

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, January 23, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (January 9, 2012)
- 3. Purpose of Special WEDA Meeting is to**
 - A. Authorize an Amended Loan Agreement with Gateway Plaza, LLC re 7305 Lowell Blvd
 - B. Authorize a Phase 2 Contract Amendment with Smith Environmental for the Westminster Mall Demolition
 - C. Authorize the Acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, Jefferson County, Colorado
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JANUARY 9, 2012, AT 8:10 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Atchison, to approve the minutes of the meeting of December 19, 2011, as written. The motion carried unanimously.

WESTMINSTER CENTER URBAN REINVESTMENT PROJECT SECURITY CONTRACT

It was moved by Board Member Major, seconded by Board Member Lindsey, based on the recommendation of the Executive Director, to find that the public interest would best be served by authorizing the Executive Director to enter into agreement with Advantage Security to obtain security services for the Westminster Mall property. The motion carried with all members voting affirmatively.

ADJOURNMENT

Mr. McCullough announced that the Board would convene in executive session to discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Urban Reinvestment Project pursuant to C.R.S. §24-6-402 (4)(a) and (e); to discuss strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and provide instructions to the Authority's negotiators as authorized by C.R.S. §24-6-402 (4)(a) and (e); and to consult with the Authority's legal counsel concerning the *Sears* litigation pursuant to C.R.S. §24-6-402(4)(b) and (e) and Westminster Municipal Code Section 1-11-3 (C)(3).

The Board departed from the Council Chambers and went to the Board Room at 8:13 P.M.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 23, 2012



SUBJECT: Amended Loan Agreement with Gateway Plaza, LLC pertaining to 7305 Lowell Boulevard

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Authorize the Executive Director to execute an amended loan agreement with Gateway Plaza, LLC, a subsidiary of the Community Resources and Housing Development Corporation, relative to a loan provided by the Westminster Economic Development Authority for the construction and acquisition of the commercial building at 7305 Lowell Boulevard.

Summary Statement

- In 2001, the Westminster Economic Development Authority (WEDA) entered into agreements with Community Builders, Inc. that provided for the construction of a commercial building on the northwest corner of 73rd Avenue and Lowell Boulevard.
- The Community Resources and Housing Development Corporation (CRHDC), formerly the Colorado Rural Housing Development Corporation, a non-profit housing agency, agreed to purchase the building from the Developer for the purpose relocating their corporate offices.
- To assist in making the development financially viable, WEDA approved a bridge loan to CRHDC in the amount of \$334,000 to be applied towards construction and acquisition of the building.
- Under the original terms of the loan, CRHDC was to fully repay the loan within 3-years using proceeds from their annual Equity Capital Campaign and 20% of any annual surplus cash flow. The interest rate was set between 2% and 4% dependant upon the remaining balance.
- Due to the downturn in the economy, banks have been reluctant to donate proceeds to the Equity Capital Campaign, and CRHDC has produced limited surplus cash flow, thereby collectively affecting their ability to repay the loan under the original terms and conditions, leading to repayment of about \$1,000 per month.
- CRHDC is requesting consideration to amend the repayment schedule to better match their cash flows and provide more time to raise money for full repayment.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should WEDA amend the loan agreement with CRHDC thereby extending the repayment period by five more years knowing that the borrower's cash flow and capital fundraising abilities have been impacted by the economic downturn, thereby affecting their ability to make full repayment within the timeline stipulated in the current loan agreement?

Alternative

The Board may choose to not amend the loan agreement and require full repayment as provided for in the original loan agreement. Staff recommends that this alternative not be pursued as CRHDC does not have the funds to fully pay the loan. WEDA's recourse could then be to foreclose on the property and possibly look towards negotiating with the primary lender to take over ownership or force a sale of the building. Under this scenario, the likelihood of WEDA recapturing the loan amount through a sale in the short term is unlikely given the current market conditions and the building's corresponding value.

Background Information

In May 2001, the City issued a request-for-proposal (RFP) seeking a developer to work with the City in redeveloping property along Lowell Boulevard and Meade Street in the vicinity of 73rd Avenue. On November 15, 2004 the City entered into a final development agreement for the second phase of development that included the proposed construction of a 12,000 square foot, two-story commercial building on the northwest corner of 73rd Avenue and Lowell Boulevard to be sold to the American Real Estate College. Several months after approval of the development agreement and prior to construction, the real estate college withdrew its intent to purchase the building, requiring the developer to seek an alternative buyer that would allow him to proceed with the project.

The Community Resources and Housing Development Corporation (CRHDC), formerly known as Colorado Rural Housing Development Corporation, needing to find suitably sized space for their expanding non-profit operations, opened a dialogue with the developer relative to buying the building. CRHDC is a non-profit group that provides assistance to low and moderate income households to become homeowners. Their services range from providing down-payment loans and grants, to homebuyer counseling, to development, construction, and rehabilitation of affordable housing. CRHDC has a long established presence in the neighborhood and City, and provides a "one-stop" shop for homebuyers.

Given the negatively perceived character of the neighborhood and low rents commanded within the market area, the appraisal on the completed project was about \$180,000 below the construction cost. The developer agreed to sell the building to CRHDC at the appraised value that basically allowed the developer to recoup construction costs and cover overhead, but not any additional profit. Based on the appraisal the primary lender agreed to loan CRHDC \$1,336,000 towards the acquisition leaving a gap of \$334,000. As a non-profit, CRHDC did not have sufficient funds to cover the gap. Accordingly, they requested consideration of a loan from WEDA to bridge the financing. WEDA approved the loan on September 18, 2006 given the City's interest in getting a catalyst project built on Lowell and knowing the financial and market challenges relative to getting redevelopment projects built in South Westminster.

The following loan terms and conditions were included in the loan agreement offered to CRHDC.

- The loan would be taken out by Gateway Plaza, LLC, a company created by CRHDC to own and manage the building;
- The loan was for \$334,000;
- The loan was for a 3-year period;
- The interest rate was set at 4% on a balance of \$200,000 or more; 3% on balance of \$100,000 - \$200,000; and, 2% on a balance of \$100,000 or less;

- As an incentive to repay the loan early, the payment of interest was to be forgiven should full repayment be made within the first year and discounted 50% if fully repaid by second year;
- CRHDC was required to make a minimum annual payment from its annual operating account whereby at least 20% of surplus cash flow generated annually would be applied to retiring the debt. This value is in part subject to requirements established by the US Department of Housing and Urban Development (HUD). Many of these Federal funds can only be applied to specific expenses, which interplays with CRHDC's discretionary cash flow opportunities. In addition to the minimum annual payment, all revenue proceeds generated by CRHDC from its equity capital campaign were to be applied to repayment of the loan on a quarterly basis so as to repay the loan at the earliest convenience;
- WEDA was required to secure the loan with a lien on the property in second position to the primary lender. WEDA would be required to consult with bank prior to any foreclosure proceedings related to default on loan;
- There were no penalties on early repayment of loan.

After receiving the loan the economy took a severe downturn affecting the ability of CRHDC to raise funds through its Equity Capital Campaign, whereby banks, being the primary source of funds, were no longer making the expected contributions. Other private and foundation contributions also dried up further impeding their operations budget to the point where CRHDC was unable to produce surplus cash flow. And compounding the cash flow matter, CRHDC has been unable to raise the tenant's rents on the ground floor space in the building given the challenging market conditions. This has all led to CRHDC not being able to fully repay the loan pursuant to the terms and conditions agreed to in the original agreement. CRHDC has been making minimal payments of \$1,000 per month that do not fully cover the principal and interest. In an effort to protect WEDA's financial interest, Staff has been working with CRHDC to restructure the agreement to ensure more timely and consistent repayment that better reflects their short and long term cash flow and fundraising capabilities.

The proposed new terms and conditions are as follows:

- The loan repayment schedule is based on a current balance due of \$355,513;
- The loan is to be amortized over 30 years with principal and interest payments made over 5 years.
- The proposed interest rate is 1.5% for the first year of repayment, 2% for the second year, 2.5% for the third year, and 3% for final two years of repayment.
- This would be an interest and principal loan with a balloon payment of unpaid principal. There would be a balloon payment at the end of the 5th year of \$313,681.

CRHDC has confidence that the economy will continue to rebound sufficiently over the next several years so as to improve the organization's ability to pursue and receive grants and donations. The restructured loan payment will give CRHDC more time to raise the entirety of funds to make the balloon payment in by 2017.

The construction of the building, which was only made possible with CRHDC's acquisition, was instrumental in getting the adjoining Lowell Row townhouses under construction and fully sold, and has raised development interest in the adjacent area. CRHDC's continued presence in the neighborhood has also reaped benefit to the City of Westminster, where approximately \$1.6 million has been invested over the last year buying and rehabilitating dilapidated and foreclosed residential properties for resale as affordable homeownership opportunities. CRHDC intends to continue its commitment to assisting the City in its revitalization and affordable housing endeavors. CRHDC is also working with a prospective affordable housing developer, whereby CRHDC would provide a grant of up to \$2.0 million to facilitate a potential mixed use redevelopment project in the 7200 block of Lowell Boulevard.

SUBJECT: Amended Loan Agreement with CRHDC

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Approval of the Amended Agreement, as proposed, will assist the City in meeting its goal of “Financially Sustainable City Government” by working to ensure all debt obligations due to the City or its affiliated agencies (i.e. Westminster Housing Authority and Westminster Economic Development Authority) are repaid. It also meets the goal of “Vibrant Neighborhoods and Commercial Areas” whereby continued partnerships with CRHDC will lead to continued investment in a revitalization of the South Westminster area.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 23, 2012



SUBJECT: Westminster Mall Demolition – Phase 2 Amendment to contract with Smith Environmental

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended Board Action

Authorize the Executive Director to execute a contract amendment with Smith Environmental in the amount of \$21,934 for the Westminster Mall Demolition – Phase 2 Project bringing its total contract amount to \$71,934.

Summary Statement

- Over the past few years, the Westminster Economic Development Authority (WEDA) has acquired approximately 90% of the land area of the Westminster Mall, and Staff believes that it is in the City's best interest to remove a majority of the structures in preparation for the eventual redevelopment of the property. The subject contract amendment is for the removal of the Dillard's building, the Wards building and all of the remaining mall, with the exception of the Sears, Sear's Automotive, J.C. Penney, Olive Garden, Brunswick Bowl, U.S. Bank and the dentist's office buildings.
- During the demolition work some unforeseen asbestos was encountered that was hidden behind drywall. It is also necessary to walk the concrete slabs of the demolition area prior to the removal of the foundations to assure that no asbestos material gets into the soil that will remain. The removal of this asbestos requires additional abatement work and monitoring by Smith Environmental. In addition, Smith Environmental will prepare an environmental report for other buildings on the mall property as part of this change order.
- Smith's current contract amount is \$50,000 and this proposed amendment would make their contract amount exceed the authorization limits in the City's Administrative Memorandum 02-09, which requires Council or WEDA approval for contracts over \$50,000.

Expenditure Required: \$71,934

Source of Funds: WEDA - Westminster Center Urban Reinvestment Project CIP

Policy Issue

Should WEDA approve this contract amendment with Smith Environmental?

Alternative

WEDA could choose to not approve this contract amendment; however, this would stop the current demolition efforts. Asbestos abatement and monitoring is a State regulated issue and has to be completed before demolition can proceed. Given the relatively small amendment amount, staff recommends the approval of this contract amendment.

Background Information

Over the past few years, the Authority has purchased many properties at the Mall making WEDA the owner of approximately 90% of the site. Staff is recommending demolition of portions of the mall in a timely manner because of security costs, utility costs and the desire to show activity in the redevelopment of the property. The first phase of this effort was the demolition of the Mervyn's, Macy's, Steak and Ale and the theater buildings. The second phase of demolition includes the Dillard's, Montgomery Ward's and the main mall corridor buildings, essentially all structures within the main mall structure with the exception of the Sears and J.C. Penney stores. Accommodations for fire protection, electrical, gas, water service, sanitary sewer service and parking lot lighting will be made to maintain all of these services to Sears and J.C. Penney so the stores can continue to operate once the mall demolition is completed.

During the current mall demolition phase, some unforeseen asbestos was uncovered during demolition. Abatement of this asbestos is required as well as the monitoring of this abatement. In addition, staff is requiring a walkthrough of all the floor slabs once all of the vertical elements are removed and prior to removing the foundations. The purpose of this inspection is to make sure that none of the vermiculite that is installed in the outer concrete masonry unit (CMU) walls of the mall for insulation is mixed with the soil that will remain on site. This vermiculite contains trace amounts of asbestos and this extra effort will allow Smith Environmental to certify in their final post demolition report that the entire property is environmentally "clean."

Smith Environmental has been doing all of the asbestos removal air quality monitoring for this project and this extra abatement and inspection requires an amendment to the company's current contract to monitor this additional work. Smith will also do an asbestos abatement report for other buildings on the mall property. The study of these other buildings was not included in the original asbestos abatement report for the scope of demolition currently under contract with American Demolition, LLC.

WEDA Board action on this item meets elements of two goals in the City's Strategic Plan: Strong Balanced Local Economy, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 C

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 23, 2012



SUBJECT: Acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, County of Jefferson, State of Colorado

Prepared By: Susan Grafton, Economic Development Director
Steve Smithers, Deputy City Manager
Marty McCullough, City Attorney

Recommended Board Action

Authorize the Executive Director to: (1) enter into a purchase and sale agreement for the acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, County of Jefferson, State of Colorado, in substantially the same form as attached and containing such other terms as may be approved by the Executive Director and the Authority Attorney, to the extent such terms do not effect the purchase price for this property; (2) enter into a loan agreement for the financing of this acquisition on commercially acceptable terms and conditions deemed acceptable to the Executive Director, the Finance Director and the City Attorney; and (3) enter into such other agreements and make such related court filings as may be approved by the Executive Director and the Authority Attorney to formally settle and dismiss the litigation related to this property.

Summary Statement

- The property is owned by Sears Development Company and contains the Sears Department Store.
- Sears has agreed to sell the property to the Westminster Economic Development Authority (WEDA) under threat of condemnation for \$4.2 million.
- The acquisition of this property is one of the last pieces of property assemblage needed for the Authority to move forward with an agreement for the redevelopment of the former Westminster Mall site.
- WEDA has available the necessary funds to make interest payments on the loan proposed to finance this acquisition. It is anticipated that the takedown of this loan will be addressed in the redevelopment agreement.

Expenditure Required: \$4.2 million plus interest and closing costs

Source of Funds: WEDA Loan

Policy Issue

Should WEDA proceed with the purchase of the above referenced parcel?

Alternative

Do not approve this acquisition at this price and/or delay the acquisition. This alternative is not recommended because (1) it would unnecessarily risk the Authority's ability to secure a redevelopment agreement for the Westminster Center Urban Reinvestment Project (WURP), (2), the price is significantly lower than the Seller's appraisal for this property, and (3) the terms of this acquisition includes the settlement of the pending litigation between Sears and WEDA concerning the WURP project.

Background Information

The acquisition of the above referenced parcel by WEDA completes the property assemblage necessary to move forward with negotiations related to the redevelopment of the WURP site. Sears desires to sell the property immediately. They have, however requested a 120 day "wind down period" to allow for closure of the department store and auto center. Closings on the loan and the purchase and sale agreement are expected to occur in the third or fourth week in February, depending on how much time it may take for the loan and other documents to be prepared and reviewed by the bank and the parties. Thus it is anticipated that the property should be vacated by the middle of July, 2012.

In addition to the purchase price, WEDA will also cover a portion of the closing costs. To cover the cost of acquisition, WEDA will borrow \$4.2 million using a portion of the WURP site for collateral. It is anticipated that the takedown of this loan will be addressed in the redevelopment agreement.

WEDA Board action on this item supports the following Strategic Plan Goals: Financially Sustainable City Government Providing Exceptional Services, Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment – Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

between

**SEARS DEVELOPMENT CO.,
a Delaware corporation**

as Seller,

and

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY,
an urban renewal authority of the State of Colorado**

as Purchaser

_____, 2012

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PURCHASE AND SALE AGREEMENT

(Westminster, CO – Sears #1001)

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of _____, 2012 (the “Effective Date”), by and between SEARS DEVELOPMENT CO., a Delaware corporation (“Seller”), and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado (“Purchaser”).

Recitals

This Agreement is made with respect to the following facts:

A. Seller owns the following described property (the “Property”):

(1) The land described in **Exhibit A** attached hereto which consists of approximately 7.974 acres more or less (the “Land”);

(2) All improvements in, upon and under the Land, including all fixtures therein (such improvements and fixtures owned by Seller are hereinafter collectively referred to as the “Improvements”); the Land and the Improvements are located at 5501 West 88th Ave, Westminster, Colorado, and are commonly known as the Sears Store at the Westminster Mall; and

(3) All rights and interests owned or acquired by Seller which are appurtenant to the Land, including, without limitation, all rights and interests owned or acquired by Seller (if any) in and to any rights-of-way, easements, improvements, structures and other property rights, if any, which are appurtenant to the Land, including but not limited to, the Reciprocal Construction, Operation and Easement dated February 13, 1986 recorded at Reception No. 86016389 of the Official Records of Jefferson County, Colorado (the “REA”).

B. The Property is part of the Westminster Mall, in Westminster, Colorado (the “Westminster Mall”).

C. Purchaser is an urban renewal authority under the laws of the State of Colorado that has the power of condemnation and is trying to acquire all of the Westminster Mall so that it may begin redevelopment of the area.

D. Purchaser threatened to condemn the Property.

E. In *Sears Development Co., et al. v. City of Westminster, et al.*, Jefferson County District Court Case No. 2011CV3569, Seller sued Purchaser, asserting various claims, including claims that Seller had violated the terms of the REA (“Seller’s Suit”).

F. Seller and Purchaser have agreed that all proceedings in Seller's Suit shall be stayed upon the Effective Date and that Seller's Suit shall be dismissed with prejudice upon Closing.

G. Seller currently operates a Sears department store on the Property (the "Sears Store").

H. For up to 120 days after the Closing Date (as that term is defined below), Seller will continue to operate the Sears Store as it winds-down its business (the "Wind-down Period").

I. Purchaser will permit Seller to operate the Sears Store during the Wind-down Period pursuant to a license agreement in substantially the form attached hereto as **Exhibit B** (the "Wind-down License").

J. One of Seller's affiliated companies, Sears, Roebuck and Co. ("Tenant"), leases an auto center at Westminster Mall (the "Auto Center"), pursuant to a lease dated February 25, 2002 by and between Westminster Mall Company, as landlord, and Tenant (the "Auto Center Lease").

K. As of the Effective Date, Seller has assumed the responsibilities of the landlord under the Auto Center Lease.

L. Section 19 of the Auto Center Lease specifies that in the event of condemnation, the Auto Center Lease terminates.

M. The Auto Center Lease will be reinstated and amended to permit Tenant to continue to occupy the Property and wind-down its business during the Wind-down Period. Such amendment shall take the form of the lease amendment attached hereto as **Exhibit C** (the "Lease Amendment").

N. The sale contemplated in this Agreement is in lieu of condemnation by Purchaser.

O. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, on the terms and conditions hereinafter set forth.

Agreement

In consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The above stated recitals are hereby incorporated and made a part of this Agreement.

2. **Purchase and Sale.** Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, assign and convey the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller.

3. **Purchase Price.** The total purchase price (the “Purchase Price”) for the Property shall be \$4,200,000, and shall be paid by Purchaser to Seller in immediately available funds at Closing, subject to the prorations and adjustments provided for herein.

4. **Purchaser’s Investigations.**

4.1 **Title Commitment.** Purchaser may, at its sole cost and expense, order a current title insurance commitment issued by Heritage Title Company, 8450 E. Crescent Parkway, Suite 410, Greenwood Village, CO 80111 (the “Title Company”), including copies of all recorded exceptions to title referred to therein (collectively, the “Title Commitment”), showing title to the Land as vested or to be vested in Seller and committing to insure title to the Land in Purchaser by issuance of its standard ALTA owner’s policy of title insurance. “Permitted Exceptions” as that term is used herein, shall be those matters reflected in the Title Commitment or revealed by the Survey which are not (i) delinquent taxes or assessments, or (ii) any monetary encumbrance created by, through or under Seller.

4.2 **Survey.** Purchaser may order and provide to Seller and the Title Company a current ALTA survey of the Land (the “Survey”), sufficient to secure the deletion of the standard preprinted “survey” exceptions contained in the Title Commitment. Purchaser may cause the Survey to be certified to and for the benefit of Purchaser. All costs of the Survey shall be borne by Purchaser.

4.3 **Indemnity.** Purchaser agrees to indemnify, defend and hold Seller harmless, to the extent permitted by law, from any claim, demand, liability, lien, cost or expense asserted against Seller or the Property arising out of or resulting from Purchaser’s or its employees’, agents’, representatives’ or contractors’ investigations of the Property prior to Closing and to pay Seller all costs and expenses, including reasonable attorneys’ fees, incurred in defending any such matter; provided, however, that Purchaser shall have no obligation to indemnify Seller with respect to claims arising from Seller’s negligent acts or omissions or any pre-existing condition of the Property. Notwithstanding any other terms and provisions of this Agreement to the contrary, this indemnification obligation of Purchaser will survive any termination of this Agreement.

4.4 **Property Information.** Seller shall allow Purchaser access to, and the opportunity to review, documents in Seller’s possession relating to the Land; provided, nothing herein shall require Seller to allow Purchaser to review any privileged document or information or any other real property, any communications between or among the officers, directors, employees or owners of Seller, or any other document or information reasonably deemed proprietary in nature by Seller.

4.5 **Property Inspection.** Following the Effective Date until the end of the Wind-down Period, Purchaser and its agents and representatives shall have and Seller hereby grants to Purchaser, the right, upon reasonable prior notice to Seller, to enter on the Property for the purposes of taking measurements and performing any studies of the Property, engineering, environmental, surveying or otherwise, as Purchaser shall reasonably determine to be desirable.

4.6 Closing Not Contingent on Purchaser's Investigations. Notwithstanding the foregoing, Purchaser's investigations of the Property shall not result in any additional obligations for Seller (nor any additional rights or remedies for Purchaser), as Closing is not contingent upon Purchaser's satisfaction with its investigations of the Property.

5. **Title.**

5.1 Issuance of Title Policy. At Closing, Seller and Purchaser will cause the Title Company to issue, or unconditionally commit to issue, to Purchaser its standard ALTA owner's policy of title insurance insuring in an amount equal to the Purchase Price that title to the Land is vested in Purchaser, subject only to the Permitted Exceptions (the "Title Policy"). Purchaser will be solely responsible for satisfying any requirements that the Title Company may impose specifically with respect to Purchaser, such as, for example, requirements with respect to Purchaser's authority to complete the transaction. Subject to Seller's approval thereof (acting reasonably), Seller agrees to execute and deliver customary affidavits concerning mechanic's liens arising by, through or under Seller and parties in possession that the Title Company may require in order to delete the standard preprinted exceptions to coverage.

6. **Representations and Warranties.**

6.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing Date, as follows:

6.1.1 Authority. Seller is a corporation duly organized and in good standing under the laws of the State of Delaware. Seller has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite action has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Seller is authorized to do so.

6.1.2 Binding Obligations; Violations. This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Seller is subject or by which Seller is bound, or constitute a breach or default under any agreement or other obligation to which Seller is a party or otherwise bound.

6.1.3 Special Assessments. Seller makes the following disclosure to Purchaser, which disclosure is required in certain circumstances by Colorado law: SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS

SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

No duty of inquiry or investigation on the part of Seller shall be implied by the making of any representation or warranty set forth in this Section 6.1.

6.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as of the Effective Date and as of the Closing Date, as follows:

6.2.1 Authority. Purchaser is a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado. Purchaser has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite action has been taken by Purchaser in connection with the entering into of this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Purchaser is authorized to do so.

6.2.2 Consents; Binding Obligations; Violations. All consents and approvals which may be required in order for Purchaser to enter into this Agreement or consummate the transaction contemplated hereby have been obtained. This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Purchaser is subject or by which Purchaser is bound, or constitute a breach or default under any agreement or other obligation to which Purchaser is a party or otherwise bound.

6.3 Survival. All representations in Sections 6.1 and 6.2 shall survive Closing, provided that any action for the breach of such representations must be commenced within one (1) year after the Closing Date.

7. **Condition of Property.**

7.1 As-is, Where-is. Seller makes no representations or warranties regarding the condition of the Property and Purchaser shall acquire and accept the Property in its then existing condition on an "AS-IS, WHERE IS and WITH ALL FAULTS BASIS."

7.2 No Representations. Purchaser acknowledges and agrees that, except as expressly represented or undertaken by Seller in accordance with the provisions of this Agreement or in any instrument of conveyance signed by Seller and delivered to Purchaser at Closing, NEITHER SELLER NOR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, MANAGER, PARTNER, BROKER, OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE

PROPERTY, INCLUDING, WITHOUT LIMITATION: (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY; (B) THE VALUE OF THE PROPERTY, THE HISTORICAL OR FUTURE INCOME OR PROFITS THAT HAVE BEEN OR MAY BE DERIVED FROM ANY OPERATION OR USE OF THE PROPERTY, OR ANY COSTS, EXPENSES, RISKS OR LIABILITIES ARISING FROM OR ATTRIBUTABLE TO THE PAST OR ANY FUTURE OWNERSHIP, USE, OCCUPANCY OR DEVELOPMENT OF THE PROPERTY; (C) THE COSTS OF OWNING, OPERATING, REPAIRING OR MAINTAINING THE PROPERTY; (D) THE MARKETABILITY OF THE PROPERTY, THE EXISTENCE OR AVAILABILITY OF ANY ENTITLEMENTS OR GOVERNMENTAL APPROVALS WITH RESPECT TO THE PROPERTY OR THE OPERATION THEREOF, OR ANY POTENTIAL TO DEVELOP, SUBDIVIDE, ZONE, CONSTRUCT OR ALTER IMPROVEMENTS ON, OR LEASE OR SELL THE PROPERTY; (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE SUITABILITY OF SOILS AND SOIL CONDITIONS AFFECTING THE PROPERTY FOR PURPOSES OF ANY FUTURE CONSTRUCTION OR DEVELOPMENT; (G) ANY WATER, WATER RIGHTS, WATER CAPACITIES OR WATER YIELD CAPABILITIES RELATING TO THE PROPERTY; OR (H) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY.

7.3 Waiver and Release. Purchaser, for itself and its successors and assigns, releases Seller and Seller's predecessors in interest in and to the Property and their respective agents, employees, officers, directors, managers, members, partners, brokers and representatives from, and waives any and all causes of action or claims against any of such persons for, (a) any and all liability attributable to any physical condition of or at the Property; (b) any and all liability resulting from the failure of the Property to comply with any applicable laws; and (c) any liability, damages or information arising from, connected with or otherwise caused by statements, opinions or information obtained from any of such persons with respect to the Property, including the information and deliveries provided in accordance with Sections 4.1, 4.2 and 4.4 hereof. The foregoing waiver and release does not release Seller from any claims or causes of action arising from Seller's breach of its express warranties and representations set forth in Section 6.1.

7.4 Wind-down Period for Sears Store. At Closing, Seller and Purchaser shall enter into the Wind-down License set forth on **Exhibit B**, pursuant to which Seller shall retain exclusive possession of the Property and continue to operate the Sears Store during the Wind-down Period. As more particularly set forth in the Wind-down License, during the Wind-down Period, Seller shall not be obligated to pay any rent or common area maintenance charges, provided, however, that Sears may be required to pay the portion of any possessory use tax imposed by Jefferson County for the Wind-down Period.

7.5 Wind-down Period for Auto Center. At Closing, Tenant and Purchaser shall enter into the Lease Amendment set forth on **Exhibit C**, pursuant to which Tenant shall retain exclusive possession of the Auto Center and continue to operate the Auto Center during the Wind-down Period. As more particularly set forth in the Lease Amendment, during the Wind-down Period, Tenant shall not be obligated to pay rent, common area maintenance charges, or any other charges under the Auto Center Lease.

7.6 REA. At Closing, Seller shall assign and Purchaser shall assume all rights Seller may have under the REA and Purchaser shall relieve Seller and Tenant of any and all obligations to pay any applicable merchants association fees (or other similar fees) imposed under the REA or other documents governing operation of the Westminster Mall.

7.7 Survival. The provisions of this Section 7 shall survive Closing.

8. **Conditions Precedent**. In addition to any other express conditions set forth in this Agreement, unless waived by the party entitled to the benefit thereof, the obligations of either party to close under this Agreement are subject to satisfaction of the conditions that all representations and warranties of the other party contained in this Agreement are true and correct in all material respects as of Closing and that the other party has performed all material covenants, agreements and obligations required to be performed by it under this Agreement.

9. **Closing**. Purchaser and Seller agree that the closing on the purchase of the Property will be consummated as follows (the "Closing"):

9.1 Closing Date. Closing will occur on February 29, 2012, or such earlier date as may be mutually agreed to by the parties (the "Closing Date"). Closing will take place through an escrow with Title Company on the Closing Date. All deliveries required to be made by the parties must be delivered to Title Company at its offices, by 10:00 a.m. on the Closing Date.

9.2 Closing Documents. Seller and Purchaser will deliver or cause to be delivered to each other at Closing, as appropriate, the following items (all documents will be duly executed and acknowledged where required):

9.2.1 Deed. The special warranty deed executed by Seller in the form attached hereto as **Exhibit D** conveying to Purchaser all of Seller's right, title and interest in and to the Land, subject only to the Permitted Exceptions.

9.2.2 Non-foreign Affidavit. An affidavit of Seller that evidences that it is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended.

9.2.3 Conveyance Information. A Colorado Form DR-1083, in form required by law and signed by Seller, concerning information with respect to a conveyance of a Colorado real property interest.

9.2.4 Transfer Declaration. A real property transfer declaration, in form required by law and signed by Purchaser, concerning the transaction contemplated by this Agreement.

9.2.5 Settlement Statements and Funds. Settlement statements executed by Seller and Purchaser reflecting the Purchase Price and all adjustments and proration to be made thereto pursuant to this Agreement including, without limitation, Section 10 below, together with any amounts, in immediately available funds, required to be paid by either party thereunder.

9.2.6 Affidavits. Such customary mechanic's lien and parties in possession affidavits that the Title Company may require in order to delete the standard preprinted exceptions to coverage.

9.2.7 Wind-down License. Seller and Purchaser shall sign the Wind-down License in the form shown on **Exhibit B** that allows Seller to operate the Sears Store during the Wind-down Period.

9.2.8 Assignment and Assumption Agreement. Seller and Purchaser shall each execute, acknowledge and deliver to Title Company an assignment and assumption agreement in substantially the form of **Exhibit E** attached hereto pursuant to which all right, title and interest of Seller in and to the REA with respect to the Land and Improvements shall be conveyed to and assumed by Purchaser.

9.2.9 Stipulation for Dismissal. Attorneys for Seller and Purchaser shall execute a Stipulation for Dismissal with Prejudice for the dismissal of Seller's Suit to be filed by attorneys for Seller and Purchaser within 3 business days of Closing.

9.2.10 Lease Amendment. Tenant and Purchaser shall sign the Lease Amendment in the form shown on **Exhibit C** that allows Tenant to operate the Auto Center during the Wind-down Period.

9.3 Further Documents. Seller and Purchaser will execute and deliver such other documents and will take such other action at Closing as may be necessary or appropriate to carry out their respective obligations under this Agreement, without further representations or warranties other than those contained herein.

10. **Adjustments and Prorations**. The following adjustments and prorations will be made at Closing and reflected, where appropriate, on the settlement statements described in Section 9.2.5 above:

10.1 Ad Valorem Taxes. All real estate taxes and assessments (if any) attributable to the Property will be prorated at Closing. Seller will pay all such taxes attributable to any period prior to the Closing Date. If the applicable tax rate and assessed valuation for the Property have not been established for the year in which Closing occurs, the proration of real estate property taxes will be based upon the real estate taxes for the preceding year, and such proration shall be final for all purposes.

10.2 Closing Costs. Purchaser will pay: (i) the Title Company's closing or escrow fees; (ii) the costs of any extended coverage or endorsements to the Title Policy; (iii) the Title Company's base premium for the Title Policy; (iii) the cost of recording the closing documents, including, without limitation, the Deed, the state documentary fee and any local transfer, documentary or sales fee; (iv) Purchaser's attorneys' fees; and (v) any other closing costs customarily paid by a purchaser in the City of Westminster, Colorado. Seller will pay (i) Seller's attorneys' fees; (ii) any recording fee required for the removal from record of a monetary lien or encumbrance arising directly from an outstanding payment due from Seller; and (iii) any other closing costs customarily paid by a seller in the City of Westminster, Colorado.

10.3 Appraisal Costs. Purchaser will reimburse Seller for the following actual reasonable costs, all of which were incurred by Seller under threat of condemnation by Purchaser: (i) Seller's appraisal of the Sears Store; and (ii) work performed by Seller's appraiser in evaluating whether to complete a formal appraisal of the Auto Center. The parties acknowledge and agree that the actual reasonable costs of Seller's appraisal for the Sears Store is Nine Thousand and No/100 Dollars (\$9,000.00), and that the actual reasonable costs for work performed by Seller's appraiser in evaluating whether to complete a formal appraisal of the Auto Center is Five Thousand, Four Hundred and No/100 Dollars (\$5,400.00).

10.4 Insurance. Purchaser understands that Seller will cause all property and liability insurance currently being carried by Seller to be canceled at Closing, and Purchaser will be responsible for obtaining new insurance coverage with respect to the Property as of Closing.

10.5 Survival. The parties' obligations under this Section 10, to the extent not fully discharged by or through Closing, will survive Closing and remain fully enforceable thereafter.

11. **Casualty Damage.**

11.1 Notice. In the event that any of the Property should be damaged by any casualty prior to the Closing Date, Seller will promptly give Purchaser written notice of such occurrence.

11.2 No Termination. If the Property should be so damaged, this Agreement will remain in full force and effect and the parties will proceed to close the transaction contemplated hereby without any adjustment to the Purchase Price.

12. **Condemnation.** Seller is conveying the Property to Purchaser pursuant to this Agreement under Purchaser's threat to condemn the Property.

13. **Commissions.**

13.1 Sales Commissions. Seller and Purchaser each hereby represents and warrants to the other that its sole contact with the other or with the Property in connection with the transaction contemplated by this Agreement has been made without the assistance of any broker or other third party. Seller and Purchaser agree to save and hold each other free, clear and harmless from any claim, cost or expense, including reasonable attorneys' fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein.

13.2 Survival. The parties' obligations under this Section 13 will survive Closing or any termination of this Agreement and remain fully enforceable thereafter.

14. **Remedies.**

14.1 Seller's Default. In the event that Seller fails to perform any of the material covenants or agreements contained herein which are to be performed by Seller, which failure is not cured within thirty (30) days after Purchaser's written notice, Purchaser may, at its option, (i) terminate this Agreement by giving written notice of termination to Seller whereupon the Title Company will return the Deposit to Purchaser, and both Purchaser and Seller will be

relieved of any further obligations or liabilities hereunder, except for the Surviving Obligations; or (ii) seek specific performance of this Agreement. Purchaser unconditionally waives any right to recover damages from Seller.

14.2 Purchaser's Default. In the event that Purchaser fails to perform any of the material covenants or agreements contained herein which are to be performed by Purchaser, including, without limitation, any failure to close as required herein, Seller may, at its option, terminate this Agreement by giving written notice of termination to Purchaser and/or seek to enforce this Agreement by any legal or equitable remedy. Without limiting the generality of the foregoing, in any resulting legal action, Seller shall be entitled to recover any actual, special, and/or consequential damages (including, without limitation, any lost profits) suffered by Seller as a result of Purchaser's default.

14.3 Indemnities; Defaults after Closing or Termination. The limitations on the parties' remedies set forth in Sections 14.1 and 14.2 will not be deemed to prohibit either party from (i) seeking indemnification from the other for any matter with respect to which such other party has agreed hereunder to provide indemnification or from seeking damages from such other party in the event it fails or refuses to provide such indemnification; (ii) subject to the express limitations set forth in Section 6.3, seeking damages incurred for the other party's breach of any representation or warranty; (iii) seeking damages or such equitable relief as may be available for the other party's failure to perform after Closing hereunder any obligation hereunder which expressly survives Closing; or (iv) seeking damages or such equitable relief as may be available for the other party's failure to perform after any termination of this Agreement any obligation hereunder which expressly survives such termination.

15. **General Provisions.** The parties further agree as follows:

15.1 Time and Dates. Time is of the essence of this Agreement and Seller's and Purchaser's obligations hereunder. If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date will be automatically extended to the next succeeding weekday that is not a holiday.

15.2 Attorneys' Fees. In the event it becomes necessary for Purchaser or Seller to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party in such suit will be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

15.3 Entire Agreement. No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as set forth herein.

15.4 Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of Colorado.

15.5 Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows; or upon actual receipt if transmitted by telecopier to the telecopy number set forth below:

If to Seller, to:

SEARS DEVELOPMENT CO.
c/o SHC
333 Beverly Rd, Dept. 824RE-BC-130B
Hoffman Estate, IL 60179
Attention: Robyn L. Alexander
Assistant General Counsel – Real Estate
Telecopy: (847)-286-2286
Email: robyn.alexander@searshc.com

With a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Tom Ragonetti, Esq.
Michael Kaplan, Esq.
Telecopy: (303) 825-6525
Email: tjr@ottenjohnson.com
mkaplan@ottenjohnson.com

If to Purchaser, to:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
J. Brent McFall, Executive Director
4800 West 92nd Avenue
Westminster, CO 80031

With a copy to:

Susan Grafton, Director
4800 West 92nd Avenue
Westminster, CO 80031

or to such other address of which, or such other person of whom, any party notifies the other for such purpose in accordance with this Section 15.5.

15.6 Headings. The headings which appear in some of the Sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

15.7 Counterparts and Execution. This Agreement may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties will be deemed an original, but all of which when taken together will constitute one agreement. Facsimiles of executed copies hereof may be delivered by telecopy, email or other electronic means and upon receipt, such facsimile copies will be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of facsimile executed copies hereof that have been delivered by telecopy, email or other electronic means, each party will endeavor to deliver originals to the other party as promptly as possible after execution.

15.8 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing provisions of this Section 15.8, Purchaser shall not assign its interest under this Agreement without the prior written consent of Seller in its sole discretion, except that no consent shall be required in the event of an assignment by Purchaser to any entity which is wholly-owned or controlled by Purchaser.

15.9 Confidentiality and Publicity. The parties agree that, until the expiration of the Wind-down Period, any public statements made on Seller's or Purchaser's behalf concerning the subject matter of this Agreement shall be made pursuant to one or more written press releases (each, a "Press Release"), and that neither party shall make any other public statements concerning the existence or terms of this Agreement, except as may be required by law. Any Press Release issued by either party shall be subject to the prior review and approval of the other party, which approval shall be given or withheld in the sole and absolute discretion of the reviewing party. Each party's right to issue Press Releases shall be limited as follows: (i) prior to Purchaser's Board of Directors' formal action to approve Purchaser's entry into this Agreement, Purchaser and Seller shall each be permitted to issue a single Press Release, on its own behalf, concerning the subject matter of this Agreement; (ii) following Purchaser's Board of Directors' formal action to approve Purchaser's entry into this Agreement, and prior to the Closing, Purchaser and Seller shall each be permitted to issue a single Press Release, on its own behalf, concerning the subject matter of this Agreement; and (iii) following the Closing, and until the expiration of the Wind-down Period, the parties agree to cooperate in preparing any additional Press Releases.

15.10 Exculpation. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no individual member of Seller or Purchaser or any of their respective officers, directors, officials, board members, members' representatives or employees shall be personally liable for any of Seller's or Purchaser's obligations or any undertaking or covenant of Seller or Purchaser contained in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

SEARS DEVELOPMENT CO., a Delaware corporation

By: _____
Name: _____
Title _____

PURCHASER:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority

By: _____
Name: J. Brent McFall
Title: Executive Director

**EXHIBIT A
TO PURCHASE AND SALE AGREEMENT**

LEGAL DESCRIPTION OF THE LAND

[See attached page(s)]

**EXHIBIT B
TO PURCHASE AND SALE AGREEMENT**

WIND-DOWN LICENSE

LICENSE AGREEMENT

(Westminster, Colorado – Sears #1001)

THIS LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2012 (the “**Effective Date**”), by and between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado (“**Licensor**”), and SEARS DEVELOPMENT CO., a Delaware corporation (“**Licensee**”).

Recitals

A. Pursuant to that certain Purchase and Sale Agreement between Licensor and Licensee, dated as of _____, 2012 (the “**Contract**”), Licensee sold to Licensor certain real property and improvements located in the City of Westminster, Colorado, defined in the Contract as the “**Property**,” and as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**License Area**”).

B. The improvements located within the License Area consist of a Sears department store (the “**Sears Store**”).

C. In order to wind-down its business, Licensee desires to retain possession of the License Area, and to continue to operate the Sears Store in the License Area, for a period of 120 days following closing of the transaction contemplated by the Contract (as more particularly described in the Contract, the “**Wind-down Period**”).

D. Licensor desires to grant a license to Licensee for the use of the License Area and the Sears Store as more particularly described below.

E. Licensor and Licensee now desire to enter into this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound, hereby agree as follows:

1. Incorporation of Recitals. The above stated recitals are incorporated and made a part of this Agreement.

2. Grant of License. Licensor hereby grants to Licensee, its successors and assigns, a non-revocable license (the “**License**”) to use the License Area for the Use (as that term is defined below). The License shall be exclusive in nature, except that it shall be subject and subordinate to any prior rights-of-way or easements of record over the License Area as of the Effective Date.

3. Use. The License shall be used by Licensee, its successors and assigns, for the purposes of (a) continuing the current operation of its retail business in the Sears Store; (b) conducting any and all customary retail store closing operations, such as liquidation sales and similar or related activities; and (c) any other legally permissible use which Licensee shall determine to be necessary or required in connection with the wind-down of its business in the Sears Store (collectively, the “Use”).
4. Term. The term of this Agreement will be for the Wind-down Period. Upon the expiration of the Wind-down Period, Licensee shall surrender possession of the License Area to Licensor in its as-is condition.
5. Maintenance; Services. Licensee agrees to be responsible for all costs associated with the Use, and to assume any and all maintenance of the License Area and the Sears Store that Licensee deems necessary in order to conduct its wind-down activities. All such activities within the License Area shall be conducted in accordance with all applicable laws and performed in a good and workmanlike manner. At no cost to Licensee, Licensor will provide snow removal and parking lot lighting for the License Area during the Wind-down Period.
6. Rent. This Agreement constitutes partial consideration for the Contract. During the Wind-down Period, Licensee shall not be required to make any payment of rent, common area maintenance charges, merchants association fees, or any other rental amounts. Notwithstanding the foregoing, Licensee may be required to pay the portion of any possessory use tax imposed by Jefferson County, Colorado for the Wind-down Period.
7. Indemnification. Licensee will indemnify and hold Licensor and its licensees, invitees, contractors, agents and employees harmless from and against any claims, damages, liens, liabilities, costs and expenses incurred by Licensor and proximately caused by Licensee or any of its licensees, invitees, contractors, agents and employees in their use of the License Area. Licensor will indemnify and hold Licensee and its licensees, invitees, contractors, agents and employees harmless from and against any claims, damages, liens, liabilities, costs and expenses incurred by Licensee and proximately caused by Licensor or any of its licensees, invitees, contractors, agents and employees in their use of the License Area.
8. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns. There shall be no third party beneficiaries of the provisions of this Agreement. The terms, conditions, covenants and agreements of this Agreement shall be construed as covenants touching and concerning, running with and appurtenant to the License Area.
9. Notices. Any and all notices, demands, requests and responses thereto permitted or required to be given under this Agreement will be in writing, signed by or on behalf of the party giving such notice, and will be delivered to the other party at the address of such other party set forth below:

If to Licensor:

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY
4800 West 92nd Avenue
Westminster, CO 80031
Attention: J. Brent McFall
Facsimile No.: (____) ____-____

If to Licensee:

SEARS DEVELOPMENT CO.
3333 Beverly Road, Dept. 824RE
Hoffman Estates, IL 60179
Attention: Kal Gibron, VP Real Estate
Facsimile No.: (842) 286-2282

10. Severability. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

11. Miscellaneous. (A) This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein, will be of any force or effect. This Agreement may not be amended or terminated except by an agreement in writing signed by the parties hereto or their respective successors in interest. (B) This Agreement will be construed in accordance with the laws of the State of Colorado. (C) The parties each represent that no real estate agent or broker has any interest in or right to payment pursuant to this Agreement.

12. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one agreement. Executed copies hereof may be delivered by telecopier, email or other electronic means and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands and affixed their seals as of the Effective Date.

LICENSOR:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, an urban renewal authority

By: _____

Name: J. Brent McFall

Title: Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority.

My commission expires:_____.

Notary Public

[Additional Signature Page Follows]

LICENSEE:

SEARS DEVELOPMENT CO., a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of SEARS DEVELOPMENT CO., a Delaware corporation.

My commission expires:_____.

Notary Public

EXHIBIT A
(The License Area)

[See attached pages]

**EXHIBIT C
TO PURCHASE AND SALE AGREEMENT**

LEASE AMENDMENT

AMENDMENT TO LEASE
(Westminster, Colorado – SAC 2716)

THIS AMENDMENT TO LEASE (this “**Amendment**”) is made and entered to be effective as of the ___ day of _____, 2012 (the “**Effective Date**”), by and between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a a body corporate duly organized and existing as an urban renewal authoirty under the laws of the State of Colorado (hereinafter referred to as “**Landlord**”), and SEARS, ROEBUCK AND CO., a New York corporation (hereinafter referred to as “**Tenant**”).

Recitals

F. On or about February 25, 2002, Westminster Mall Company, a Colorado general partnership (“**WMC**”) and Tenant entered into that certain Lease (the “**Lease**”), whereby WMC demised to Tenant certain premises known as the Sears Auto Center (f/k/a Wards Auto Center), located in the Westminster Mall, in Westminster, Colorado (the “**Auto Center**”).

G. Landlord has assumed the rights and obligations of WMC under the Lease.

H. Sears Development Co., a Delaware corporation (“**Sears Development**”), an affiliate of Tenant, is the owner of other property located in the Westminster Mall that is used for the operation of a Sears retail store (the “**Sears Store**”).

I. Landlord is an urban renewal authority under the laws of the State of Colorado that has the power of condemnation and is trying to acquire all of the Westminster Mall, including the Auto Center and the Sears Store, so that it may begin redevelopment of the area.

J. Under threat of Landlord condemning the Sears Store, Sears Development has entered into that certain Purchase and Sale Agreement between Sears Development and Landlord, dated as of _____, 2012, whereby Sears Development will sell the Sears Store to Landlord (the “**Contract**”).

K. The Contract provides for Sears Development and Tenant to have the benefit of a period of 120 days following the closing of the transaction contemplated by the Contract (as more particularly described in the Contract, the “**Wind-down Period**”), during which 120-day period (i) Sears Development may operate and retain possession of the Sears Store in order to wind-down its business operations; and (ii) Tenant may operate and retain possession of the Auto Center in order to wind-down its business operations.

L. Landlord and Tenant desire to amend the Lease in order to provide Tenant with a modified Term of the Lease to account for the Wind-down Period, and to amend certain other matters as more particularly described in this Amendment.

M. Landlord and Tenant have agreed to amend the Lease as more particularly described herein.

Agreement

NOW, THEREFORE, in consideration of the premises, the consideration set forth in the Lease, the promises and covenants of the parties set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Incorporation of Recitals. The above stated recitals are incorporated and made a part of this Agreement.

2. Defined Terms. All capitalized terms used but not defined in this Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Amendment and used in any provisions that are added to the Lease pursuant to this Amendment will have the meanings set forth for such terms in this Amendment.

3. Modified Term. The Term of the Lease is hereby modified to remain in effect until the expiration of the Wind-down Period (the "**Lease Expiration Date**"). Section 3(a) of the Lease is hereby revised and amended accordingly. Landlord and Tenant acknowledge that the Lease shall continue in full force and effect until the Lease Expiration Date.

4. Rent. During the Wind-down Period, through and including the Lease Expiration Date, Tenant shall not be required to make any payment of Rent, operating costs, common area maintenance charges, merchants association fees, or any other rental amounts due under the Lease. Notwithstanding the foregoing, Tenant may be required to pay the portion of any possessory use tax imposed by Jefferson County, Colorado for the Wind-down Period.

5. Ratification. Tenant and Landlord hereby specifically agree that all provisions set forth in the Lease, except as specifically amended by this Amendment, shall remain in full force and effect and are hereby adopted, reinstated, ratified and confirmed by Landlord and Tenant. This Amendment shall not be construed as a waiver of any provision under said Lease.

6. Governing Law. This Amendment shall be governed by the laws of the State of Colorado. The parties hereto expressly consent to jurisdiction over them in the subject matter of this Amendment in the courts of the State of Colorado.

7. Counterparts and Signatures. This Amendment, or the signature pages thereof, may be executed in counterparts, all of which will have full force and effect as an original, including admission into evidence. Facsimile signatures or signatures delivered by e-mail shall be effective to bind each of the parties hereto. However, each such party hereby agrees to provide the other with original signatures on this Amendment at the earliest reasonable time after facsimile signatures or signatures delivered by e-mail have been transmitted.

8. Severability. In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Amendment, the remainder of this Amendment shall be fully enforceable.

9. Integration. This Amendment constitutes the entire agreement of the parties and a complete merger of all prior negotiations and agreements. This Amendment shall not be modified except in writing signed by the parties or their authorized representatives.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment to be effective as of the Effective Date.

LANDLORD:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, an urban renewal authority

By: _____
Name: J. Brent McFall
Title: Executive Director

TENANT:

SEARS, ROEBUCK AND Co., a New York
corporation

By: _____
Name: _____
Title: _____

**EXHIBIT D
TO PURCHASE AND SALE AGREEMENT**

SPECIAL WARRANTY DEED

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (this "Deed") evidences a conveyance by SEARS DEVELOPMENT CO., a Delaware corporation ("Grantor"), whose street address is 3333 Beverly Rd., Dept. 824RE, Hoffman Estates, IL 60179, to WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority ("Grantee"), whose street address is _____, _____.

Grantor, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, hereby sells and conveys to Grantee, the real property in the City of Westminster, County of Jefferson and State of Colorado that is legally described in **Exhibit A** attached hereto and made a part hereof (the "Land"), together with all its appurtenances and any and all improvements located on the Land, and warrants the title to the same against all persons claiming by, through or under Grantor, subject to the below reservations and those matters described in **Exhibit B** attached hereto and made a part hereof.

Signed as of the ____ day of _____, 2012.

GRANTOR:

SEARS DEVELOPMENT CO., a Delaware
corporation

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of SEARS DEVELOPMENT CO., a Delaware corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Exhibit A
To Special Warranty Deed
(Legal Description)

Exhibit B
To Special Warranty Deed
(Exceptions to Title)

Exhibit E

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**") is made and is effective as of the _____, 2012, by and between SEARS DEVELOPMENT CO., a Delaware corporation ("**Assignor**") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("**Assignee**").

WHEREAS, Assignor is the owner of certain real property located in the City of Westminster, County of Jefferson, State of Colorado, as more particular described on Schedule 1 (the "Sears Parcel") and which is part of the shopping center commonly known as the Westminster Mall (the "Center");

WHEREAS, Assignor, as Seller, and Assignee, as Buyer, entered into that certain Purchase and Sale Agreement dated as of _____, 2012 (the "**Purchase Agreement**") with respect to the sale of the Sears Parcel, including a certain building and other property and rights of Assignor; and

WHEREAS, the Sears Parcel is subject to and/or Assignor is a party to those certain agreements listed in attached Schedule 2 as the same may have been modified, amended or supplemented, directly or indirectly, by any agreement that in any manner affects the Sears Parcel or the Center, recorded or unrecorded (collectively, together with any collateral or incidental agreements, the "REA");

WHEREAS, Assignor, in connection with the purchase and sale of the Sears Parcel desires and intends to assign, transfer and convey to Assignee, all of Assignor's rights, title, interests and obligations in, to and under the REA upon the terms hereinafter set forth; and

WHEREAS, Assignee desires and intends to accept the assignment of the REA and to assume Assignor's obligations and liabilities thereunder as and to the extent hereinafter provided.

NOW THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Assignor and Assignee hereby covenant and agree as follows:

1. Effective as of the date hereof, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's rights, title, and interests in, to and under the REA, to have and to hold the same unto Assignee, its successors and assigns, subject to all of the terms, covenants and conditions contained in the REA.
2. Assignee hereby accepts the assignment of the REA from Assignor and hereby assumes and agrees to observe and perform all the obligations, terms, covenants and conditions thereof to be observed or performed by Assignor thereunder from and after the date hereof and hereby assumes all liabilities to the extent arising out of or relating to the REA from and after the date hereof.
3. Assignee acknowledges and agrees that Assignor's rights under the REA have been offered to Assignee on an "as is, where is" basis, and that no oral or written representation of warranties concerning the REA have been made in connection with Assignee's agreement to purchase Assignor's rights under the Purchase Agreement.
4. Assignee hereby agrees to indemnify and hold harmless Assignor from and against any loss, costs, liabilities and damages that arise from any third party holding or attempting to hold Assignor liable for the obligations assumed by Assignee in this Agreement with respect to the Sears Parcel that relate to the period of time from and after the date of this Agreement. Assignor hereby agrees to indemnify and hold harmless Assignee from and against any loss, costs, liabilities and damages that arise from any third party holding or attempting to hold Assignee liable for the obligations of Assignor under the REA with respect to the Sears Parcel that relate to the period of time prior to the date of this Agreement but only during the Assignor's period of ownership of the Sears Parcel.
5. Capitalized terms not defined herein shall have the meanings given to such terms in the Purchase Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.
6. This Agreement shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns.
7. All exhibits attached hereto are incorporated herein by reference.

The rest of this page intentionally left blank.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption Agreement to be executed as of the day and year first above written.

ASSIGNOR:

SEARS DEVELOPMENT CO., a Delaware corporation

By: _____
Name: _____
Title: _____

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority

By: _____
Name: J. Brent McFall
Title: Executive Director