

**AGENDA**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
SPECIAL MEETING**

**MONDAY, AUGUST 10, 2015**

**AT 7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (July 27, 2015)
- 3. Public Hearings and New Business**
  - A. Public Hearing re: Supplemental Appropriation to the 2015 budget
  - B. Resolution No. 164 Authorizing Supplemental Appropriation to 2015 Budget
  - C. J.C. Penney Lease Amendment to Accommodate Road and Infrastructure Construction for the Downtown Westminster Project
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, JULY 27, 2015, AT 9:32 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Bob Briggs, and Board Members Bruce Baker, Maria De Cambra, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were Donald M. Tripp, Executive Director, Hilary Graham, Deputy City Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Vice Chairperson Briggs moved, seconded by Board Member Baker, to approve the minutes of the meeting of April 27, 2015, as written. The motion carried unanimously.

CONTRACT AMENDMENT WITH TORTI GALLAS AND PARTNERS

Board Member Seitz moved, seconded by Vice Chairperson Briggs, based on a recommendation from the Executive Director, to find that the public interest would best be served by authorizing the Executive Director to execute an amendment of \$42,850 to an existing contract of \$32,000 with Torti Gallas and Partners for revisions to renderings and graphics for the Downtown Specific Plan and a three-dimensional video illustration of the plan vision. The motion carried on a 6:1 vote with Board Member Baker voting no.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 9:35 p.m.

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

# WEDA Agenda Item 3 A-B

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
August 10, 2015



**SUBJECT:** Public Hearing and Resolution No. 164 re: Westminster Economic Development Authority Supplemental Appropriation to the 2015 budget

**Prepared By:** Karen Creager, Special Districts Accountant

### Recommended Board Action

1. Hold a Public Hearing on the budget amendment for the Westminster Economic Development Authority.
2. Adopt Resolution No. 164 authorizing a supplemental appropriation to the 2015 Westminster Economic Development Authority budget.

### Summary Statement

- When necessary, City Staff (Staff) prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Typically, supplemental appropriations are prepared on a periodic basis for the Westminster Economic Development Authority (WEDA) to simplify administrative procedures and reduce paper work.
- This supplemental appropriation covers activity for the 1<sup>st</sup> and 2<sup>nd</sup> Quarter 2015.
- 2015 Amendments:
  - North Huron Urban Renewal Area (URA)
    - \$124 Interest earnings
    - \$653,011 Carryover
  - Westminster Center Urban Reinvestment Plan (WURP) Area URA
    - \$680,000 Transfer from City of Westminster (City) Sales Tax Fund
    - \$200,000 Transfer from City General Capital Improvement Fund (GCIF)
    - \$192,592 Rents
    - \$86,655 Carryover
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

**Expenditure Required:** \$1,812,382

**Source of Funds:** Carryover from prior years, interest earnings, transfers and rent revenue

**Policy Issue**

Should the WEDA Board appropriate funds as set forth in the attached Resolution?

**Alternatives**

1. In accordance with the Compass Mortgage Corporation Loan Agreement, use of the loan proceeds is to be applied solely to capital expenditures in the North Huron URA. Interest earnings on the unspent loan proceeds carry the same restriction. Alternatively, the Board could decide to appropriate the interest earnings to a different project in the North Huron URA instead of Orchard Parkway. This alternative is not recommended at this time as this is the best method for tracking the interest earnings to ensure compliance with the loan covenants.
2. The Board could decide not to appropriate carryover in the amount of \$653,011 in the North Huron URA to be transferred to the City to reimburse costs the City incurred for improvements to 128<sup>th</sup> Avenue at I-25. This alternative is not recommended as use of prior year excess revenues to reimburse these costs is an appropriate use of the funds currently available at the Trust and shifts the burden of costs in the URA to the area benefitting from the improvements as contemplated when the intergovernmental cooperation agreement (ICA) between WEDA and the City was approved.
3. The Board could decide not to appropriate the rent revenue, transfers and carryover to the WURP City Participation project. Although the rent revenues and carryover are not restricted in their use, Staff recommends continuing to use the rents from the remaining tenants at the former Mall site as well as carryover from prior year sales tax increment to cover costs associated with providing service to the tenants and the continued redevelopment at that site. Additionally, the transfers received from the City's Sales Tax Fund and General Capital Improvement Fund were authorized by City Council for specific purposes associated with the redevelopment of the site.

**Background Information**

**North Huron URA**

*Carryover*

The North Huron Urban Renewal Plan ("Plan"), approved by the City on January 26, 2004, includes as one of its primary objectives providing an efficient system of streets, roads and other transportation facilities necessary to support urban development within the URA. The Plan provides for WEDA to undertake certain actions that would make the URA more attractive for private investment and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects. In recognition that the City incurs costs for maintenance and other contractual obligations associated with improvements located within the North Huron URA, on December 9, 2013 WEDA and the City entered into an ICA that provides for WEDA to reimburse the City for costs the City incurred related to improvements made within the URA. In accordance with the ICA, Staff has determined that payment to the City for costs incurred for 128<sup>th</sup> Avenue improvements is an allowable use under the loan agreement of excess incremental revenues held in the North Huron Supplemental Reserve Trust account. Therefore, Staff is requesting appropriation of prior year excess revenues to fund the payment to the City of \$653,011.

*Interest Earnings*

The unspent project funds for Orchard Parkway continue to earn interest until spent. Interest earned on project funds for the 1<sup>st</sup> and 2<sup>nd</sup> quarter totals \$124. The loan agreement specifies that the interest earned on the project funds must be spent on projects in the North Huron URA; therefore, the interest earned in the 1<sup>st</sup> and 2<sup>nd</sup> quarter is requested to be appropriated to the Orchard Parkway project to ensure proper tracking for compliance purposes.

**Westminster Center Urban Reinvestment Plan Area URA**

*Carryover*

In 2014, incremental sales tax receipts in the URA were over the established base sales tax receipts by \$86,655. These funds were intentionally not appropriated in 2014 as the plan in the area was not finalized. Therefore at the end of 2014, these incremental revenues were part of the WURP URA's ending fund balance. Staff is requesting that the prior years' revenue be appropriated as carryover to the WURP City Participation project.

*Rental income*

Although only a few tenants continue to operate at the Mall site during the redevelopment, monthly rents are received from those tenants. There are unappropriated rents totaling \$192,592 received in 2015. Therefore, Staff is requesting that the rents be appropriated to the WURP City Participation project to continue to provide services for the tenants and the redevelopment efforts.

*Transfers*

The City and WEDA continue to work cooperatively to redevelop the former Westminster Mall site. As one of City Council's highest Strategic Plan priorities, funding was provided in the GCIF 2015 budget for ongoing WURP activities and obligations that are the responsibility of WEDA. Per historical practice, clear reporting and financial tracking, City Staff proposed to transfer this \$200,000 from the City's GCIF to WEDA. This funding provides for a 0.5 FTE for administrative support and a .5 FTE temporary maintenance worker position for upkeep of the WURP site. Additionally, these funds will address planning, architectural services, other consulting contracts and administrative costs related to the WURP Project. The transfer of \$200,000 was approved by City Council on second reading on June 8, 2015. The action included in this supplemental appropriation is to appropriate the funds to the WURP City Participation project as intended when the funds were transferred.

On July 27, 2015, City Council approved on first reading a transfer of \$680,000 to the WURP City Participation project in the WEDA Fund from 2014 carryover funds in the City's Sales Tax Fund. These funds are intended to fund the acquisition (including closing costs) of the JC Penny leasehold interest in land needed to build Westminster Boulevard. As the land and associated lease are held by WEDA, it is appropriate that these funds be appropriated directly into WEDA for use in this manner. The appropriation of these funds to the WURP City Participation project is being requested in anticipation of City Council approving the appropriation of these funds on the City side on second reading at the City Council meeting held prior to this WEDA meeting.

The amendments listed in the attached resolution will bring WEDA's accounting records up-to-date to reflect the various detailed transactions.

The action requested in this agenda memorandum relates to City Council's Strategic Plan goals of Dynamic, Diverse Economy and Financially Sustainable Government Providing Excellence in City Services. These goals are met by ensuring revenues are appropriated to expenditure accounts so the funds can be utilized as intended including continued improvements in the North I-25 development area and the redevelopment efforts at the Downtown Westminster site.

Respectfully submitted,

Donald M. Tripp  
Executive Director

Attachment: WEDA Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **164**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2015

**2015 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2015 budget on October 13, 2014; and

WHEREAS, proper notice for this amendment was published on August 6, 2015, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on August 10, 2015, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2015 budget; and

WHEREAS, the revenue adjustment consists of an increase of \$1,812,382; and

WHEREAS, the expense adjustment consists of an increase of \$1,812,382.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

Section 1. The \$1,812,382 increase shall be allocated to WEDA Revenue and Expenditure accounts as described below:

REVENUES

| Description              | Account Number  | Current Budget | Amendment          | Revised Budget |
|--------------------------|-----------------|----------------|--------------------|----------------|
| Carryover – No Huron     | 6800.40020.0183 | \$(740,334)    | \$653,011          | \$(87,323)     |
| Interest                 | 6800.42520.0183 | 0              | 124                | 124            |
| Rents                    | 6800.40900.0191 | 0              | 192,592            | 192,592        |
| Carryover - WURP         | 6800.40020.0191 | 0              | 86,655             | 86,655         |
| Transfers Sales Tax      | 6800.45000.0530 | 0              | 680,000            | 680,000        |
| Transfers GCIF           | 6800.45000.0750 | 0              | <u>200,000</u>     | 200,000        |
| Total Change to Revenues |                 |                | <u>\$1,812,382</u> |                |

EXPENDITURES

| Description                                | Account Number         | Current Budget | Amendment          | Revised Budget |
|--|------------------------|----------------|--------------------|----------------|
| Appropriation Holding - City Participation | 80968005952.80400.8888 | \$1,130,607    | \$1,159,247        | \$2,289,854    |
| Transfers General Fund                     | 68010900.79800.0100    | 0              | 653,011            | 653,011        |
| Appropriation Holding-Orchard Pkwy         | 81268030997.80400.8888 | 147,597        | <u>124</u>         | 147,721        |
| Total Change to Expenses                   |                        |                | <u>\$1,812,382</u> |                |

Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 10th day of August, 2015.

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

## WEDA Agenda Item 3 C

### Agenda Memorandum

Westminster Economic Development Authority Meeting  
August 10, 2015



**SUBJECT:** J.C. Penney Lease Amendment to Accommodate Road and Infrastructure Construction for the Downtown Westminster Project

**Prepared By:** Jody Andrews, Deputy Executive Director

### Recommended Board Action

Authorize the Executive Director to execute a Lease Amendment Agreement with J.C. Penney, in substantially the same form as attached, to accommodate road and infrastructure construction for the Downtown Westminster project, including authorization for funding the lease surrender payment in an amount not to exceed \$680,000.

### Summary Statement

- The Authority, as successor in interest to the Westminster Mall Company, and J.C. Penney (JCP) are parties to a lease dated February 13, 1986 (the "Lease").
- The current Lease runs through February 28, 2021, with four renewal options to extend the Lease through February, 2040.
- The acquisition of public right of way from JCP is needed in order to accommodate the extension of Westminster Boulevard from 92nd Avenue to 88th Avenue and the installation of related utilities for the Downtown Westminster project.
- The proposed Lease Amendment Agreement releases the area needed for the road and infrastructure improvements from the current lease in exchange for a surrender payment of \$671,087.91.
- The Lease Amendment also provides JCP with temporary, substitute parking until such time as structured parking is constructed for the project.
- Adequate funds are available in the Westminster Center Urban Reinvestment Project (WURP) account for this expense.

**Expenditure Required:** \$ 680,000

**Source of Funds:** Westminster Economic Development Authority Capital Improvement Project - WURP City Participation Account



**Policy Issue**

Should the Authority authorize the Executive Director to execute a lease Amendment Agreement with JCP for the construction of Westminster Boulevard and other improvements related to the Downtown Westminster project?

**Alternatives**

- The Authority could opt not to authorize this amendment. This alternative is not recommended as it would require an eminent domain action to acquire JCP's interest in the right of way area.
- The Authority could direct Staff to negotiate different terms for the acquisition. This alternative is not recommended as it would delay the construction of the Downtown infrastructure and further negotiations would not likely result in a more favorable agreement with JCP.

**Background Information**

The Westminster Center Urban Reinvestment Project (Downtown Westminster Project) was approved in April 2009. Since that time, the Authority and the City have been working on implementing the Project and have made significant investments in the site. The Downtown Westminster Specific Plan was adopted in November 2014. The Authority now owns the property necessary to implement the Project and has awarded a contract to Hammerlund Construction to install Phase 1 roads and related infrastructure. However, JCP has a leasehold interest in part of the site that conflicts with the road and related infrastructure improvements for the Project. It is necessary to amend the JCP lease in order to proceed with these improvements.

Staff has been in negotiations with JCP for several months concerning a limited amendment to accommodate the construction of Westminster Boulevard and related infrastructure.

JCP and the Authority staff have reached agreement for JCP to surrender to the Authority its leasehold interest in the property required for the portion of Westminster Boulevard and related infrastructure passing through the JCP leasehold area. The Authority would submit to JCP a surrender payment based on an agreed value of \$10.17 per square foot for 65,987 square feet, totaling \$671,087.91. The recommended Lease Amendment Agreement is attached. Staff is requesting a total budget of \$680,000 for this purpose, including closing costs, source of funds to be the Westminster Economic Development Authority Capital Improvement Project - WURP City Participation Account.

JCP and Authority staff have also been negotiating the terms for a new, long term agreement that would facilitate JCP and the Authority's desire to have JCP remain as a major retail presence in the Downtown Westminster project.

Staff is working with JCP to present the Authority with a long term lease agreement in the not too distant future. In the interim, the proposed lease Amendment Agreement represents a positive step in establishing this longer term relationship and reflects both parties' interest in JCP remaining an integral part of the Downtown Westminster project.

The approval of this Lease Amendment Agreement serves the furtherance of the City's goal to make Westminster a Dynamic, Diverse Economy by allowing the Authority and the City to retain an existing business and continue to redevelop the site of the former Westminster Mall into the new Downtown Westminster.

Respectfully submitted,

Donald M. Tripp  
Executive Director

Attachment: Lease Amendment

JCPenney store #2160  
Westminster, CO

**Nothing herein contained or attached hereto shall be considered an offer, nor shall J.C. Penney Corporation, Inc., J.C. Penney Properties, Inc. or any of its affiliates be bound or obligated hereby. J.C. Penney Corporation, Inc., J.C. Penney Properties, Inc. or its affiliates shall not be bound or obligated unless and until internal corporate approvals have been obtained and final negotiated documentation have been fully executed and delivered by all parties thereto and then only to the extent provided in such final documents.**

LEASE AMENDMENT AGREEMENT

This LEASE AMENDMENT AGREEMENT (this "Amendment") is dated effective as of \_\_\_\_\_, 2015 (the "Effective Date"), by and between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a \_\_\_\_\_, having an address of 4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031 (hereinafter called "Landlord"), and J. C. PENNEY PROPERTIES, INC., a Delaware corporation having a mailing address of P. O. Box 10001, Dallas, Texas 75301-1104 Attn: Real Estate Counsel (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, Westminster Mall Company (Landlord's predecessor in title), as landlord, and Tenant entered into a certain lease dated as of February 13, 1986, which was filed for record on February 18, 1986 in the Jefferson County, Colorado records as Reception No. 86016388, and which lease has been amended and supplemented by the following:

Term Agreement dated June 18, 1993; and  
Letter dated February 6, 2015

(which lease, as so supplemented and amended, is hereinafter referred to as the "Lease"); and

WHEREAS, pursuant to the Lease there was demised and leased to Tenant a certain premises (the "Demised Premises") being a part of the land which was formerly occupied by Westminster Mall (the "Entire Premises" as defined in the Lease) situated in Westminster, Jefferson County, and State of Colorado, as more particularly described therein, for a term which commenced on February 19, 1986 and continuing until the last day of February, 2021 unless extended or sooner terminated as provided therein; and

WHEREAS, Landlord is now the fee owner of the Demised Premises and the Entire Premises; and

WHEREAS, the parties hereto desire to amend the Lease as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Landlord and Tenant do hereby covenant and agree as follows:

1. COVENANT OF TITLE: Landlord represents and warrants that: (i) Landlord has title to the Entire Premises (including the Demised Premises) in fee simple; and (ii) the Lease has not been assigned by Landlord, nor have the rentals payable under the Lease been assigned. Landlord further covenants and warrants that Landlord has full right and lawful authority to enter into this Amendment and to perform Landlord's obligations under the Lease and this Amendment for the term of the Lease and all extensions thereto, if any, of the Lease and that no consents of any nature whatsoever are required for Landlord to enter into this Amendment or for this Amendment to be enforceable against Landlord or any successor Landlord.

Tenant represents and warrants that the Lease has not been assigned by Tenant (other than as permitted in Section 5.2(1) of the Lease as to licensees and concessionaires). Tenant further covenants and warrants that Tenant has full right and lawful authority to enter into this Amendment and to perform Tenant's obligations under the Lease and this Amendment for the term of the Lease and all extensions thereto, if any, of the Lease and that no consents of any nature whatsoever are required for Tenant to enter into this Amendment or for this Amendment to be enforceable against Tenant, any successor Tenant or any mortgagee of Tenant (as defined in Section 5.5 of the Lease). Tenant represents and warrants that it either has obtained the consent and approval of this Amendment by its mortgagee Goldman Sachs Bank USA or no such consent is required under the terms of the Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing recorded on July 15, 2013 at Reception No. 2013085525 in the Office of the Clerk and Recorder of Jefferson County Colorado (the "Leasehold Deed of Trust") and the Credit Agreement defined in the Leasehold Deed of Trust.

2. SURRENDER PARCEL: As of the Effective Date, and contingent upon Tenant's receipt of the Surrender Payment, as defined below, the Lease is hereby amended to delete from the definition of the Demised Premises all of the land described on Exhibit A-1 attached hereto (the "Surrender Parcel"). The Surrender Parcel is hereby excluded and released from the Demised Premises, as described on "Exhibit A – Part IV" attached to the Lease, and is surrendered by Tenant to Landlord in order for Landlord to construct a road thereon (the "Roadway"). Landlord hereby accepts the Surrender Parcel in its AS IS, WHERE IS condition, and releases Tenant from any responsibility for the condition thereof. Upon its surrender, the Surrender Parcel is no longer part of the Demised Premises and any payments or calculations under the Lease which are made based upon the square footage or area of the Demised Premises or attributable specifically to the Surrender Parcel will also be adjusted to exclude the area of the Surrender Parcel.

All activities conducted by or on behalf Landlord in connection with the construction of the Roadway on the Surrender Parcel will be done in a good and workmanlike matter and will be conducted so as to minimize in a commercially reasonable manner the interference with Tenant's ongoing business in the Demised Premises. Specifically, and without limiting the foregoing, Landlord agrees that it will not commence any work of a disruptive nature on the Roadway on the Surrender Parcel until after August 15, 2015. Tenant will have access to and use of parking in the Parking License Area, defined in paragraph 3 below after the date on which the foregoing work is commenced, and no such work of a disruptive nature will be conducted during the period commencing on November 15 of any year and January 1 of the immediately succeeding year. Nothing herein will be construed as Tenant's approval of any improvements to be constructed by

Landlord. Tenant specifically waives any other approval rights related to the Roadway which Tenant may have under the Lease

3. PARKING LICENSE AND LICENSE FOR TRUCK TURNAROUND AND LOADING/UNLOADING: Beginning on the Effective Date and continuing until the completion and opening of a parking garage on Parcel C-2 as set out on the Site Plan for Downtown Westminster dated June 2, 2015, Landlord grants to Tenant a license to use portions of the areas designated collectively as the "Parking License Area" on Exhibit A-2 attached hereto and made a part hereof, which will contain not less than 115 parking spaces, for use as a parking field for its store. The parties acknowledge that Landlord may shift the location of such surface parking as construction progresses on the individual Parcels making up the Parking License Area. Upon completion of construction of the Roadway, Landlord further grants to Tenant a license to use a portion of the Roadway for purposes of truck access and turnaround, and loading and unloading its merchandise, from and to the truck dock areas serving its store. The Parking License Area will be paved, striped, lighted and maintained in good condition by Landlord, and will be used exclusively for the parking of Tenant's customers, employees and invitees. Landlord will grant to Tenant any necessary signage rights or other rights which may be necessary in connection with Tenant's access to and use of the Parking License Area as the parties may mutually agree.

4. SURRENDER PAYMENT: On or before five business days after Tenant signs and delivers both this Amendment and its wire instructions to Landlord, Landlord will pay to Tenant the amount of \$671,087.79 (the "Surrender Payment") in exchange for Tenant's surrender of the Surrender Parcel. Landlord and Tenant acknowledge that the Surrender Payment was calculated using a certain valuation of the Demised Premises; however, that valuation is for the purposes of this Agreement only, and will not be binding upon the parties in any subsequent condemnation or litigation proceedings.

The Surrender Payment will be forwarded to J. C. Penney Corporation, Inc., Controllers Shared Services, Building A, Floor 3, Attn: Roy Reed, Mailstop 2123, 6501 Legacy Drive, Plano, Texas 75024 if paid by check (also, please note on check name of Shopping Center, JCPenney Store #2160 and nature of payment) or if Landlord pays by wire transfer instead of a check then Landlord shall wire the funds pursuant to wire instructions to be provided by Tenant. If such money is wire transferred then simultaneously therewith Landlord shall telephone Roy Reed at 972-431-2271 of the placement of the wire transfer, together with the Federal Reference Number. In the event Landlord shall not have paid Tenant such amount within the time frame set forth herein, Tenant, in addition to any other rights and remedies Tenant may have available at law or in equity, shall have the right (without risk of forfeiture) to deduct such amount plus interest thereon at the highest interest rate permitted under applicable law, from the date due until paid to, or recouped by, Tenant, from all rents and other charges then due or thereafter coming due under the Lease, and irrespective of who may own or have an interest in the Demised Premises at the time such deduction(s) are made.

5. NOTICES: As of the Effective Date, all provisions of the Lease relating to giving, sending, delivering, or receiving notices shall be deleted from the Lease, and the following shall be substituted in its place and stead:

“Any notice, demand, consent, approval, request, statement, document or other communication required or permitted to be given to or served upon either party hereto pursuant to this lease or applicable law shall be in writing and shall be by United States certified mail, return receipt requested, or by a method which confirms delivery (or refusal of delivery) by either the United States Postal Service or a recognized national courier service (such as, but not limited to, Federal Express or United Parcel Service), postage prepaid, addressed:

(a) If to Landlord:

Westminster Economic Development Authority  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031

Emergency Email: \_\_\_\_\_

With a duplicate copy to:

The City of Westminster  
Office of the City Attorney  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031

(b) If to Tenant:

(if by certified mail)  
J.C. Penney Properties, Inc.  
P.O. Box 10001  
Dallas, Texas 75301-1106  
Attn: Real Estate Counsel

(if by overnight mail)  
J.C. Penney Properties, Inc.  
6501 Legacy Drive  
Plano, Texas 75024-3698  
Attn: Real Estate Counsel MS 1106

Emergency Email: \_\_\_\_\_

with a duplicate copy to:

J.C. Penney Properties, Inc.  
P.O. Box 10001  
Dallas, Texas 75301-2104  
Attn: Property Manager for Store #2160; Westminster, CO

[NOTE: Need alternate street address here for overnight courier]

with a duplicate copy to the Demised Premises, marked for the attention of "Store Manager"; provided, however, in the case of the need for emergency repairs, Landlord or Tenant may give the other party notice by email (with no duplicate copies to be required) to be followed by an original written copy of the notice (including the duplicate copies) sent by one of the above prescribed methods. All such communications mailed or transmitted in accordance with the foregoing provisions shall be deemed to have been given or served as of the third business day after such mailing or on the next business day after such delivery by overnight courier or on the date of such transmittal by email in the case of emergency. Either Landlord or Tenant may, by ten (10) days prior notice to the other as aforesaid, designate a different address or different addresses to which communications intended for it are to be sent, such addresses to be within the United States and to include a physical mailing address in addition to any P.O. Box address”

6. AGREEMENT TO BE RECORDED: Landlord shall, at its cost and expense, record a fully executed original of a separate memorandum of this agreement. Landlord will deliver to Tenant a copy of the file-stamped recorded memorandum within 15 days of Landlord’s receipt thereof. Landlord shall pay for any and all real estate transfer fees assessed in connection with this Amendment or assessed in connection with the recording of the memorandum thereof.

7. RELEASE OF DEED OF TRUST: On or before August 15, 2015, Tenant shall deliver to Landlord an original Request for Partial Release to the Public Trustee, requesting the release of the Surrender Parcel and executed by any “mortgagee” as defined in Section 5.5 of the Lease in connection with its deed of trust now encumbering the Demised Premises, including but not limited to the Leasehold Deed of Trust.

8. AGREEMENT BINDING UPON HEIRS, ETC.: This Amendment shall extend to and be binding upon the heirs, devisees, executors, administrators, successors in interest and permitted assignees of both Landlord and Tenant.

9. DEFINITIONS; TERMS MODIFIED; MISCELLANEOUS: Unless otherwise defined in this Amendment, terms used in this Amendment but not otherwise defined but defined in the Lease shall have the definitions ascribed to such terms in the Lease. Except as expressly modified herein, all the terms, provisions and conditions of the Lease shall remain in full force and effect. This Amendment forms a part of the Lease. If any provisions of this Amendment are inconsistent with the provisions of the Lease, the terms of this Amendment shall prevail. This Amendment contains the entire understanding and agreement of the parties with respect to the subject matter hereof, supersedes all other written or oral exchanges, agreements, or negotiations between them or their representatives, and cannot be amended orally, but only by instrument in writing signed by both parties. This Amendment may be executed in two or more counterparts and each counterpart shall be deemed to be one and the same agreement. Scanned signatures of this Amendment delivered by facsimile, electronic mail, or other electronic means will be as valid as ink-signed originals. This Amendment will be governed by the laws of the State of Colorado.

**[Remainder of Page Intentionally Left Blank - Signature Page Follows.]**

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

**LANDLORD:**

WESTMINSTER ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

J. C. PENNEY PROPERTIES, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Assistant Secretary

|          |
|----------|
| APPROVED |
|          |
| ATTORNEY |

|             |
|-------------|
| APPROVED    |
|             |
| REAL ESTATE |

EXHIBIT A-1

DESCRIPTION OF THE SURRENDER PARCEL

DOWNTOWN WESTMINSTER

PARCEL 4

LEGAL DESCRIPTION

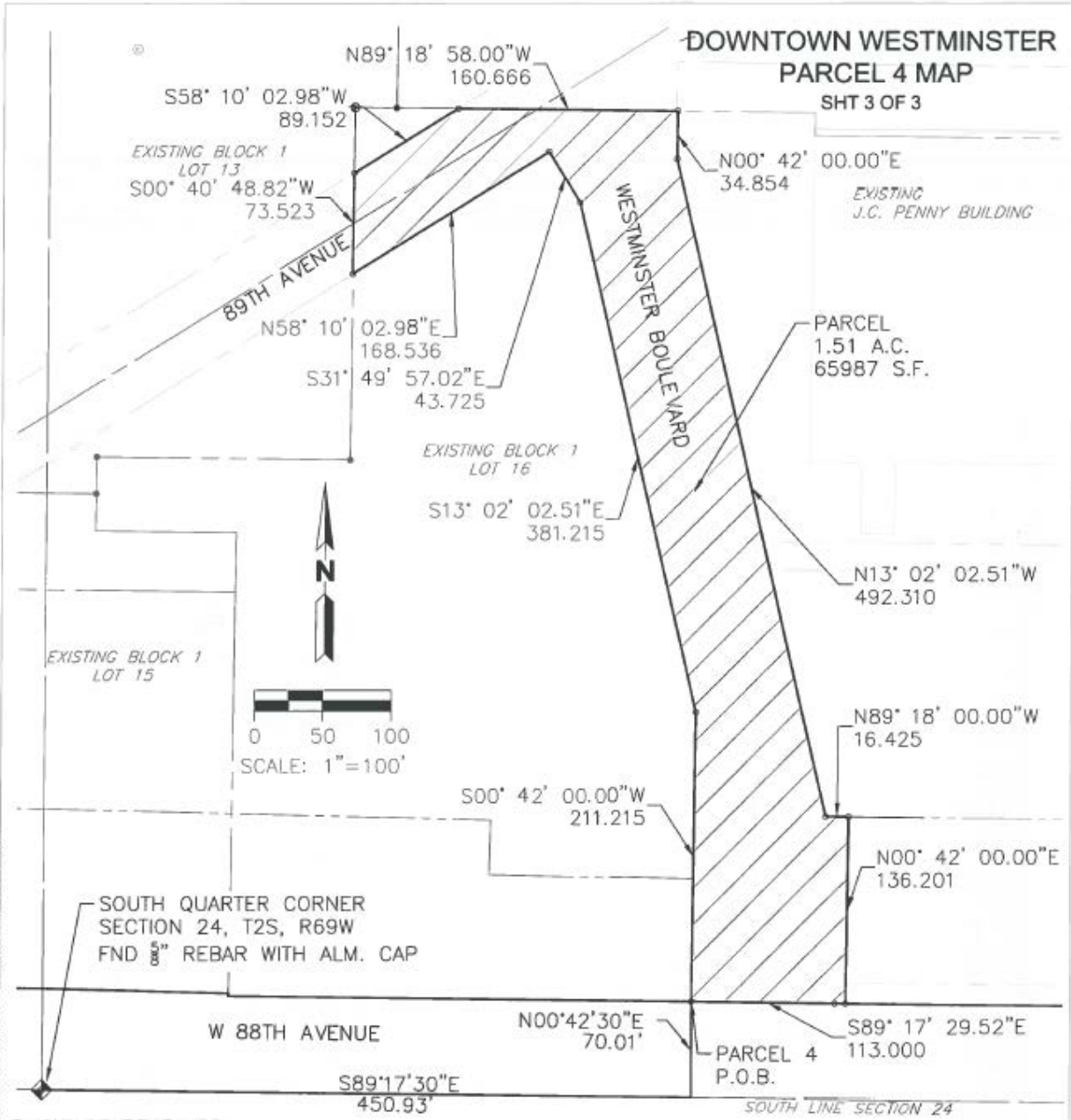
A PARCEL OF LAND BEING A PORTION OF LOT 16, BLOCK 1 , WESTMINSTER MALL 2ND AMENDED PLAT AS RECORDED AT RECEPTION NUMBER 86016236, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 69 WEST, OF THE 6TH PRINCIPAL MERIDIAN; CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 24; THENCE S89°17'30"E A DISTANCE OF 450.93 FEET ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 24; THENCE DEPARTING SAID SOUTHERLY LINE, N00°42'30"E A DISTANCE OF 70.01 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 88TH AVENUE AND A POINT ON THE PROPOSED WESTERLY RIGHT-OF-WAY LINE OF WESTMINSTER BOULEVARD BEING THE POINT OF BEGINNING; THENCE DEPARTING THE NORTHERLY RIGHT-OF-WAY LINE OF SAID WEST 88TH AVENUE, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED WESTMINSTER BOULEVARD THE FOLLOWING THREE (3) CONSECUTIVE COURSES AND DISTANCES: 1) N00°42'00"E A DISTANCE OF 211.21 FEET; 2) THENCE N13°02'03"W A DISTANCE OF 381.21 FEET; 3) THENCE N31°49'57"W A DISTANCE OF 43.72 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF PROPOSED 89TH AVENUE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, S58°10'03"W A DISTANCE OF 168.54 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 16, THENCE ALONG SAID WESTERLY LINE, N00°40'49"E A DISTANCE OF 73.52 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PROPOSED 89TH AVENUE; THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PROPOSED 89TH AVENUE, N58°10'03"E A DISTANCE OF 89.15 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 16; THENCE DEPARTING THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PROPOSED 89TH AVENUE ALONG THE NORTHERLY LINE OF SAID LOT 16, S89°18'58"E A DISTANCE OF 160.67 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PROPOSED WESTMINSTER BOULEVARD; THENCE DEPARTING THE NORTHERLY LINE OF SAID LOT 16, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED WESTMINSTER BOULEVARD THE FOLLOWING FOUR (4) CONSECUTIVE COURSES AND DISTANCES: 1) S00°42'00"W A DISTANCE OF 34.85 FEET; 2) THENCE S13°02'03"E A DISTANCE OF 492.31 FEET; 3) THENCE S89°18'00"E A DISTANCE OF



16.43 FEET; 4) THENCE S00°42'00"W A DISTANCE OF 136.20 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID WEST 88TH AVENUE; THENCE DEPARTING THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED WESTMINSTER BOULEVARD ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID WEST 88TH AVENUE, N89°17'30"W A DISTANCE OF 113.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1.515 ACRES (65,987 SQUARE FEET), MORE OR LESS.



**BASIS OF BEARINGS**

BEARINGS ARE BASED ON THE CITY OF WESTMINSTER GIS HORIZONTAL CONTROL NETWORK. BEARINGS HAVE BEEN ROTATED 00°08'32" COUNTERCLOCKWISE FROM THE PLATTED BEARINGS FOR WESTMINSTER MALL 2ND AMENDMENT PLAT, RECORDED AT RECEPTION NO. 86016236.

**NOTES:**

1. THIS EXHIBIT DOES NOT CONSTITUTE A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



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05-27-15

DRAWING LOCATION: G:\Tulika\13.0403-Downtown Westminster\ENG\LEGAL\EXHIBIT PARCEL 4\_05-27-15.dwg

EXHIBIT A-2

DESCRIPTION OF THE PARKING LICENSE AREA

Parcels A-1, B-1, and C-1

as set forth on the Site Plan for Downtown Westminster dated June 2, 2015