recreation Department**  
**Wheat Ridge Forestry Division**  
**Wheat Ridge Building Division**

Vicinity Map





3.5

**TO:** Renewal Wheat Ridge Board Members  
**FROM/PREPARED BY:** Steve Art, Urban Renewal Manager  
**RE:** Public Posting  
**DATE:** January 24, 2017

---

**ISSUE:**

State Statute requires that each municipality annually establish the location for posting public notices, as well as the newspaper in which the notices will be published.

**PRIOR ACTION:**

In previous years, the Wheat Ridge Transcript has been utilized as the City's official newspaper for publications; official posting location has been the City Hall Lobby.

**FINANCIAL IMPACT:**

None

**BACKGROUND:**

None

**RECOMMENDATIONS:**

It is recommended that Renewal Wheat Ridge continue to use the same newspaper and posting location as in previous years.

**RECOMMENDED MOTION:**

"I move to approve Resolution No. 03-2017, a resolution designating the City Hall Lobby as the official public notice location and Wheat Ridge Transcript as the official newspaper of general circulation for the City of Wheat Ridge, Colorado.

Or,

"I move to postpone indefinitely Resolution No. 03-2017, for the following reason(s)

\_\_\_\_\_."

**REPORT PREPARED/REVIEWED BY:**

**ATTACHMENTS:**

1. Resolution No. 03-2017

20.0

# ATTACHMENT 1

## WHEAT RIDGE URBAN RENEWAL AUTHORITY RESOLUTION NO.03-2017

**TITLE: A RESOLUTION DESIGNATING THE CITY HALL LOBBY AS THE OFFICIAL PUBLIC NOTICE LOCATION AND THE WHEAT RIDGE TRANSCRIPT AS THE OFFICIAL NEWSPAPER OF GENERAL CIRCULATION FOR THE WHEAT RIDGE URBAN RENEWAL AUTHORITY**

**WHEREAS**, the Colorado Revised Statutes require municipalities to designate official public notice and publication locations for legal notices; and

**WHEREAS**, such locations must be approved by the governing body of the municipality annually; and

**WHEREAS**, Wheat Ridge Urban Renewal Authority dba Renewal Wheat Ridge approves the locations denoted in the title of this resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Wheat Ridge Urban Renewal Authority, that:

Section 1. Public notice of public meetings of Renewal Wheat Ridge for which public notice is required, shall be posted on the first floor at the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado, which location shall be deemed the official posting location for the City.

Section 2. Except as otherwise permitted by Sections 5.2 and 5.12 of the Charter, notices and other information required to be published in a newspaper of general circulation within the City, shall be made in the Wheat Ridge Transcript; except that, where circumstance makes publication ineffective or otherwise undesirable, the City may publish official notice on the City's website.

Section 3. This resolution shall be effective upon adoption.

**DONE AND RESOLVED** this 24<sup>th</sup> day of January 2017.

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Tim Rogers, Chair

ATTEST:

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Steve Art – Manager

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Corey Hoffmann – Legal Counsel

