



WESTMINSTER

AGENDA

SPECIAL CITY COUNCIL MEETING

MONDAY, MAY 2, 2011

AT 6:30 P.M.

1. Pledge of Allegiance

2. Roll Call

3. Purpose of Special Council Meeting is to

- A. Consider Acquisition of the Property Owned by the Westminster Mall Company and Related Entities within the 105-Acre Westminster Center Urban Reinvestment Project Area
- B. Consider Adopting Resolution No. 14 Pledging City Cash Reserves for Repayment of a Promissory Note for the Purchase of the Westminster Mall
- C. Consider Adopting Resolution No. 15 a Reimbursement Resolution for Westminster Center Urban Reinvestment Project Bond Financing

4. Adjournment

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING
(separate agenda)**





WESTMINSTER

April 25, 2011

Linda Yeager, City Clerk
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2006
FAX 303-706-3921

Nancy McNally
Mayor

Chris Dittman
Mayor Pro Tem

Bob Briggs
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Faith Winter
Councillor

Dear Linda:

I wish to call a special meeting of the City Council for Monday, May 2, 2011, to begin at 6:30 p.m. and to be held in the Council Chambers of City Hall, 4800 West 92nd Avenue, for the purpose of considering: 1) acquisition of the property owned by the Westminster Mall Company and related entities within the 105-acre Westminster Center Urban Reinvestment Project Area; 2) a Resolution pledging City cash reserves for repayment of a promissory note for the purchase of the Westminster Mall; and 3) the Reimbursement Resolution for Westminster Urban Reinvestment Project Bond Financing.

Sincerely,

Nancy McNally
Mayor

cc: City Council
J. Brent McFall, City Manager





Agenda Item 3 A

Agenda Memorandum

City Council Meeting
May 2, 2011



SUBJECT: Acquisition of the Property Owned by the Westminster Mall Company and Related Entities within the 105-Acre Westminster Center Urban Reinvestment Project Area

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

Recommended City Council Action

Authorize the City Manager to execute a purchase and sale agreement in substantially the same form as attached and all necessary closing documents for the acquisition of the majority of the remaining privately owned property within the Westminster Center Urban Reinvestment Project area, and authorize the funding as needed for this acquisition.

Summary Statement

- Staff has negotiated the purchase of the Westminster Mall for a purchase price of \$22,000,000.
- WEDA will acquire the property with a combination of existing funds and a promissory note backed by a deed of trust and assignment of rents. The City is guaranteeing WEDA's obligations under this agreement, subject to annual appropriation, TABOR, and other legal restrictions applicable to the City.
- With this acquisition, WEDA will own approximately 90% of the approximately 105-acre Project site.
- The acquisition of this property is an integral part of the Mall redevelopment efforts.

Expenditure Required: \$0 - The City is acting as conditional co-guarantor of WEDA's obligations

Source of Funds: N/A



Policy Issue

Should the City assist WEDA in acquiring the majority of the remaining privately owned property within the approximately 105-acre Westminster Center Urban Reinvestment Project area?

Alternatives

1. Direct Staff to renegotiate the agreement.
2. Require WEDA to file an eminent domain action to acquire the property.

These alternatives are not recommended. The acquisition of this parcel is key to the Mall redevelopment and Staff and the City's commercial real estate consultants believe the proposed price and other terms of the agreement are fair and reasonable, and its approval will terminate the pending litigation between WEDA and the Mall ownership concerning this Project.

Background Information

Staff has been working to implement the Westminster Center Urban Reinvestment Project (WURP), as part of the Westminster Center Urban Reinvestment Plan, approved on April 13, 2009, to redevelop the property within the vicinity of 88th Avenue and Sheridan Boulevard (historically known as the Westminster Mall). The redevelopment of the Westminster Mall site is the City Council's top strategic plan priority, as outlined in the City's five-year Strategic Plan. Land assemblage and the installation of public infrastructure are key components of the redevelopment plans for this Project.

WEDA and the City have invested significant funds in furtherance of the WURP Project. These include planning, consulting, land assembly and other predevelopment costs. WEDA previously acquired the Mervyn's, Macy's and Trail Dust properties from their respective owners with the assistance of the City. This acquisition will result in WEDA owning approximately 90% (or nearly 94 acres) of the WURP site.

This Purchase and Sale Agreement anticipates a closing date for the acquisition of the property on or before May 11, 2011. WEDA is currently in the process of identifying a redeveloper for the WURP site. Control of the property will make this site much more attractive to quality developers, which should allow the redevelopment to move forward.

City Council action on this item meets elements of all five goals in the City's Strategic Plan: Financially Sustainable City Government Providing Exceptional Services, Safe and Secure Community, Strong Balanced Local Economy, Vibrant Neighborhoods in One Livable Community, and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is made as of this _____ day of _____, 2011 (the “**Effective Date**”), by and between **WESTMINSTER MALL COMPANY**, a Colorado general partnership (“**WMC**”), **THE HIGBEE COMPANY**, a Delaware corporation and successor by merger to Mersco Realty Co., Inc., an Ohio corporation (“**Higbee**”), **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company (“**MD1**”), and **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company (“**MD2**”) (WMC, Higbee, MD1 and MD2, collectively, “**Seller**”) and the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal authority (the “**Authority**”), and the **CITY OF WESTMINSTER**, a Colorado home rule city (“**City**”) (Authority and City, collectively, “**Purchaser**”). Seller and Purchaser are sometimes referred to herein as the “**Parties**”.

WHEREAS, the City of Westminster is a home rule municipality organized under the laws of the State of Colorado.

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to Part I of Article 25 of Title 31, C.R.S. On April 13, 2009, the City Council made a determination that the Westminster Center Urban Renewal Area (“**Plan Area**”) was a blighted area and appropriate for an urban renewal project pursuant to the Act.

WHEREAS, on April 13, 2009, the City Council approved the Westminster Center Urban Reinvestment Plan (“**Plan**”) covering the Plan Area as defined therein and authorizing the Authority to acquire property, by condemnation if necessary, and to redevelop property within the Plan Area.

WHEREAS, Seller owns certain interests in portions of the Plan Area described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Real Property**”) which constitute part of the development commonly known as the Westminster Mall (the “**Shopping Center**”).

WHEREAS, on July 15, 2010, Seller filed a Complaint in *Westminster Mall Company, et al v. City of Westminster, et al.*, Case Number 10-CV-3231, Jefferson County District Court (“**Litigation**”) challenging, among other things, the legality of the Purchaser’s right to condemn the Property, blight determination with respect to the Real Property and the Plan.

WHEREAS, on or about the date hereof, the Parties have entered into a settlement agreement (“**Settlement Agreement**”) and, in connection therewith, the Parties have agreed that Seller will convey to Authority, and Authority shall acquire from Seller, the Property (as defined herein) in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual obligations, covenants and representations set forth herein, and other good and valuable consideration, the Parties mutually agree as follows:

1. **Sale of Property.** Upon and subject to the terms and conditions contained in this Agreement, Seller agrees to sell and convey to Authority, and Purchaser agrees that Authority shall purchase, accept and assume from Seller, the following (collectively, the “**Property**”):

(a) all of Seller’s right, title and interest in the Real Property together with all of Seller’s right, title and interest in (i) the buildings and improvements thereon, (ii) water and sewer taps (specifically excluding any utility deposits) and all rights of Seller to have such buildings and improvements to be provided with water and sewer services (to the extent transferrable by Seller to Purchaser), and (iii) all other appurtenances thereto (“**Real Property and Improvements**”);

(b) all right, title and interest of Seller, if any, in and to (i) all equipment, appliances, trade fixtures, machinery, furniture, furnishings, supplies, and other tangible personal property that is owned by Seller and is located on and used in connection with the operation, ownership or management of the Shopping Center excluding those items listed on **Exhibit B** attached hereto and made a part hereof (“**Excluded Personality**”), and (ii) all plans, drawings, development rights, licenses or permits owned by Seller and used in connection with the operation, ownership or management of the Shopping Center, to the extent the same are in Seller’s possession and are transferable by Seller to Purchaser (“**Personality**”);

(c) all right, title and interest of Seller in and to (i) the leases described as the “**Ground Leases**” in the Assignment of First Ground Lease (as defined herein) (“**First Ground Lease**”) and in the Assignment of Second Ground Lease (as defined herein) (“**Second Ground Lease**”); (ii) the lease described as the “**Penney Lease**” on **Exhibit C** attached hereto and made a part hereof by this reference; and (iii) all other leases, subleases, licenses, concessions and other agreements and unapplied security deposits paid by tenants under such leases as identified in **Exhibit C** attached hereto and made a part hereof by this reference (other than the Penney Lease) to which Seller is a party relating to the occupancy of any portion of the Real Property and Improvements, as the same shall have been amended or modified (“**Tenant Leases**”) (the Ground Leases, the Penney Lease and the Tenant Leases are herein collectively called the “**Leases**”; a current list of the Penney Lease and the Tenant Leases is set forth on **Exhibit C**; and the tenants and occupants under the Tenant Leases and the tenant under the Penney Lease are herein collectively called “**Tenants**” and individually, “**Tenant**”); and

(d) all right, title and interest of Seller in and to the following (collectively, the “**Contracts**”): that certain Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986, as amended (the “**RCOEA**”), all agreements relating to the RCOEA which are identified as supplemental agreements in the “Assignment of RCOEA and Other Agreements” attached hereto as **Exhibit M** (“**Supplemental Agreements**”), all easements and other documents recorded in the real estate records which are identified on the Commitment (as defined herein) affecting the Real Property and Improvements (other than the “**Seller DT Liens**”, as defined herein, and the “**Terminated Leases**”, as defined herein), and those service, maintenance, repair and other contracts to which Seller is a party that are listed on **Exhibit D** attached hereto and made a part hereof (“**Service**”);

Contracts”), but only to the extent the same are assignable by Seller to Purchaser without third party consent unless such consent is obtained.

2. **Conveyance in Lieu of Condemnation.** The Parties hereby acknowledge, confirm and agree that this Agreement and the sale of the Property to the Authority is made under threat of condemnation.

3. **Purchase Price.** The Purchase Price for the Property shall be Twenty-Two Million and 00/100 Dollars (\$22,000,000.00) (“**Purchase Price**”). The Purchase Price for the interests of each Seller (including the “Deferred Amount” described below) are hereby allocated by the Parties as set forth in the attached **Exhibit E.** The Purchase Price, as adjusted under Section 7, shall be deposited by Purchaser on the Closing Date as follows: (i) Eighteen Million Five Hundred Thousand and 00/100 Dollars (\$18,500,000.00) in immediate same-day federal funds (which shall comply with the Colorado “good funds” law) wired for credit into the escrow account established by Escrow Agent for this transaction (“**Cash**”), all of which Cash shall be paid solely to WMC, and (ii) two promissory notes in the aggregate original principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (“**Deferred Amount**”), the form of which are attached hereto as **Exhibit F-1** and incorporated herein by this reference (“**Notes**”) (and WMC hereby directs that payment of its portion of the Deferred Amount be made to MD Westminster Holdings, LLC and TM Westminster Holdings, LLC as provided in the Notes). The Notes provide for monthly interest-only payments calculated at the rate of 6% per annum payable in advance on the first day of each calendar month, with no prepayment penalty, and the outstanding principal amount due and payable in full no later than one (1) year after the Closing Date. Pursuant to a loan agreement to be entered into at Closing, the form of which is attached hereto as **Exhibit F-2 (“Loan Agreement”)** and incorporated herein by this reference, the Notes shall be secured by a deed of trust (“**Deed of Trust**”) encumbering the Property, the form of which is attached hereto as **Exhibits F-3** and incorporated herein by this reference, and such other documents contemplated to secure the Notes as is provided in the Notes, Loan Agreement or Deed of Trust (all of the same being collectively called the “**Loan Documents**”).

4. **Closing.** The escrow closing (“**Closing**”) of the transactions contemplated hereby shall take place on May 10, 2011 or on such earlier date as Seller and Purchaser shall mutually agree upon in writing (“**Closing Date**”), at the office of the Escrow Agent whose business address is Land Title Guarantee Company, 5875 Greenwood Plaza Boulevard, Greenwood Village, CO 80111 (“**Title Company**”) or such other date or place as the parties shall agree; provided, however, that the prorations and adjustments set forth in Section 7 hereof may be made as of 11:59 P.M. on a date other than the Closing Date if Seller and Purchaser shall mutually agree upon such other date in writing (“**Proration Date**”); and if no such other date is agreed upon then the Closing Date shall be the Proration Date).

5. **Cooperation in Transition.** From the execution of this Agreement through the date of Closing, WMC will cooperate with Purchaser, at no expense to Seller, in providing an orderly transition of management responsibility from WMC to Authority. In such connection, during such period, WMC will make the current Shopping Center management team available to meet with Authority, its employees and contractors at times mutually acceptable to the parties for

the purpose of reasonably familiarizing Authority's employees and contractors with the maintenance, configuration and operation of the Shopping Center and location of the documents, records and agreements necessary for the operation and maintenance of the Shopping Center. For a period not to exceed five (5) business days from and after Closing, no more than three (3) employees of WMC shall have continued access to the Property to wind up WMC's business operations thereon.

6. Operation of Property. (a) After the Effective Date so long as this Agreement is in effect, Seller shall not enter into, amend, terminate except for default, or waive in writing any rights under any Leases without Authority's prior written consent. Seller shall not apply any tenant security deposits under the Leases, except in the event of a Tenant's default under a Lease.

(b) Seller shall continue to maintain in effect its current insurance coverages on the Property in existence on the date hereof. Purchaser shall secure its own insurance with respect to the Property and Purchaser shall have no rights under Seller's insurance policies including, without limitation, any proceeds, unearned premiums or any deposits all of which shall belong solely to the Seller.

(c) Seller shall have the right (but shall not be required) to remove all Excluded Personalty on or before the Closing Date, or at any time within thirty (30) days thereafter; provided, that Seller shall indemnify and hold harmless Authority from any loss, damage, claim or judgments incurred by Authority and caused by Seller or any of its employees in connection with the removal of Excluded Personalty. Any Excluded Personalty not so removed shall, notwithstanding anything to the contrary contained herein, be deemed abandoned by Seller and shall be deemed conveyed to Authority in its then AS IS WHERE IS condition with all faults without representation or warranty of any kind.

(d) **Seller's Loan Policy.** As a condition to Seller's obligation to close, the Escrow Agent shall be in a position to unconditionally and irrevocably issue an ALTA loan title insurance policy ("**Loan Policy**") in favor of Seller (or other persons designated as the mortgagee under the Deed of Trust), in the aggregate amount of the Notes, and in a form and substance satisfactory to Seller, insuring the lien of the Deed of Trust as a first priority lien on the Real Property subject only to such exceptions and containing such endorsements and affirmative coverages as Seller may reasonably require.

(e) **Owner's Title Policy.** As a condition to Purchaser's obligation to close, the Seller shall deliver the Seller DT Release (defined herein) to the Escrow Agent, and the Escrow Agent shall be in a position to unconditionally (other than payment of the policy premium) and irrevocably issue an ALTA owner's title insurance policy ("**Owner's Policy**") in favor of Authority, in an amount equal to the Purchase Price, subject to all exceptions to title and other matters set forth in Schedule B-2 of the Commitment with the following deletions: (i) the exceptions for the matters covered under the Seller DT Release and (ii) the mechanics' lien exception contemplated to be deleted by the affidavit of Seller described in clause (i) of Section 8(h) of this Agreement.

(f) Seller shall deliver to Authority, at the on-site mall office, not later than seven (7) days following the Closing Date, the following documents to the extent currently within Seller's possession or control and not delivered to Purchaser prior to the Closing: copies (or originals as determined by Seller) of all civil, architectural, structural, electrical, mechanical-plumbing, fire sprinkler and landscape working drawings, specifications, as-built construction plans, architectural renderings or models or any other plans developed or prepared for the Property, and all engineer's letters or certifications.

7. **Closing Adjustments.** The following items pertaining to the Property shall be prorated or credited as of the Proration Date, and appropriate adjustments made to the Cash portion of the Purchase Price or as otherwise set forth below. The Title Company, with the assistance of Seller and Authority shall prepare a proration statement in reasonable detail showing each item prorated, allocated or adjusted in accordance with this Section ("**Proration Statement**").

(a) **Taxes.** The following terms shall have the following meanings: (i) "**Taxes**" shall mean the real estate taxes and assessments, both general and special, imposed against or encumbering the Real Property and Improvements and personal property taxes imposed against or encumbering the Personalty; (ii) "**Excluded Taxes**" shall mean the Taxes payable by the tenants under the Leases with Sears, Roebuck and Co. ("**SR**") covering the Sears TBA ("**Sears TBA Lease**"), Penney, Olive Garden and U.S. Bank (collectively "**Excluded Taxes Leases**") (Sears TBA: 29-244-02-017 ("**Sears TBA Tax Parcel**"); Penney: 29-244-02-028; Olive Garden: 29-244-02-030 ("**Olive Garden Tax Parcel**"); U.S. Bank: 29-244-02-027 ("**Bank Tax Parcel**")) and (iii) the term "**Applicable Taxes**" shall mean the Taxes excluding the Excluded Taxes. The Applicable Taxes for years prior to the year of Closing, including the second installment of 2010 taxes, as well as the second installment of 2010 Taxes for the Sears TBA Tax Parcel, Olive Garden Tax Parcel and Bank Tax Parcel (collectively, "**Outparcel 2010 Installments**"), shall be paid by WMC at Closing. The Applicable Taxes for 2011 payable in 2012 shall be split between WMC and Authority as of the Proration Date, with WMC responsible for the 2011 Applicable Taxes due from January 1, 2011 to the Proration Date. Authority acknowledges that Authority is tax exempt and that the Property will be removed from the real estate tax rolls as of the Proration Date; therefore, the total 2011 Applicable Taxes billing from the county Treasurer may reflect only the amount payable by WMC. WMC's share of the 2011 Applicable Taxes shall be escrowed in an interest-bearing account with the Title Company for payment of 2011 Applicable Taxes on or before the last date on which the 2011 Applicable Taxes are due and payable without penalty. The escrowed amount shall be equal to the 2010 Applicable Taxes prorated for the number of days from January 1, 2011 to the Proration Date. Authority shall remit originals or copies of all 2011 tax bills to WMC and Title Company within ten (10) days after receipt thereof by Authority and in all events prior to the date such taxes are due. The Title Company shall pay WMC's 2011 Applicable Taxes prior to delinquency and promptly remit to WMC after such payment all funds escrowed in excess of the actual amount. The escrow fee of the Title Company shall be paid by Authority. Notwithstanding the foregoing, Seller retains and reserves any and all rights of protest, appeal and abatement related to the valuation, taxes and assessments for the Real Property and Improvements ("**Tax Appeals**"), both past and future, to the extent that such Tax Appeals apply to the year of Closing or any tax periods prior thereto. Authority agrees to reasonably cooperate in all such Tax Appeals with the local taxing authorities at no out of

pocket expense to the Authority. Any such refunds or reductions in such property taxes and assessments due to the Tax Appeals shall belong exclusively to Seller. All costs and expenses incurred in such Tax Appeals shall be borne by Seller. The parties recognize that the Excluded Taxes are payable by the tenants under the Excluded Taxes Leases and that Seller shall have no liability to Purchaser or otherwise for the payment of the Excluded Taxes other than the Outparcel 2010 Installments. WMC and Authority shall sign the Title Company's standard Tax Agreement at Closing provided the same is in a form acceptable to the Parties

(b) Ground Leases and Dillard's Lease. Seller shall be entitled to receive and retain all rent and other charges accrued under the Ground Leases and the Dillard Lease prior to Closing, none of which shall be prorated. The parties acknowledge that WMC, on the one hand, and the lessors under the Ground Leases and the tenant under the Dillard Lease, on the other hand, will adjust amounts payable under the Ground Leases and Dillard Lease outside of the Closing by separate agreement between such parties.

(c) Fixed and Percentage Rents. As to fixed and minimum rents payable under all other Leases, the same will be prorated as of the Proration Date. WMC shall be entitled to receive and retain all fixed, minimum and base rents, and all percentage rent, whether payable monthly (including monthly in arrears) or (subject to the last sentence of this subparagraph) annually, which are attributable to any period preceding the Proration Date, whether then due or past due or not yet due under any Leases. For example and without limitation, percentage rent payable monthly in arrears based on sales occurring prior to the month in which the Proration Date shall occur is attributable to such prior month, notwithstanding whether payment is due in a subsequent month. Within thirty (30) days after receipt of payment from a Tenant, Authority shall remit to WMC its allocable share of all rent and percentage rent attributable to periods prior to the Proration Date together with the applicable Tenant's gross sales statements. Percentage rents based on annual gross sales shall be separately prorated under each Lease on the basis of the fiscal year set forth in each Lease for which Percentage Rent is payable, and the parties shall adjust between themselves amounts owed for such fiscal year on account of percentage rents, and WMC's allocable share shall be determined by multiplying total percentage rents owed by the fraction whose numerator is the number of days in such fiscal year before the Proration Date, and whose denominator is the total number of days in such fiscal year which the Authority shall pay to WMC within thirty (30) day after receipt thereof from a tenant.

(d) Additional Charges. Subject to the provisions of paragraphs (b), (c) and (e) of this Section, WMC shall be entitled to receive and retain all other charges payable to WMC by a Tenant, including advertising and promotional fees, common area maintenance charges, charges for electricity or other utilities, real estate taxes and assessments, insurance premiums, administrative overhead, and other amounts so payable (but only to the extent denominated as a separate charge as opposed to being included in gross or base rent) ("**Additional Charges**") attributable to the period preceding the Proration Date. Additional Charges received by WMC and attributable to the month of Closing shall be prorated between WMC and Authority as of the Proration Date. In the event Authority shall receive from a Tenant any Additional Charges attributable to the period prior to the Proration Date, Authority shall promptly remit the same to WMC; likewise, should Seller receive any Additional Charges from a Tenant payable for any period after the Proration Date, Seller shall remit the same to Authority. Notwithstanding the

foregoing or anything else herein, from and after the Proration Date the parties release and discharge each other from any and all claims, demands or liability for Additional Charges or any other obligations under the “May Supplemental Agreement” or “Mervyn’s Supplemental Agreement” (as each are identified on Exhibit B to the Assignment of RCOEA and Other Agreements attached hereto) or under the RCOEA or any other agreements with respect to either the “**May Site**” or the “**Mervyn’s Site**”, as each are as defined in the RCOEA, which release and discharge shall survive the Closing and delivery of the Deed.

(e) Sears Charges. The term “**Sears Supplemental Agreement**” shall mean that certain Supplemental Agreement dated February 13, 1986 between WMC and Sears Development Co. (“**SDC**”), as successor in interest to Carter Hawley Hale Stores, Inc. The term “**Sears Common Area Charges**” shall mean the amount payable by (i) SR under the Sears TBA Lease for its share of “Operating Costs” (as therein defined) for each fiscal year applicable thereto under the Sears TBA Lease and (ii) SDC under the Sears Supplemental Agreement for its share of “Common Facilities Operating Expenses” (as therein defined) for the fiscal year applicable thereto under the Sears Supplemental Agreement. For the respective fiscal year(s) under the Sears TBA Lease and Sears Supplemental Agreement upon which the Sears Common Area Charges are computed, the Sears Common Area Charges shall be prorated between WMC and Authority as of the Proration Date with WMC being entitled all payments allocable to the period prior to the Proration Date, subject to adjustment as hereinafter provided. At the conclusion of the fiscal year(s) under the Sears TBA Lease applicable to the Sears Common Area Charges thereunder, WMC’s allocable share of the actual Sears Common Area Charges as of the Proration Date under the Sears TBA Lease shall be determined by multiplying (A) the amount of the Sears Common Area Charge payable thereunder for such fiscal year by (B) a fraction, the numerator of which is “Operating Costs” thereunder incurred by WMC prior to the Proration Date and the denominator of which is WMC’s and Authority’s total Operating Costs incurred for the entire fiscal year. At the conclusion of the fiscal year(s) under the Sears Supplemental Agreement applicable to the Sears Common Area Charges thereunder, WMC’s allocable share of the actual Sears Common Area Charges as of the Proration Date under the Sears Supplemental Agreement shall be determined by multiplying (y) the amount of the Sears Common Area Charge payable thereunder for such fiscal year by (z) a fraction, the numerator of which are WMC’s “Common Facilities Operating Expenses” under the Sears Supplemental Agreement incurred by WMC prior to the Proration Date and the denominator of which are WMC’s and Authority’s Common Facilities Operating Expenses incurred for the entire fiscal year. If, on the basis of amounts actually incurred and the estimated payments received by WMC from Sears prior to the Proration Date, WMC has retained amounts in excess of its allocable share, it shall remit such excess to Authority within 30 days, and if WMC has retained less than its allocable share from the total payments of Sears Additional Charges payable by Sears for such fiscal year, Authority shall remit such amount to WMC within 30 days after the Authority receives such amounts from Sears under the annual reconciliation process.

(f) Sears Letter. Further, the parties acknowledge that SR and SDC are disputing the Sears Common Area Charges for years prior to Closing as set forth in that certain letter dated March 11, 2011 from Sears Holdings to WMC (“**Sears Letter**”), a copy of which Seller has furnished Purchaser and of which Purchaser acknowledges receipt. Accordingly, (i) WMC reserves and retains any and all right and interest to any Sears Common Area Charges or other charges owed to WMC under the Sears TBA Lease or Sears Supplemental Agreement for any

period prior to the Proration Date (“**Reserved Sears Charges**”) (and Authority agrees to cooperate with Seller in connection therewith at no cost to Authority), and (ii) Seller shall indemnify and hold harmless Authority from any loss, damage, or judgments with respect to any overpayment by Sears of Sears Common Area Charges pursuant to the claims made by Sears in the Sears Letter (no admission being herein made by WMC that any such overpayment has ever occurred).

(g) Service Contracts. All amounts due and payable under the Service Contracts through the date of Proration Date shall be paid by WMC and payments due and payable from and after the date of Proration Date shall be paid by Authority. Prorations shall be determined by prorating the payment amount under the Service Contract over the period to which such payment applies. WMC shall be entitled to a credit to the extent that sums have been paid by WMC under any Service Contracts for services to be performed or goods to be delivered after the Proration Date. Authority shall be entitled to a credit to the extent that sums are paid by Authority for services performed or goods delivered on or prior to the Proration Date.

(h) Utility Charges; Other Expenses. Utility charges for the Real Property and Improvements and not otherwise payable directly by a Tenant to the applicable utility company shall be prorated as of the Proration Date. WMC shall pay such charges assessed through the Proration Date and shall receive a credit for any prepaid amounts attributable thereafter. If final billing statements are not available at Closing, then such charges shall be estimated on the basis of the most recent billing statement for each respective utility service. In the case of the water and sewer service, the Title Company shall order a final reading as of the Proration Date and shall escrow from Seller’s closing proceeds an amount reasonably estimated by the Title Company for the payment of the final water and sewer bill to the Proration Date. The Title Company shall pay (from the amount escrowed) the final water and sewer billing statement and shall promptly remit to WMC after such payment all funds escrowed in excess of such water and sewer final billing statement. WMC and the Authority shall sign the Title Company’s standard Utility Agreement at Closing provided the same is in a form acceptable to the Parties. All other customarily prorated costs or expenses which are not otherwise prorated or addressed pursuant to the preceding provisions of this Section 7 and which are to be assumed by the Authority under this Agreement shall be prorated between the parties hereto as of the Proration Date. Except with respect to such expense items prorated as of and on the Proration Date, Seller shall be responsible for payment of any and all bills or charges incurred on or prior to the Proration Date for work, services, supplies or materials, and the Authority shall be responsible for payment of any and all bills or charges incurred after the Proration Date for work, services, supplies or materials. All charges and fees of the Title Company for the services contemplated to be performed by the Title Company under this Agreement shall be paid by Authority. The state documentary fee shall be paid by Authority.

(i) Security Deposits. Tenant shall receive a credit for security deposits of Tenants under Leases not previously applied.

Notwithstanding the foregoing or any direction from any Tenant or SDC to the contrary, all rent and charges received by Authority or WMC from Tenants or SDC shall be applied as follows:

(w) first, towards the payment of rent and Additional Charges (including Sears Common Area Charges) attributable to the calendar month in which the Proration Date occurs (including, without limitation, percentage rent so attributable but due after the Proration Date; i.e., percentage rent payable in May, 2011 based on sales for April, 2011),

(x) second, to payment of rent and Additional Charges described on Schedule 7(x), (“**Schedule 7(x) Amounts**”) (provided, however, (1) Seller reserves the right to pursue all Schedule 7(x) Amounts, and (2) Purchaser shall not waive any Schedule 7(x) Amounts nor reduce any of the same),

(y) third, to payment of rent and Additional Charges (including Sears Common Area Charges) attributable to periods after the Proration Date,

(z) fourth, to the payment of rent and Additional Charges (including Sears Common Area Charges) which were past due as of the Proration Date (“**Additional Delinquent Amounts**”) (provided, however, (1) all Reserved Sears Charges shall be retained by Seller and Purchaser shall have no rights with respect thereto, (2) Seller reserves the right to pursue all Additional Delinquent Amounts, and (3) Purchaser shall not waive any Additional Delinquent Amounts nor reduce any of the same).

Subject to the foregoing, any amounts received by Authority for the period on or prior to the Proration Date shall be paid to WMC within 30 days of receipt and any amounts received by WMC attributable to the period after the Proration Date shall be paid to Authority within 30 days of receipt. The obligations in this Section 7 shall survive Closing. In all cases in this Section 7 in which WMC is to pay any amount to Authority, if WMC fails to timely pay such amount, then the other parties constituting Seller agree to pay such amount in accordance with the provisions of Section 7.

8. Closing Deliveries. (i) On or before the Closing Date, Seller shall deliver to Escrow Agent each of the following documents, in recordable form where applicable:

(a) an executed original of the bargain and sale deed in the form attached hereto as **Exhibit H** (“**Deed**”);

(b) two (2) originals executed by the applicable Seller of each of the Bill of Sale in the form attached hereto as **Exhibit I**, the Assignment of First Ground Lease and the Assignment of Second Ground Lease (collectively, “Assignments of Ground Lease”) in the forms attached hereto as **Exhibit J**, the Assignment of the Penney Lease in the form attached hereto as **Exhibit K**, the Assignment of the Tenant Leases in the form attached hereto as **Exhibit L**, the Assignment of Contracts in the form attached hereto as **Exhibit M**, and the Assignment of RCOEA and Other Agreements in the forms attached hereto as **Exhibit N** (collectively, the “Assignments”);

(c) A Request for Release of that certain deed of trust, dated December 31, 2002, to the Public Trustee of Jefferson County for the benefit of Gold Bank, a Kansas banking association recorded December 31, 2002, at reception no. F1642585 together with the original promissory note and original or certified copy of such deed of trust, as may be required by

Colorado statutes and releases or terminations of any other recorded documents related to the loan which the deed of trust secures, including without limitation termination(s) of any UCC financing statement(s) all in a form acceptable to Title Company in order to issue the policy of title insurance, with such documents either deleted or shown as released, should Purchaser elect to obtain, at its expense, an owner's policy of title insurance ("**Seller DT Release**");

(d) Two (2) originals of the Loan Agreement executed by the parties thereto other than Purchaser;

(e) A FIRPTA Affidavit executed by Seller;

(f) Notices executed by WMC to SR, Penney and each other Tenant advising it of the change of ownership and delivery of its security deposit, if any, and directing it to pay rent and charges attributable to periods prior to the Proration Date to Seller, and from and after the Proration Date to an address specified by Authority; any and all notices (executed by WMC) required by the RCOEA or Supplemental Agreements in connection with this Agreement or the transactions provided for in this Agreement including, but not limited to, the notice required under Section 50.1. of the RCOEA (but excluding notices to the owners of May Site or Mervyn's Site, which notices shall be the sole obligation of Purchaser); and a general notice executed by WMC to any party to the Service Contracts advising of the transfer and assignment of Seller's interest therein to Authority and directing that all payments and inquiries with respect to matters accruing before the Proration Date made to Seller and those accruing following the Proration Date be made to Authority ("**Tenant and Vendor Notices**");

(g) the Proration Statement (as defined in Section 7) executed by Seller;

(h) one or more affidavits from WMC in favor of the Title Company in form sufficient for the Title Company to delete from the Owner's Policy (should Purchaser elect to obtain such policy, at its expense) (i) the standard mechanics lien exception solely to the extent the lien is caused by Seller (and not any tenant or other party holding by, through or under Seller) and (ii) the lease exceptions shown as items 22, 23, 58, 67 and 72 ("**Terminated Leases**") on the Commitment attached hereto as **Exhibit O** (the "**Commitment**").

(i) Such other documents, instruments or agreements that Seller may reasonably be required to execute and/or deliver on or prior to Closing pursuant to any provision of this Agreement or required by any law to be executed by Seller in connection with the contemplated transactions (including certificates, authorizations or other documents required by laws as a condition of transfer of title to the Real Property).

(ii) On or before the Closing Date, Purchaser shall deliver to Escrow Agent the Cash and each of the following documents, in recordable form where applicable:

(a) an original of each of the Notes execute by Purchaser;

(b) two (2) executed originals of each of the Loan Agreement, Deed of Trust, and any other Loan Documents executed by Authority and, where applicable, City;

(c) two (2) originals executed by Purchaser of each of the Assignments;

(d) the Proration Statement executed by Authority;

(e) the Tenant and Vendor Notices executed by Authority;

(f) Two (2) originals executed by the Authority and the tenant under the Dillard's lease of a lease modification agreement in the form attached hereto as **Exhibit P** (the "**Dillard Modification**"); and

(g) Such other documents, instruments or agreements that Purchaser may be required to execute and/or deliver on or prior to Closing pursuant to any provision of this Agreement or the Loan Documents or required by any laws to be executed by Purchaser in connection with the contemplated transactions or the Loan Documents, together with such other documents, instruments or agreements that Purchaser may be required to execute and/or deliver on or prior to Closing by the Title Company, including without limitation, documents necessary to endorse the Owner's policy of Title Insurance with extended coverage.

9. Closing Costs. Purchaser shall pay all closing, escrow and other fees charged by Escrow Agent; all premiums and other costs of the Lender's Policy and of any title policy it may obtain and any endorsements thereto; all real property transfer taxes, documentary fees, or mortgage fees imposed in connection with the conveyance of the Property or the Loan Documents; and the cost of recording any documents to be recorded in connection with the Closing, except that Seller shall pay the cost to record the Seller DT Release.

10. Representations and Warranties

(a) Purchaser represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

(i) Authority (1) is a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, (2) has full power, authority and legal right to execute, deliver and perform under this Agreement and all of the Exhibits hereto, and under the Loan Documents, and (3) has obtained all necessary consents and approvals of all requisite parties to execute this Agreement;

(ii) This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms; and

(iii) There are no actions, suits, proceedings, orders or investigations pending or threatened against or affecting Purchaser at law or in equity, or before or by any governmental body which might adversely affect Purchaser's performance under this Agreement.

Purchaser's representations and warranties set forth in this Section shall survive the Closing and shall remain in full force and effect for a period ending the earlier of one year following Closing or until satisfaction and payment of all obligations under the Note and other Loan Documents.

(b) Seller represents and warrants to Purchaser, as of the date hereof, as follows:

(i) WMC is a general partnership formed under the Colorado laws, MD1 and MD2 are limited liability companies duly organized in Missouri, and Hibgee is a corporation duly incorporated in Delaware; all of which are qualified to do business in the State of Colorado if required and have the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and Seller has obtained all necessary partnership or corporate authorizations required in connection with the execution, delivery and performance contemplated by this Agreement and has obtained the consent of such respective partners, members and directors as are necessary to bind Seller to this Agreement; and

(ii) To the actual knowledge of Seller, neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which Seller is bound that would (a) prevent consummation of the purchase and sale contemplated hereby or (b) impose liability upon Purchaser; and

(iii) To the actual knowledge of Seller, as of the date of Closing, except such Contracts as will be paid by Seller in the ordinary course of business and except for the Leases and Contracts assumed by Authority as to which adjustments shall be made as provided in Section 7 hereof, there will be no outstanding Contracts made by Seller or Seller's property manager for any improvements to the Property prior to Closing which have not been fully paid for, and Seller shall cause to be discharged all mechanics' and materialmen's liens arising from any labor and materials furnished pursuant to such contracts entered into by Seller (but not any tenant or other party holding by, through or under Seller) prior to Closing; and

(iv) To the actual knowledge of Seller, except as may be set forth on **Schedule 10(b)(iv)** attached hereto there are no unsettled insurance claims concerning the Property; and

(v) To the actual knowledge of Seller, except as may be set forth on **Schedule 10(b)(v)** attached hereto, Seller is not in default under the terms of the Service Contracts or any of the Leases which are being assumed by Purchaser hereunder; provided, however, nothing set forth on such Schedule shall be construed as an admission by Seller of any default.

Seller's representations set forth in subsections (b)(i)-(v) of this Section (b) shall survive the Closing of this Agreement for a period of six (6) months from the Closing Date (the "**Limited Warranty Period**"). Seller's representations and warranties shall be deemed to be reaffirmed as true and correct as of the Closing Date except as revealed by Seller to Purchaser in writing or as may be otherwise known to Purchaser on or before the Closing the Closing Date. As used herein,

the phrase "to the actual knowledge of Seller" means to the actual, present knowledge of Milton Brod, Chief Financial Officer of MD Management, Inc. (in such capacity and not in his individual capacity, and without the imposition of any personal liability) on the Effective Date, without any duty of inquiry.

(c) Seller shall provide to the Title Company such authorizations of the authority of the Seller to enter into this Agreement and close the transaction contemplated hereby as shall be reasonably required by the Title Company in order for it to issue an Owner's Policy of title insurance to Authority at Closing, at Purchaser's expense, should Purchaser wish to obtain such policy.

(d) Seller and Purchaser represent and warrant, each to the other, that they have not dealt with any real estate broker, sales person or finder in connection with this transaction and no other person initiated or participated in the negotiation of this Agreement or showed the Property to Purchaser, and to the knowledge of Seller and Purchaser, there are no real estate brokerage commissions, finder's fees, or other similar fees due any person or entity on account of or as a result of this transaction, except as set forth herein. Seller and Purchaser each agree to defend and hold the other harmless from and against any loss, cost, liability or expense suffered or incurred by the other party as a result of a claim or claims for brokerage commissions, finder's fees or other similar fees from any party or firm that is based on the act or omission of the party in breach of the above warranty. The provisions of this paragraph shall survive the Closing.

11. No Seller Warranties; Release; AS IS.

(a) **No Seller Warranties.** THE ENTIRE AGREEMENT BETWEEN THE SELLER AND PURCHASER WITH RESPECT TO THE SALE OF THE PROPERTY IS EXPRESSLY SET FORTH IN THIS AGREEMENT. SELLER IS NOT BOUND BY ANY AGREEMENTS, UNDERSTANDINGS, PROVISIONS, CONDITIONS, REPRESENTATIONS OR WARRANTIES (WHETHER WRITTEN OR ORAL AND WHETHER MADE BY SELLER OR ANY AGENT, EMPLOYEE OR PRINCIPAL OF SELLER OR ANY OTHER PARTY) EXCEPT AS EXPRESSLY SET FORTH AND STIPULATED (i) IN SUBSECTIONS (b) (THE "**10(b) WARRANTY**") AND (d) (THE "**10(d) WARRANTY**") OF SECTION 10 HEREOF (AND SUBJECT TO THE LIMITATIONS SET FORTH IN SAID SECTION) AND (ii) IN THE DEED AND ASSIGNMENTS (THE "**CONVEYANCE DOCUMENTS**") TO BE SIGNED AND DELIVERED BY SELLER AT CLOSING (COLLECTIVELY, THE "**CONVEYANCE WARRANTIES**"). PURCHASER ACKNOWLEDGES THAT (A) PURCHASER HAS FULLY INSPECTED ALL OF THE PROPERTY, AND IS FULLY AND COMPLETELY SATISFIED WITH THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ALL REAL PROPERTY AND IMPROVEMENTS, THE PERSONALTY, THE LEASES, AND THE CONTRACTS), (B) PURCHASER IS FULLY FAMILIAR WITH THE FINANCIAL AND PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION THEREOF, AND (C) THE PROPERTY IS BEING PURCHASED BY PURCHASER IN AN "AS IS" AND "WHERE IS" CONDITION AND WITH ALL DEFECTS AND FAULTS (PATENT AND LATENT) AND WITHOUT RELIANCE ON ANY AGREEMENT, UNDERSTANDING, CONDITION, WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), FINANCIAL,

OPERATING OR OTHER INFORMATION (WRITTEN, ORAL OR ELECTRONIC) PROVIDED BY SELLER TO PURCHASER OR ANY REPRESENTATION MADE BY SELLER OR ANY SELLER PARTIES (DEFINED BELOW) OR ANY OTHER PARTY AS TO THE FINANCIAL OR PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION OF THE PROPERTY (INCLUDING ALL REAL PROPERTY AND IMPROVEMENTS, THE PERSONALTY, THE LEASES, RCOEA AND THE CONTRACTS) OR THE AREAS SURROUNDING THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO (I) ANY PERMITTED USE THEREOF, (II) THE ZONING CLASSIFICATION THEREOF OR COMPLIANCE THEREOF WITH FEDERAL, STATE OR LOCAL LAWS, (III) AS TO THE INCOME OR EXPENSE IN CONNECTION THEREWITH, (IV) COMPLIANCE OF THE PROPERTY WITH ANY PRIVATE USE RESTRICTIONS, SUCH AS RECORDED COVENANTS, CONDITIONS, AND RESTRICTIONS, (V) THE ACCURACY OF ANY STATEMENTS, CALCULATIONS OR CONDITIONS STATED OR SET FORTH IN ANY DOCUMENTS DELIVERED OR PROVIDED BY SELLER OR ANY SELLER PARTIES, OR AS TO ANY OTHER MATTER IN CONNECTION THEREWITH. PURCHASER KNOWINGLY WAIVES ANY AND ALL OBJECTIONS TO, COMPLAINTS ABOUT, OR CLAIMS REGARDING THE PROPERTY (INCLUDING ALL REAL PROPERTY, THE PERSONALTY, THE LEASES AND THE CONTRACTS) OR FINANCIAL, PHYSICAL OR OTHER CONDITION THEREOF AND ACKNOWLEDGE AND AGREES THAT PURCHASER IS RELYING SOLELY ON ITS OWN INSPECTIONS, INVESTIGATIONS AND DUE DILIGENCE AND ASSUMES THE RISK THAT ADVERSE MATTERS CONCERNING THE FINANCIAL AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, ANY ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY SUCH INSPECTIONS, INVESTIGATIONS AND/OR DUE DILIGENCE. PURCHASER FURTHER ASSUMES THE RISK OF CHANGES IN ENVIRONMENTAL LAWS AS THEY MAY RELATE TO PAST, PRESENT, OR FUTURE ENVIRONMENTAL CONDITIONS AT OR ABOUT THE PROPERTY, AS WELL AS THE RISK THAT ADVERSE PHYSICAL CHARACTERISTICS AND CONDITIONS, INCLUDING THE PRESENCE OF HAZARDOUS MATERIALS, MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATIONS. PURCHASER ACKNOWLEDGES THAT NEITHER SELLER, NOR ANY SELLER PARTIES NOR ANY OTHER PARTY ACTING ON BEHALF OF SELLER OR SELLER PARTIES, HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY SUCH AGREEMENT, CONDITION, REPRESENTATION OR WARRANTY EITHER EXPRESSED OR IMPLIED. SELLER AND THE SELLER PARTIES HEREBY SPECIFICALLY DISCLAIM ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES AND FURTHER SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES WITH RESPECT TO THE PROPERTY. THIS PARAGRAPH SHALL SURVIVE CLOSING AND DELIVERY OF THE DEED, AND SHALL BE DEEMED INCORPORATED BY REFERENCE AND MADE A PART OF ALL DOCUMENTS DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE SALE OF THE PROPERTY AND THE TRANSACTIONS CONTEMPLATED HEREIN.

(b) **Release.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, PURCHASER HEREBY FULLY AND FOREVER RELEASES AND DISCHARGES SELLER AND (AS THE CASE MAY BE) SELLER'S RESPECTIVE

PARTNERS, EMPLOYEES, MANAGERS, AGENTS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, REPRESENTATIVES, CONSULTANTS, AND ATTORNEYS (“**SELLER PARTIES**”) FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES WHETHER SUIT IS INSTITUTED OR NOT) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (HEREINAFTER COLLECTIVELY CALLED THE "**CLAIMS**") ARISING FROM, REGARDING OR OTHERWISE RELATING TO THE PROPERTY, THE MAY SITE OR THE MERVYN'S SITE (INCLUDING WITHOUT LIMITATION ALL REAL PROPERTY AND IMPROVEMENTS, PERSONALTY, LEASES, RCOEA, SUPPLEMENTAL AGREEMENTS AND SERVICE CONTRACTS), INCLUDING WITHOUT LIMITATION AS TO (I) ANY DEFECTS (PATENT OR LATENT), ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY WHETHER THE SAME ARE THE RESULT OF NEGLIGENCE OR OTHERWISE, OR (II) ANY OTHER CONDITIONS, INCLUDING ENVIRONMENTAL AND OTHER PHYSICAL CONDITIONS, FINANCIAL, TITLE, OR OTHER MATTERS OR CONDITIONS AFFECTING THE PROPERTY WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE. THIS RELEASE SPECIFICALLY INCLUDES, WITHOUT LIMITATION, ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS OR THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED, AS THOSE LAWS MAY BE AMENDED FROM TIME TO TIME AND ANY REGULATIONS, ORDERS, RULES OF PROCEDURES OR GUIDELINES PROMULGATED IN CONNECTION WITH SUCH LAWS, REGARDLESS OF WHETHER THEY ARE IN EXISTENCE ON THE DATE OF THIS AGREEMENT. IN THIS CONNECTION, PURCHASER ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, CONTROVERSIES, DAMAGES, COSTS, LOSSES OR EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND PURCHASER FURTHER ACKNOWLEDGES THAT THIS RELEASE HAS BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THE FOREGOING. PURCHASER EXPRESSLY WAIVES ANY PROVISION OF STATUTORY OR DECISIONAL LAW TO THE EFFECT THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN SUCH PARTY'S FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY SUCH PARTY, MUST HAVE MATERIALLY AFFECTED SUCH PARTY'S SETTLEMENT WITH THE RELEASED PARTIES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF PURCHASER'S SELECTION AND PURCHASER IS GRANTING THIS RELEASE OF ITS OWN VOLITION AND AFTER CONSULTATION WITH PURCHASER'S COUNSEL.

(B) **Environmental Definitions.** As used in this Section: (i) The term “**Environmental Law**” shall mean any common law or any federal, state or local law, statute, code, ordinance, rule or regulation, and any amendments thereto (whether such state or local law, statute, code, ordinance, rule or regulation derives its authority from the constitution or laws of the United States or the State of Colorado) relating to either the waters of the United States or the State of Colorado or to the emission, discharge, spill, release or threatened release of any Hazardous Substance into the environment (including, but not limited to, ambient air, surface

water, groundwater or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. "CERCLA", the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., the Federal Clean Air Act, 42 U.S.C. § 7401-7626, the Federal Water Pollution Control Act and Federal Clean Water Act of 1977, 33 U.S.C. § 1251, et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135 et seq., the Federal Environmental Pesticide Control Act, the Federal Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Federal Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq., and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C., § 11001, et seq., (reference to all of such Acts to include all amendments), together with all similar laws, ordinances, rules, regulations and orders enacted or promulgated by any agency or instrumentality of any government, or applicable state or local government or political subdivision of any government; and (ii) the term "**Hazardous Substance**" includes, without limitation, those substances included within the definitions of "Hazardous Substances," "Hazardous Materials," "Toxic Substances," "Hazardous Waste," or "Solid Waste" in any Environmental Law, and oil and petroleum (and their products), asbestos, polychlorinated biphenyls, urea formaldehyde, lead-based paint, and medical or infectious waste or any other substance regulated by Environmental Law.

(C) **AS IS.** PURCHASER SHALL ACCEPT THE PROPERTY (INCLUDING ALL REAL PROPERTY, PERSONALTY, LEASES AND CONTRACTS), AT THE TIME OF CLOSING IN THE SAME CONDITION AS THE SAME ARE AS OF THE DATE OF THIS AGREEMENT, AS SUCH CONDITION SHALL HAVE CHANGED BY REASON OF WEAR AND TEAR, DAMAGE BY FIRE OR OTHER CASUALTY OR DUE TO ANY CONDEMNATION (I.E., BY A THIRD PARTY). SELLER SHALL HAVE NO OBLIGATION TO MAKE ANY REPAIRS, REPLACEMENTS OR IMPROVEMENTS WHATSOEVER, WHETHER ORDINARY OR EXTRAORDINARY, STRUCTURAL, CAPITAL OR OTHERWISE, OR REQUIRED BY REASON OF WEAR AND TEAR, FIRE OR OTHER CASUALTY, NOR SHALL THE CLOSING DATE BE EXTENDED OR THE PURCHASE PRICE REDUCED AS A CONSEQUENCE THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER SPECIFICALLY ACKNOWLEDGES THAT THE FACT THAT ANY PORTION OF THE PROPERTY MAY NOT BE IN WORKING ORDER OR CONDITION AT THE CLOSING DATE FOR ANY REASON OR MAY BE SUBJECT TO ANY CONDEMNATION (I.E., BY A THIRD PARTY), SHALL NOT RELIEVE PURCHASER OF ITS OBLIGATION TO COMPLETE CLOSING UNDER THIS AGREEMENT AND PAY THE FULL PURCHASE PRICE. SELLER MAY, WITH PURCHASER'S EXPRESS WRITTEN CONSENT (WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED) AT SELLER'S OPTION, MAKE ANY SUCH REPAIRS AND REPLACEMENTS PRIOR TO CLOSING IF SELLER, IN GOOD FAITH, BELIEVES SUCH REPAIRS AND REPLACEMENTS ARE NECESSARY OR LEGALLY REQUIRED TO PROTECT THE PROPERTY OR ARE NECESSARY TO COMPLY WITH CONTINUING OBLIGATIONS UNDER ANY LEASE AND THE REASONABLE COST OF SUCH REPAIRS AND REPLACEMENTS SO APPROVED BY PURCHASER AND WHICH IS NOT COVERED BY INSURANCE SHALL BE ADDED TO THE PURCHASE PRICE AND SHALL BE PAYABLE BY PURCHASER TO SELLER ON THE CLOSING DATE.

(D) **Effect of Disclaimers.** PURCHASER ACKNOWLEDGES AND AGREES THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED TO TAKE INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD SUBJECT TO THE PROVISIONS OF THIS SECTION 11 AND THAT SELLER WOULD HAVE CHARGED A HIGHER PURCHASE PRICE IF THE PROVISIONS OF THIS SECTION 11 WERE NOT AGREED UPON BY THE PURCHASER. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE DEED AND SHALL BE DEEMED INCORPORATED BY REFERENCE AND MADE A PART OF ALL DOCUMENTS DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE SALE OF THE PROPERTY AND THE TRANSACTIONS CONTEMPLATED HEREIN.

12. Default (a) If Seller shall fail to perform any of its material obligations hereunder, and if such failure is not cured within ten (10) days after written notice to Seller specifying such failure, Purchaser shall have the following rights: (i) proceed to Closing without any reduction or abatement of the Purchase Price; (ii) terminate this Agreement, in which event all amounts deposited by Purchaser shall be promptly returned to Purchaser; or (iii) in the event that Seller refuses to complete the transactions provided for in this Agreement, Purchaser shall be entitled to specific performance (and Purchaser shall not be entitled to any monetary damages). The remedies set forth in this Section shall be Purchaser's sole and exclusive remedies in the event of Seller's default.

(b) If Purchaser shall default in the performance of any of its obligations hereunder including, without limitation, Purchaser's failure to close, Seller shall have the right at its election to pursue all remedies available at law or in equity.

13. Like-Kind Exchange by Seller. (a) It is understood and agreed that Seller shall have the option to qualify this transaction as part of a tax deferred like-kind exchange under Section 1031 of the Internal Revenue Code. Purchaser shall cooperate with Seller in effecting such exchange and to undertake such customary accommodations as Seller and its attorneys may request to accomplish the exchange in a tax deferred manner (including, without limitation, executing such documents to acknowledge such exchange as are reasonably necessary for Seller to effect such exchange); provided, however, that Purchaser shall not be obligated to incur any expense directly resulting from Seller's exchange unless Seller agrees to reimburse Purchaser for such expenses, and, provided, that such like-kind exchange shall not delay the Closing.

(b) **Condemnation Replacement.** It is understood and agreed that Seller is selling the Property to Purchaser in lieu of condemnation and Seller desires to have the opportunity to replace the Property with similar in use or like-kind property under Section 1033 of the Internal Revenue Code. Purchaser agrees to cooperate with Seller in effecting such replacement and to undertake such accommodations as Seller and its attorneys may request to accomplish such replacement in a tax deferred manner (including, without limitation, modifying the payees and terms of promissory notes and related security documents which the Seller gives in such manner as is requested by Purchaser as long as such modifications do not increase the aggregate amount Seller has to pay under such notes); provided, however, that Purchaser shall not be obligated to incur any expense directly resulting from Seller's replacement unless Seller agrees to reimburse Purchaser for such replacement, and, provided, further, that such replacement shall not delay the Closing.

14. Notices. Any notice, request, demand, instruction or other document or communication to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be deemed to be delivered (a) upon personal delivery to and receipt by the person to whom delivered (including without limitation delivery to and/or receipt by telecopy), or (b) three (3) days after deposit in United States registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) day after deposit with a nationally recognized overnight express courier for next day delivery, in each case addressed to the parties at their respective addresses or telecopy numbers (as applicable) set forth below:

If to Seller: c/o MD Management, Inc.
5201 Johnson Drive, Suite 450
Mission, Kansas 66201
Attention: Milton Brod
Telecopy No.: 913-384-2996

with a simultaneous copy to:

Lewis, Rice & Fingersh L.C.
1010 Walnut Street, Suite 500
Kansas City, Missouri 64106
Attention: William E. Carr, Esq.
Telecopy No.: 816.472.2500

If to Purchaser: Westminster Economic Development
Authority
c/o Finance Department
City of Westminster, Colorado
4800 W. 92nd Avenue
Westminster, CO 80031
Telecopy No.: 303-477-0965

with a simultaneous copy to:

Malcolm Murray
Murray, Dahl, Kuechenmeister & Renaud LLP
2401 15th Street, Suite 200
Denver, CO 80202
Telecopy No.: 303-477-0965

A party may change its address and telecopy number for receipt of notices by service of a notice of such change in accordance herewith.

15. Invalidity. If any term, provision or condition of this Agreement is found to be or is rendered invalid or unenforceable, it shall not affect the remaining terms, provisions and conditions of this Agreement, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Colorado.

17. **No Third Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances, rules, regulations, orders or decrees.

18. **Entirety and Amendments.** This Agreement contains the entire agreement among the parties hereto with respect to its subject matter and shall supersede all negotiations, prior discussions, agreements, letters of intent and understandings between Seller, Purchaser, and their respective employees, agents and representatives, all of same being merged herein and extinguished. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. This Agreement has been drafted through a joint effort of the parties and, therefore, shall not be construed in favor of or against either of the parties, but shall be construed in accordance with its fair meaning.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

20. **Time.** Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

21. **Assignment.** This Agreement may not be assigned by Purchaser without the prior written consent of the Seller. Subject to the foregoing, all terms, covenants, conditions and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, executors, administrators, legal representatives, and permitted successors in interest and assigns.

22. **Waiver and Consent.**

(a) One or more waivers of any term, covenant or condition of this Agreement by any party shall not be construed as a waiver of any subsequent breach of the same or any other term, covenant or condition; nor shall any delay or omission by any party in seeking a remedy for any breach of this Agreement, or in exercising any right accruing to such party by reason of any such breach, be deemed a waiver by such party of its rights or remedies with respect to such breach.

(b) The failure of any party to insist upon the strict performance of any provision of this Agreement, or the failure of any party to exercise any right, option or remedy hereby reserved or granted, shall not be construed as a waiver for the future of any such provision, right, option or remedy, or as a waiver of any subsequent breach thereof, or as an alteration or modification of this Agreement.

(c) No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing, signed by the party against whom such waiver is sought to be enforced.

23. **Gender and Number.** Words of any gender shall include the other gender and the neuter. Whenever the singular is used, the same shall include the plural wherever appropriate, and whenever the plural is used, the same shall also include the singular wherever appropriate. Without limiting the generality of the foregoing, the plural form of any term that is defined in the singular shall mean collectively all items so defined and the singular form of any term that is defined in the plural shall mean singly each item so defined.

24. **Illustrative Terms.** Whenever the word “including”, “includes” or any variation thereof is used herein, such term shall be construed as a term of illustration and not a term of limitation. For example, the term “including” shall be deemed to mean “including, without limitation”, and the term “includes” shall be deemed to mean “includes, without limitation”.

25. **Joint and Several.** The obligations of each Purchaser hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim (whether such claim is one against the other entities which comprise the Purchaser) until all obligations of the collective Purchaser to the Seller hereunder (and all obligations under the Note and Deed of Trust) are satisfied in full.

26. **Survival.** Except as to those matters herein specifically stated to survive the Closing, all covenants, representations and warranties, if any, set forth in this Agreement shall merge with the Deed and shall not survive Closing; provided, however, this shall not be deemed to affect the provisions of the Deed, Bill of Sale, Assignments and Loan Documents.

27. **Attorney’s Fees.** In the event either Party institutes any action or proceeding against the other Party relating to the interpretation or enforcement of the provisions of this Agreement or any violation hereunder, the unsuccessful Party in such action or proceeding shall reimburse to the successful Party its reasonable attorneys’ fees and costs.

28. **Exhibits.** All Exhibits which are attached to this Agreement are hereby made a part of this Agreement by this reference.

A	Legal Description of Real Property
B	Excluded Personalty
C	Leases
D	Service Contracts
E	Allocation of Interests and Purchase Price
F-1 to F-3	Form of Notes, Loan Agreement and Deed of Trust
G	[Intentionally Deleted]
H	Form of Deed
I	Form of Bill of Sale
J	Form of Assignments of Ground Leases
K	Form of Assignment of Penney Lease
L	Form of Assignments of Tenant Leases
M	Form of Assignment of Contracts
N	Form of Assignment of RCOEA and Other Agreements
O	Commitment
P	Form of Dillard Modification Agreement

SELLER:

WESTMINSTER MALL COMPANY,
a Colorado general partnership

By: M D Management, Inc., a Missouri corporation, Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation, Manager

By: _____
Printed
Name: _____
Its: _____

THE HIGBEE COMPANY,
a Delaware corporation
and successor by merger to Mersco Realty Co., Inc., an Ohio corporation

By: _____
Printed
Name: _____
Its: _____

MD WESTMINSTER 1ST TRACT, LLC,
a Missouri limited liability company

By: _____
Thomas S. Morgan, Manager

MD WESTMINSTER 2ND TRACT, LLC,
a Missouri limited liability company

By: _____
Thomas S. Morgan, Manager

PURCHASER:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT A

Real Property

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

Excluded Personalty

Office computers of bookkeeper, manager, management assistant and security

Front End loader

Truck

EXHIBIT C

List of Leases

UNIT	TENANT	LEASE DOCUMENTS
012	Things Remembered, Inc.	Lease Extension Agreement dated 8/31/07 Second Lease Extension Agreement dated 1/1/09
016	Footlocker Retail, Inc. f/k/a Venator Group Retail Inc. f/k/a Kinney Shoe Corporation d/b/a Foot Locker	Lease dated 6/21/96 Lease Extension Agreement dated 9/16/03 Second Lease Extension Agreement dated 1/8/10 Third Lease Extension Agreement dated 3/21/11
018	Spencer Gifts LLC	Lease dated 1/12/98 Lease Extension Agreement dated 9/28/07 Second Lease Extension Agreement dated 11/28/08 Third Lease Extension Agreement dated 2/1/10 Letter dated April 21, 2001
020	Michael Amani d/b/a Riviera Clothing	Lease dated 7/11/05 Lease Extension and Amendment Agreement dated 11/1/08
022	General Nutrition Corporation	Lease dated 12/7/94 Lease Amendment and Extension Agreement dated 10/29/04 Second Lease Amendment and Extension Agreement dated 11/30/06 Third Lease Amendment and Extension Agreement dated 10/31/07 Fourth Lease Amendment and Extension Agreement dated 8/7/09 Fifth Lease Amendment and Extension Agreement dated 11/30/09 Guaranty by General Nutrition Centers Inc. dated 12/7/94
023	Bath & Body Works, LLC	Lease dated 11/08/96 Letter Agreement dated 7/19/10

035	Dillard Juniors	Part of premises under Dillard lease (Main 3) described below
042	Infinite Design Jeweler	Lease dated 2/23/06
044	FL Retail Operations d/b/a Foot Action	Lease dated 8/10/98 Guaranty of Lease dated 8/10/98 Assignment and Assumption of Lease Agreement dated 5/7/04 1 st Amendment dated 8/04 Second Lease Extension Agreement dated 3/21/11
045	Visionary Properties, Inc. d/b/a Doctor's Vision World	Lease dated 9/14/00
049	Genesco Inc. d/b/a Journey's	Lease dated 10/25/01 Lease Modification Agreement dated 11/1/08 Second Lease Modification Agreement dated 11/1/09 Third Lease Modification Agreement dated 10/1/10
050A	Claire's Boutiques	Lease dated 4/26/04 Letter dated December 7, 2004
058	Victoria's Secret Stores, Inc.	Lease dated 10/29/03 Lease Amendment Agreement dated 6/17/04 Second Lease Amendment Agreement dated 1/27/05 Termination letter dated October 28, 2010
072	Pet City, Inc.	Lease dated 4/17/01
139	Footlocker Retail, Inc. d/b/a Champ Sports	Lease dated 1/9/04 Lease Amendment Agreement dated 3/___/10 Second Lease Extension Agreement dated 3/21/11
K012	Compass Bank	Lease 11/11/2002

		Lease Extension 1/1/2005
K015	Compass Bank	Lease 11/11/2002
MAIN 3 & Unit 035	Dillard's f/k/a Higbee Lancoms, LP, a Delaware limited partnership (successor to The Joslin Dry Goods Company)	Lease and Declaration of Restrictions dated September 9, 1976 between Westminster Mall Company and The Joslin Dry Goods Company Memorandum of lease recorded in Book 2985 at Page 672 First Lease Modification Agreement dated July 1, 1977 Amendment No. 1 to Lease and Declaration of Restrictions dated February 1, 1979 Amendment and Modification No. 2 to Lease and Declaration of Restrictions dated October 10, 1985 First Amendment to Lease and Declaration of Restrictions dated February 13, 1986 Second Lease Modification Agreement dated February 13, 1986 Amended and Restated Lease and Declaration Restrictions dated 12/5/87
MAIN 4	J.C. Penney Properties, Inc.	The following documents constituting the "Penney Lease": Lease dated 2/13/86 (partial copy recorded at Reception. No. 86016388) Letter Guaranty from J.C. Penney Company dated 2/13/86 Letter Agreement dated 2/13/86 Letter Agreement dated 2/13/86 Term Agreement dated 6/18/93 recorded July 12, 1993 under Reception No. 93101704 and recorded January 10, 1994 under Reception No. 94005874
PAD2	U.S. Bank f/k/a Central Bancorporation	Lease dated 1/31/85 Memorandum of Lease recorded March 27, 1985 under Reception No. 85028159
PAD5	GMRI, Inc. d/b/a Olive Garden	Sublease dated 11/20/92 Memorandum of Sublease dated 4/22/93 recorded May 14, 1993 under Reception No. 93067818 and recorded October 19, 1993 under Reception No. 93167959 Attornment Agreement of Ground Lease recorded May 14, 1993 under

		<p>Reception No. 93067819</p> <p>Extension letter dated 3/21/05</p> <p>Extension letter dated 1/27/10</p>
PAD6	Sears & Roebuck Company (Sears Auto Center)	Lease dated 2/25/02
TEMP	Corn LTD	Agreement dated 09/08/09
TEMP	Extreme Mini Golf Inc.	Agreement dated 11/02/09

EXHIBIT D

Service Contracts

1. Service Agreement dated January, 2011 and Renewal Mechanical Service Agreement dated December 8, 2010 with Long Mechanical Solutions.
2. Service Agreement Non-Hazardous Waste dated January 25, 1989 with Waste Management.
3. Maintenance and Guarantee Agreement dated April 17, 2007 with Plantek Distinctive Interiorscaping, Inc.

EXHIBIT E

Allocated Interests and Purchase Price of each Seller Party

Seller Party	Total Purchase Price	Cash portion of Purchase Price	Deferred Amount of Purchase Price
WMC	\$19,125,000	\$18,500,000	\$625,000
MD1	\$250,000	\$0.00	\$250,000
MD2	\$1,187,500	\$0.00	\$1,187,500
Higbee, as to the property subject to the First Ground Lease	\$250,000	\$0.00	\$250,000
Higbee, as to the property subject to the Second Ground Lease	\$1,187,500	\$0.00	\$1,187,500

EXHIBITS F-1 – F-3
Loan Documents

EXHIBIT F-1

Higbee Promissory Note

PROMISSORY NOTE

\$1,750,000.00

May __, 2011

FOR VALUE RECEIVED, **CITY OF WESTMINSTER**, a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal agency (hereinafter collectively called "Borrower"), having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, promise to pay to the order of **THE HIGBEE COMPANY**, a Delaware corporation (hereinafter collectively called "Lender"), with an address at 1600 Cantrell Road, Little Rock, Arkansas 72205, Attn: Vice President, Real Estate, or at such other place as the Lender may from time to time designate in writing, the principal sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (U.S. \$1,750,000.00)**, together with interest thereon, as follows (*certain capitalized terms used herein are hereinafter defined*):

§1. Accrual of Interest; Interest Rate; Payments.

(a) Interest shall accrue on the outstanding principal balance under this Note from the date hereof through the Maturity Date at the Applicable Rate, or if applicable under the terms of this Note, the Default Rate.

(b) On June 1, 2011, and on the corresponding day of each succeeding calendar month to and including April 1, 2012, Borrower shall pay to Lender, the entire amount of interest accrued and then unpaid on the indebtedness evidenced hereby.

(c) The entire unpaid principal balance of this Note, together with all interest accrued but unpaid thereon, shall be due and payable on the Maturity Date. If Borrower should fail to repay this Note in full by the Maturity Date, then interest shall accrue at the Default Rate on the outstanding principal balance under this Note from the Maturity Date until this Note is repaid in full (notwithstanding the entry of any decree, order, judgment or other judicial action concerning this Note).

(d) Borrower acknowledges that the periodic interest payments described above will not provide any amortization of the Loan over the term of this Note, and that a payment of all principal owing under this Note (a balloon payment) will be required on the scheduled Maturity Date.

(e) All payments under this Note (other than payments of late charges) shall be first applied to interest and the remainder to principal. Remittances in payment of any part of the indebtedness evidenced hereby other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder

hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

§2. Prepayments. Borrower shall have the right to prepay this Note and the Related Note together, both in full without premium or penalty at any time upon giving written notice to Lender and Additional Lender specifying the date of prepayment not less than three (3) business days prior to such prepayment. No prepayment of this Note shall be accepted unless the Related Note is also paid in full at the same time. If notice of intention to prepay is given, the entire principal balance hereof and of the Related Note, together with all accrued, unpaid interest thereon, shall become due and payable on the date specified for prepayment in such notice.

§3. Security. This Note, together with the Related Note, is secured by the Mortgage, encumbering real property in Westminster, Colorado, and other security.

§4. Certain Terms Defined. In addition to words and terms defined elsewhere in this Note the following terms, as used in this Note, shall have the following meanings:

“Agent” shall mean _____, the Agent of the Lender and Additional Lender under the terms of the Loan Agreement.

“Additional Lender” shall mean collectively MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company, MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company, MD WESTMINSTER HOLDINGS, LLC, a Missouri limited liability company, and TM WESTMINSTER HOLDINGS, LLC, a Missouri limited liability company and collectively the payee of the Related Note.

“Applicable Rate” shall mean six percent (6%) per annum.

“Default Rate” shall mean a per annum interest rate equal to five percent (5%) in excess of the Applicable Rate.

“Event of Default” shall mean an “Event of Default” as defined in the Loan Agreement.

“Loan” shall mean all of the indebtedness evidenced hereby from time to time, whether principal, interest or otherwise, and all sums coming due Lender under this Note, together with all amounts due to Additional Lender under the Related Note and all sums due to Lender and Additional Lender under any of the Loan Documents from time to time.

“Loan Agreement” shall mean the Loan Agreement of even date herewith among Borrower, Lender, Additional Lender and Agent.

“Loan Documents” shall mean collectively this Note, the Related Note, the Loan Agreement, the Mortgage, and each other instrument, agreement or document now or hereafter evi-

dencing, securing, supporting, guaranteeing or executed in connection with the indebtedness evidenced hereby, and any amendments to any of the same hereafter made.

“Maturity Date” shall mean the date one year following the date of this Note.

“Mortgage” shall mean that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from Borrower for the benefit of Agent, on behalf of Lender and Additional Lender, encumbering the Mortgaged Property and securing repayment of the Loan, as the same may hereafter be amended.

“Mortgaged Property” shall mean the “Mortgaged Property” as defined in the Mortgage.

"Note" shall mean this Promissory Note, as the same may be amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

“Related Note” shall mean that certain promissory note of even date herewith in the principal amount of \$1,750,000.00 made by Borrower and payable to the order of Additional Lender.

"Usury Law" shall mean any law or regulation of any governmental authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money.

§5. Late Charge. If any payment due under this Note is not received by Lender within five (5) days after such payment is due, Borrower shall pay to Lender on demand a late charge in an amount equal to five percent (5.00%) of such overdue payment, to compensate Lender for some of the additional costs and expenses of processing late payments. Such five (5) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Lender or Agent may have and is in addition to any fees and charges of any agents or attorneys which Agent may employ upon the occurrence of an Event of Default, whether authorized herein or by law.

§6. Event of Default. If an Event of Default shall occur and exist, then: (a) the entire unpaid principal balance of the Loan and all other sums payable to Lender under this Note, the Related Note and/or any of the other Loan Documents, together with unpaid interest on the Loan and all such sums, shall at the option of Lender become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or other action, all of which are hereby waived by Borrower; and (b) notwithstanding any other provision of this Note, during the period of existence of such Event of Default, interest on the Loan shall accrue and be paid at the lesser of (i) the Default Rate, or (ii) the maximum lawful rate of interest under the applicable Usury Law. All of the rights, remedies, powers and privileges (together, "Rights") of the holder hereof provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust

it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by the holder hereof to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the holder hereof from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect. If any holder of this Note retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, reasonable attorneys' fees and expenses as permitted by law, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

§7. Joint and Several Liability; Certain Waivers. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute suit or exhaust its remedies hereunder against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the State in which payment is to be made as specified in this Note, and venue in the county in which payment is to be made as specified in this Note, over any suit, action or proceeding arising out of, or relating to, the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Agent to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full.

§8. Choice of Governing Law. This Note is to be delivered to and accepted by Lender in the State of Colorado. Lender and Borrower have therefore agreed, and do agree, that this Note is to be construed and enforced in all respects in accordance with the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other jurisdiction) of the State of Colorado, including but not limited to the Usury Laws of the State of Colorado.

§9. Compliance with Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Borrower to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto, then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If from any circumstance, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law.

§10. Revival of Liability. If any payments or proceeds received by Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

§11. Miscellaneous Provisions. This Note may not be changed, amended or modified except by agreement in writing signed by Borrower and Lender. Time is of the essence with respect to all of Borrower's obligations and agreements under this Note. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Section headings and captions herein are provided solely for convenience, and shall not be considered in interpreting or construing the provisions of this Note.

§12. Successors and Assigns. Whenever used in this Note, the words "Borrower" and "Lender" shall be deemed to include the respective successors of Borrower and of Lender, and "Lender" shall also include any subsequent holder of this Note. This Note shall be binding in

accordance with its terms upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower. The holder of this Note may, from time to time, sell or offer to sell the loan evidenced by this Note, or interests therein, to one or more assignees or participants and is hereby authorized to disseminate any information it has pertaining to the Loan evidenced by this Note, including, without limitation, any security for this Note and credit information on Borrower, any of its principals and any guarantor of this Note, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to this Note and the other Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

§13. Not for Nominee. Borrower hereby represents and warrants to Lender that: (a) Borrower is borrowing the Loan on Borrower's own behalf, and not as nominee, designee, or agent for another, and (b) Borrower is not acting for another in so borrowing the Loan. This Note and the other Loan Documents collectively: (a) constitute the final expression of the agreement between Borrower and Lender concerning the Loan; (b) contain the entire agreement among Borrower, Lender, Additional Lender and Agent respecting the matters set forth herein and in such other Loan Documents; (c) may not be contradicted by evidence of any prior or contemporaneous oral agreements or understandings among Borrower and Lender or Additional Lender or Agent; and (d) supersede all prior agreements and understandings among Borrower, Lender, Additional Lender and Agent respecting such matters.

§14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given: (a) three (3) days after being sent by certified United States Mail, return receipt requested, to Borrower and to Lender at their respective addresses hereinabove set forth, or to such other place or places as either party hereto may from time to time designate to the other for the purpose of receiving notices hereunder; or (b) if given in the manner provided for the giving of notices under the Mortgage.

§15. Waiver of Jury Trial. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER OR AGENT MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR

HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

“BORROWER”:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT F-2

MD Promissory Note

PROMISSORY NOTE

\$1,750,000.00

May __, 2011

FOR VALUE RECEIVED, **CITY OF WESTMINSTER**, a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal agency (hereinafter collectively called "Borrower"), having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, promise to pay to the order of **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company (hereinafter collectively called "Lender"), at its office at c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205 or at such other place as the Lender may from time to time designate in writing, the principal sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (U.S. \$1,750,000.00)**, together with interest thereon, as follows (*certain capitalized terms used herein are hereinafter defined*):

§1. Accrual of Interest; Interest Rate; Payments.

(a) Interest shall accrue on the outstanding principal balance under this Note from the date hereof through the Maturity Date at the Applicable Rate, or if applicable under the terms of this Note, the Default Rate.

(b) On June 1, 2011, and on the corresponding day of each succeeding calendar month to and including April 1, 2012, Borrower shall pay to Lender, the entire amount of interest accrued and then unpaid on the indebtedness evidenced hereby.

(c) The entire unpaid principal balance of this Note, together with all interest accrued but unpaid thereon, shall be due and payable on the Maturity Date. If Borrower should fail to repay this Note in full by the Maturity Date, then interest shall accrue at the Default Rate on the outstanding principal balance under this Note from the Maturity Date until this Note is repaid in full (notwithstanding the entry of any decree, order, judgment or other judicial action concerning this Note).

(d) Borrower acknowledges that the periodic interest payments described above will not provide any amortization of the Loan over the term of this Note, and that a payment of all principal owing under this Note (a balloon payment) will be required on the scheduled Maturity Date.

(e) All payments under this Note (other than payments of late charges) shall be first applied to interest and the remainder to principal. Remittances in payment of any part of the indebtedness evidenced hereby other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and

shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

§2. Prepayments. Borrower shall have the right to prepay this Note and the Related Note together, both in full without premium or penalty at any time upon giving written notice to Lender and Additional Lender specifying the date of prepayment not less than three (3) business days prior to such prepayment. No prepayment of this Note shall be accepted unless the Related Note is also paid in full at the same time. If notice of intention to prepay is given, the entire principal balance hereof and of the Related Note, together with all accrued, unpaid interest thereon, shall become due and payable on the date specified for prepayment in such notice.

§3. Security. This Note, together with the Related Note, is secured by the Mortgage, encumbering real property in Westminster, Colorado, and other security.

§4. Certain Terms Defined. In addition to words and terms defined elsewhere in this Note the following terms, as used in this Note, shall have the following meanings:

“Agent” shall mean _____, the Agent of the Lender and Additional Lender under the terms of the Loan Agreement.

“Additional Lender” shall mean The Higbee Company, a Delaware corporation and the payee of the Related Note.

“Applicable Rate” shall mean six percent (6%) per annum.

“Default Rate” shall mean a per annum interest rate equal to five percent (5%) in excess of the Applicable Rate.

“Event of Default” shall mean an “Event of Default” as defined in the Loan Agreement.

“Loan” shall mean all of the indebtedness evidenced hereby from time to time, whether principal, interest or otherwise, and all sums coming due Lender under this Note, together with all amounts due to Additional Lender under the Related Note and all sums due to Lender and Additional Lender under any of the Loan Documents from time to time.

“Loan Agreement” shall mean the Loan Agreement of even date herewith among Borrower, Lender, Additional Lender and Agent.

“Loan Documents” shall mean collectively this Note, the Related Note, the Loan Agreement, the Mortgage, and each other instrument, agreement or document now or hereafter evi-

dencing, securing, supporting, guaranteeing or executed in connection with the indebtedness evidenced hereby, and any amendments to any of the same hereafter made.

“Maturity Date” shall mean the date one year following the date of this Note.

“Mortgage” shall mean that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from Borrower for the benefit of Agent, on behalf of Lender and Additional Lender, encumbering the Mortgaged Property and securing repayment of the Loan, as the same may hereafter be amended.

“Mortgaged Property” shall mean the “Mortgaged Property” as defined in the Mortgage.

"Note" shall mean this Promissory Note, as the same may be amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

“Related Note” shall mean that certain promissory note of even date herewith in the principal amount of \$1,750,000.00 made by Borrower and payable to the order of Additional Lender.

"Usury Law" shall mean any law or regulation of any governmental authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money.

§5. Late Charge. If any payment due under this Note is not received by Lender within five (5) days after such payment is due, Borrower shall pay to Lender on demand a late charge in an amount equal to five percent (5.00%) of such overdue payment, to compensate Lender for some of the additional costs and expenses of processing late payments. Such five (5) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Agent or Lender may have and is in addition to any fees and charges of any agents or attorneys which Agent may employ upon the occurrence of an Event of Default, whether authorized herein or by law.

§6. Event of Default. If an Event of Default shall occur and exist, then: (a) the entire unpaid principal balance of the Loan and all other sums payable to Lender under this Note, the Related Note and/or any of the other Loan Documents, together with unpaid interest on the Loan and all such sums, shall at the option of Lender become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or other action, all of which are hereby waived by Borrower; and (b) notwithstanding any other provision of this Note, during the period of existence of such Event of Default, interest on the Loan shall accrue and be paid at the lesser of (i) the Default Rate, or (ii) the maximum lawful rate of interest under the applicable Usury Law. All of the rights, remedies, powers and privileges (together, "Rights") of the holder hereof provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust

it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by the holder hereof to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the holder hereof from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect. If any holder of this Note retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, reasonable attorneys' fees and expenses as permitted by law, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

§7. Joint and Several Liability; Certain Waivers. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute suit or exhaust its remedies hereunder against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the State in which payment is to be made as specified in this Note, and venue in the county in which payment is to be made as specified in this Note, over any suit, action or proceeding arising out of, or relating to, the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Agent to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full.

§8. Choice of Governing Law. This Note is to be delivered to and accepted by Lender in the State of Colorado. Lender and Borrower have therefore agreed, and do agree, that this Note is to be construed and enforced in all respects in accordance with the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other jurisdiction) of the State of Colorado, including but not limited to the Usury Laws of the State of Colorado.

§9. Compliance with Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Borrower to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto, then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If from any circumstance, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law.

§10. Revival of Liability. If any payments or proceeds received by Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

§11. Miscellaneous Provisions. This Note may not be changed, amended or modified except by agreement in writing signed by Borrower and Lender. Time is of the essence with respect to all of Borrower's obligations and agreements under this Note. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Section headings and captions herein are provided solely for convenience, and shall not be considered in interpreting or construing the provisions of this Note.

§12. Successors and Assigns. Whenever used in this Note, the words "Borrower" and "Lender" shall be deemed to include the respective successors of Borrower and of Lender, and "Lender" shall also include any subsequent holder of this Note. This Note shall be binding in

accordance with its terms upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower. The holder of this Note may, from time to time, sell or offer to sell the loan evidenced by this Note, or interests therein, to one or more assignees or participants and is hereby authorized to disseminate any information it has pertaining to the Loan evidenced by this Note, including, without limitation, any security for this Note and credit information on Borrower, any of its principals and any guarantor of this Note, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to this Note and the other Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

§13. Not for Nominee. Borrower hereby represents and warrants to Lender that: (a) Borrower is borrowing the Loan on Borrower's own behalf, and not as nominee, designee, or agent for another, and (b) Borrower is not acting for another in so borrowing the Loan. This Note and the other Loan Documents collectively: (a) constitute the final expression of the agreement between Borrower and Lender concerning the Loan; (b) contain the entire agreement among Borrower, Lender, Additional Lender and Agent respecting the matters set forth herein and in such other Loan Documents; (c) may not be contradicted by evidence of any prior or contemporaneous oral agreements or understandings among Borrower and Lender or Additional Lender or Agent; and (d) supersede all prior agreements and understandings among Borrower, Lender, Additional Lender and Agent respecting such matters.

§14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given: (a) three (3) days after being sent by certified United States Mail, return receipt requested, to Borrower, Lender and Agent at their respective addresses hereinabove set forth, or to such other place or places as either party hereto may from time to time designate to the other for the purpose of receiving notices hereunder; or (b) if given in the manner provided for the giving of notices under the Mortgage.

§15. Waiver of Jury Trial. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER OR AGENT MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR

HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

“BORROWER”:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT F-3

Loan Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT is made as of _____, 2011, by and among:

CITY OF WESTMINSTER (“City”), a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”)**, a Colorado urban renewal authority, each having an address at Borrower’s Address, and collectively referred to herein as **“Borrower”**;

AND

_____ [AGENT TO BE DETERMINED], having an office at Agent’s Address, as Agent for Lenders.

AND

THE HIGBEE COMPANY (“Higbee”), a Delaware corporation, **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company (collectively **“MD Lender”** Higbee and MD Lender are sometimes referred to individually as a **“Lender”** or collectively as **“Lenders”**).

RECITALS:

(A) Certain capitalized words and terms used herein are defined in Section 19.7 of that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from WEDA to the Public Trustee of Jefferson County, Colorado for the benefit of Agent encumbering among other things the Land and Improvements, and any amendments or supplements to the same hereafter made (the **“Mortgage”**), which Section 19.7 is incorporated herein by reference.

(B) Lenders have agreed to finance a portion of the cost of Borrower’s acquisition of the Mortgaged Property upon the terms and subject to the conditions hereinafter set forth.

Accordingly, Borrower, Lenders and Agent hereby agree as follows:

§1. INCORPORATION OF RECITALS. The Recitals to this Loan Agreement are incorporated herein as part of this Loan Agreement.

§2. USE OF PROCEEDS. The proceeds of the Loan will be used solely to finance Borrower’s acquisition of the Mortgaged Property, and related closing costs.

§3. THE LOAN

(a) Loan Advances. Borrower acknowledges receipt of the entire Loan Amount on the Closing Date.

(b) Loan Payments. Although the Loan is a single loan secured by the Mortgage and other Loan Documents, Higbee and MD Lender each hold a Note. Borrower shall make all payments on the loan 50% to Higbee and 50% to MD Lender, and in no event shall Borrower make any payment (whether of principal, interest, late charges or other amounts due under the Loan Documents) to Higbee without making a payment in identical amount to MD Lender or to MD Lender without making a payment in identical amount to Higbee. Failure of Borrower to comply with the requirements of this paragraph (b) shall constitute an Event of Default.

§4. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Agent as follows:

(a) Authority. The City of Westminster is a Colorado home rule city in good standing in the State of Colorado, and has all requisite legal capacity to own, mortgage, develop, lease, sell and otherwise deal in and with real and personal property in the State of Colorado and to execute, deliver and perform its obligations as provided in the Loan Documents. WEDA is a Colorado urban renewal authority in good standing in the State of Colorado, and has all requisite legal capacity to own, mortgage, develop, lease, sell and otherwise deal in and with real and personal property in the State of Colorado and to execute, deliver and perform its obligations as provided in the Loan Documents.

(b) No Conflict. The execution, delivery and performance by City and WEDA of the Loan Documents will not cause or constitute a violation of any law or regulation or any order, writ, injunction or decree of any court or Governmental Authority, or result in a breach of or constitute a default under any agreement to which either of them is bound.

(c) Binding Agreements. This Loan Agreement and all other Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

(d) Borrower Authorization. The execution, delivery and performance by Borrower of the Loan Documents to which Borrower is a party have been duly authorized by all necessary action on the part of Borrower.

(e) No Governmental Consent. No authorization, approval or consent by, or filing with, any Governmental Authority or public regulatory authority is necessary in connection with the authorization, execution, delivery and performance of any Loan Document by either the City or WEDA, other than the filing for record of the Mortgage.

(f) No Current Default. On the date hereof, there exists no Event of Default, nor any event, circumstance or situation which, with the giving of notice, the passage of time, or both, could become such an Event of Default.

All representations and warranties made in this §4 shall survive the closing of the Loan.

§5. COVENANTS. Until payment in full of the Note and performance of all of Borrower's other obligations under the Loan Documents:

(a) Notices. Borrower shall promptly give Agent notice of (1) any Event of Default or any event known to Borrower which, with notice or the lapse of time or both, would constitute an Event of Default, promptly after the same becomes known to Borrower, together with a written statement of the action being taken by Borrower to remedy the same, and (2) all litigation or proceedings before any court or Governmental Authority affecting any of the Mortgaged Property.

(b) Legal Requirements. Borrower shall comply with all Legal Requirements applicable to the Land and the Improvements, and with the agreements or instruments to which it is a party or by which its properties or assets may be bound.

(c) Liens. Borrower shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or encumbrance not created by one of the Loan Documents upon the Mortgaged Property or any part thereof, except Permitted Encumbrances, and except to the extent contested in compliance with §10(q) hereof. All equipment, furnishings, and fixtures to be affixed to or attached to the Mortgaged Property shall be owned by Borrower in Borrower's own name except for trade fixtures, equipment and furnishings owned by any of the tenants of the Mortgaged Property under occupancy leases.

(d) Application of Revenues. While any of the Loan remains outstanding, Borrower shall apply all revenues earned from the operation of the Mortgaged Property first to the payment of the reasonable and necessary operating expenses of the Mortgaged Property, and next to the payment of the sums currently due on account of the Loan, before applying the same to any other purpose.

§6. CERTAIN PROPERTY-RELATED COVENANTS.

(a) Maintenance. Until the Debt is paid in full, and the Loan Documents released and discharged, Borrower will keep the Mortgaged Property in good order and condition, and do all necessary Maintenance. All Maintenance shall be equal in quality and class to the original work. The standard for Maintenance required shall be that which is appropriate for facilities and buildings of similar construction and class, provided that Borrower shall in any event do all Maintenance necessary to avoid any structural damage or injury to the Improvements, to comply with all Legal Requirements and to keep each of the Improvements in a proper condition for

their respective Permitted Uses. Borrower will not permit any condition to exist on any of the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

(b) Inspection by Agent. Without notice to Borrower, but subject to the rights of tenants under their respective occupancy leases, Agent and Agent's representatives may enter the Mortgaged Property at reasonable times to inspect the same; provided, however, Agent shall have no obligation to make any such inspections nor any responsibility to Borrower or any Person, for any deficiency in construction or other problems which may be revealed by any such inspection, whether or not discovered by Agent. If any Event of Default occurs, Agent may, at its option, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Agent shall not be liable for any such entry upon the Mortgaged Property except in the event of intentional misconduct by its agents or employees. Agent shall use reasonable efforts to assure that such inspections and entry do not unreasonably interfere with any tenant's use of the Mortgaged Property.

(c) Compliance Required. Borrower shall promptly comply with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting any of the Mortgaged Property. Borrower will not make any application to any Governmental Authority for a change in zoning affecting any of the Mortgaged Property, nor will Borrower consent to any such change, without the prior written consent of Agent.

(d) Conditions to Permitted Changes. Borrower shall not make any changes or alterations in or to the Improvements without the prior written consent of Agent in each instance.

§7. EVENTS OF DEFAULT. An "Event of Default" shall exist if any one or more of the following events shall occur and be continuing:

(a) any sum of money coming due under the Note, whether principal, interest, late charges, or otherwise, is not paid when due;

(b) any sum of money coming due under this Loan Agreement or under any of the other Loan Documents (other than the Note) is not paid when due and such default continues for a period of five (5) days after written notice thereof from Agent to Borrower;

(c) there shall at any time exist a default or an "Event of Default" under the Mortgage or any other Loan Document (other than this Loan Agreement), and such default shall continue beyond the applicable period of notice and opportunity to cure, if any;

(d) any representation or warranty made by or on behalf of Borrower or in the Mortgage or any other Loan Document or in any certificate, financial statement or other document furnished to Agent pursuant to the provisions hereof or of any other Loan Document, shall prove to have been false or misleading in any material respect when made or when deemed to have been made hereunder;

(e) Borrower shall assign or attempt to assign this Loan Agreement or its right to receive any Loan proceeds hereunder;

(f) the entry of any lien or encumbrance against any of the Mortgaged Property, except for Permitted Encumbrances, subject to Borrower's right to contest Liens as provided in §10(q) hereof;

(g) a default shall occur under any Lien upon any of the Mortgaged Property, if the effect of such default is to cause, or (immediately or upon the giving of notice or passage of time, or both) to permit the holder or holders (or a trustee on behalf of such holder or holders) of the indebtedness secured by such Lien to cause, the indebtedness secured by such Lien to become due prior to its stated maturity or to cause any of the Mortgaged Property to be subject to sale to foreclose or enforce such Lien;

(h) the occurrence of any Transfer without Agent's written consent;

(i) a "Casualty" (as defined in the Mortgage) shall occur which causes damages in excess of \$4,500,000 to the Improvements.

(j) insurance on any of the Mortgaged Property is not provided or maintained, or evidence of such insurance is not delivered by Borrower to Agent, as required by the Mortgage;

(k) the legal existence of the City or WEDA shall terminate for any reason;

(l) if (x) Borrower shall default in the performance or observance of or compliance with any covenant, agreement, condition or provision contained in (a) this Loan Agreement and not otherwise specified in this §7, or (b) contained in the Settlement Agreement of even date herewith among Borrower, MD Westminster 1st Tract, LLC, MD Westminster 2nd Tract, LLC, and MD Westminster Parcels LLC or (y) Borrower shall default under any of the other Loan Documents and such default is not specifically defined as an "Event of Default" under such other Loan Document, and such default shall not be cured within 15 days after notice thereof to Borrower; provided, that if such default is of such a nature that it can be cured but not by the mere payment of money, and not within such 15 day period, then Borrower shall have such additional time as may be required to cure the same (but in no event extending more than 30 days after such notice of default is given to Borrower), if Borrower commences to cure it within said 15 day period (and gives notice to Agent of Borrower's intention to cure it), and prosecutes such cure with diligence and continuity to completion;

(m) if any default by Borrower shall occur under any Lease or under the Reciprocal Easement Agreement and not be cured within any applicable cure period provided in such Lease.

(n) REMEDIES UPON AN EVENT OF DEFAULT. Upon the occurrence of an Event of Default, in addition to any banker's lien rights, rights and remedies available to Agent under law,

equity, the Note and/or any other Loan Document including the right to declare all the outstanding principal balance under the Note, together with all accrued interest and other sums due under the Note and Loan Documents, immediately due and payable.

§8. MISCELLANEOUS.

(a) No Broker. Borrower represents that no broker was involved in procuring the Loan or in connection with the transactions contemplated hereby and shall indemnify and save Agent and Lenders harmless from and against any and all claims for any brokerage commission arising out of the making of the Loan or the transactions contemplated hereby. Borrower's obligations under this §8(a) shall survive the payment of the Note.

(b) Estoppel Certificate. Borrower, within three days upon request in person or within seven (7) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Agent setting forth the unpaid amount of the Loan (including principal, interest, and otherwise), and stating either that no offsets or defenses exist against the obligation to pay such unpaid amount of the Loan, or if such offsets or defenses are alleged to exist, the nature and extent thereof, and containing such other matters as Agent shall reasonably request.

(c) Lost Note. If either of the two notes constituting the "Note" shall be mutilated, destroyed, lost or stolen, Borrower will deliver to Higbee or MD Lender, as applicable, in substitution therefor a new promissory note containing the same terms and conditions as the lost note with a notation thereon of the unpaid principal and accrued but unpaid interest. Borrower shall be furnished with reasonably satisfactory evidence of the mutilation, destruction, loss or theft of such note, and also such security or indemnity as may be reasonably requested by Borrower.

§9. AGREEMENTS CONCERNING AGENT.

(a) Appointment and Authorization. MD Lender and Higbee each hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any such other Loan Document, together with such powers as are reasonably incidental thereto. Lenders (i) authorize Agent to execute, deliver and perform each of the Loan Documents to which such Agent is or is intended to be a party and (ii) agree to be bound by all of the agreements of Agent contained in the Loan Documents.

(b) No Implied Fiduciary Duties. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities except those expressly set forth herein and in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

Without limiting the generality of the foregoing sentence, the use of the term “Agent” in this Agreement is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such terms are used merely as a matter of market custom, and are intended to create or reflect only a relationship between independent contracting parties.

(c) Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel, accountants, appraisers or other experts or advisors concerning all matters pertaining to such duties. Agents shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

(d) Limitation of Liability. Neither Agent nor any Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any Lender or any other Person for any recital, statement, representation or warranty made by the Borrower or any affiliate of the Borrower contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by any Agent under or in connection with, this Agreement or any other Loan Document, or for the value of or title to any collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. Neither Agents nor any Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document.

(e) Credit Decision. MD Lender and Higbee each acknowledge and agree that each of them has made an independent credit decision to make its portion of the Loan and has not relied on the other for underwriting, documentation or other advice or support in connection with this Agreement or the transactions arising in connection herewith.

(f) Receipt of Payments. MD Lender and Higbee each hold a separate Note made by Borrower for one-half of the Loan. MD Lender and Higbee shall each receive direct payments from the Borrower. Although the Borrower is obligated to make equal payments to MD Lender and Higbee Lender, should Borrower fail to do so or should either MD Lender or Higbee ever receive more than 50% of all payments made by Borrower and all proceeds from the collateral for the Loan, then the Lender receiving the excess proceeds shall immediately make payment to the other Lender of the amount required to restore each Lender to a 50% share of all payments and proceeds.

(g) Indemnity. The Lenders shall indemnify upon demand Agent and the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), *pro rata* in accordance with the aggregate principal amount of the Loans held by such Lender, from and against any and all Indemnified Liabilities; provided,

however, that no Lender shall be liable for the payment to any Agent or the Agent-Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct.

(h) Cooperation of Lenders. Lenders hereby acknowledge and agree that although each of them holds its own separate note (collectively constituting the Note) the Loan is a unified loan to be enforced by the actions of the Agent and that neither Lender has any priority or preference to receipt of payment or proceeds of collateral. In the event of a foreclosure of the Mortgage and the acquisition of the Mortgaged Property, the Lenders shall cooperate to form an entity to own the foreclosed collateral in equal shares.

(i) Successor Agent. Upon the Agreement of MD Lender and Higbee, a successor Agent may be designated at any time. Such successor Agent shall have all of the rights and duties of Agent under this Agreement and the Loan Documents as if it were the original Agent hereunder.

(j) Taking of Action after Event of Default. Agent shall not take any action to institute a foreclosure upon collateral or exercise any other right or remedy under the Loan Documents unless it receives joint written instructions from MD Lender and Higbee to do so.

§10. PROVISIONS APPLICABLE TO ALL LOAN DOCUMENTS. The provisions of this §10 shall be applicable to this Loan Agreement, and shall also be applicable to and deemed incorporated into each of the Loan Documents which incorporate this §10 by reference.

(a) Notices. All notices, demands, requests and consents required under this Loan Agreement or any of the other Loan Documents, unless telephonic notice or notice by facsimile is expressly provided for, shall be in writing, and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other nationally recognized overnight delivery service; or (d) if sent by facsimile transmission, confirmed by certified or Registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender, and addressed to the appropriate party or parties at their respective addresses, or at such other address or addresses as any party hereto may hereafter designate for itself by written notice to each other party to the Loan Documents. Notices, demands and requests hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three (3) days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission, with confirmation by certified or registered mail, on the date such facsimile transmission is sent if electronic confirmation of receipt is received by the sender.

(b) Revival of Liability. If any payments or proceeds received by a Lender hereunder, or under any other Loan Document, are subsequently invalidated, declared to be

fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Agent.

(c) Proceedings, Etc. All proceedings taken in connection with the transactions provided for herein, including without limitation the appraisals and documents required or contemplated by this Loan Agreement or any of the Loan Documents, the persons responsible for the execution and preparation thereof, all insurers and policies of insurance required hereby or by any of the Loan Documents, shall be satisfactory in form, scope and content and all other respects to Agent.

(d) No Third Party Rights. Nothing in this Loan Agreement or in any of the Loan Documents, whether express or implied, shall be construed to give to any person other than the parties hereto or the parties to the Loan Documents any legal or equitable right, remedy or claim under or in respect of this Loan Agreement or any other Loan Document, which is intended for the sole and exclusive benefit of the parties hereto.

(e) Amendments. No provision of this Loan Agreement or of any of the other Loan Documents shall be changed, altered, modified, waived, discharged, terminated or released, except by an instrument in writing signed by the party against whom enforcement of the change, alteration, modification, waiver, discharge, termination or release is sought.

(f) No Waiver, Etc. No failure on the part of Agent to exercise, and no delay in exercising, any right, power or remedy hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein and in any other Loan Documents shall be cumulative and not exclusive of any remedies provided by law, or of any other remedies provided herein or in any of the other Loan Documents.

(g) Expenses. Borrower shall promptly pay upon request all actual and reasonable costs and expenses incurred by Agent, including actual and reasonable attorney's fees, together with interest thereon at the Default Rate from the tenth (10th) day after demand by Agent for the payment thereof, in connection with:

(1) all costs of collection (including to the extent not prohibited by law, reasonable attorney's fees) if default is made in the payment of the Loan or any other sums payable to Agent under the Loan Documents or if any Event of Default shall occur;

(2) any action, proceeding, litigation or claim instituted or asserted by or against Agent, or in which Agent becomes engaged, wherein it becomes necessary in the opinion of Agent to protect Agent's interests in the Mortgaged Property or the security afforded by any of the Loan Documents, or to defend or uphold the Lien of the Mortgage, or the validity or

effectiveness of any assignment of any leases, rents, claims, awards, payments, insurance policies or any other right or property conveyed, encumbered or assigned by Borrower to Agent under any of the Loan Documents, or the priority of any of the same;

(3) the collection and/or enforcement of any of the Debt and/or Obligations, including realization upon any of the Mortgaged Property or other security for any of the Debt or Obligations; and

(4) the collection and application of any insurance proceeds and Condemnation Awards.

All of Borrower's obligations under this §10(g) shall survive the payment of the Note, the termination of this Loan Agreement and any release of the Mortgage. All such expenses and costs, with interest thereon at the Default Rate, shall be added to and become part of the indebtedness and shall be secured by each of the Loan Documents, including the Mortgage.

(h) Application of Moneys. Whenever in the Note, this Loan Agreement, or any of the other Loan Documents Agent is to apply, or shall elect to apply, any sum of money to payment of any of the Debt, or to performance of any of the Obligations, Agent and the Lenders may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Agent and the Lenders may elect, unless a different order of priority is required by non-waivable applicable law.

(i) Governing Law. This Loan Agreement shall be construed in accordance with and governed by the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other state) of the State of Colorado.

(j) Successors and Assigns. Each of the Loan Documents, including this Loan Agreement, shall be binding upon and inure to the benefit of the parties to such Loan Document and their respective heirs, personal representatives and successors, any assigns of Lenders, and any assigns of Borrower permitted under the Loan Documents.

(k) Multiple Counterparts. Each of the Loan Documents, including this Loan Agreement, may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which when taken together shall constitute a single counterpart instrument. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

(l) Provisions Severable. If any provision of the Loan Documents, including this Loan Agreement, or application thereof to any person or circumstances shall, to any extent, or for any reason, be held invalid or unenforceable, the remainder of such Loan Document or the application of

such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Loan Document shall be valid and be enforced to the fullest extent permitted by law.

(m) Agent Approvals and Consents. Except as otherwise expressly stated in any of the Loan Documents, with respect to any matters which Agent shall have the right to approve, consent to, be satisfied with respect to, exercise its judgment with regard to determine or calculate, under any of the Loan Documents, including this Loan Agreement, the decisions of Agent with respect to such matters shall be made in the sole discretion of Agent exercised in a commercially reasonable manner and subject to such conditions as Agent may reasonably require. The immediately preceding sentence shall not apply to the Agent's decision to take actions following an Event of Default, which shall be made in the Agent's sole discretion, but subject to the rights of the Lenders to direct the Agent as provided in this Agreement.

(n) Time of Essence. Time is of the essence with respect to all obligations of Borrower under this Loan Agreement and under any of the Loan Documents.

(o) Other Interpretive Provisions. As used herein, and as used in each of the other Loan Documents, the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein"; and (iv) "any of" shall mean all or any part of or interest in that with respect to which such phrase is used. The headings and captions in this Loan Agreement and in the other Loan Documents are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Loan Agreement or such other Loan Documents. Each of the parties have participated in the negotiation and preparation of this Loan Agreement and the other Loan Documents, with the advice of counsel, and this Loan Agreement and the other Loan Documents shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Loan Agreement or such other Loan Documents.

(p) Miscellaneous Provisions. Whenever used in this Loan Agreement or in any of the other Loan Documents, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Loan Agreement or of any of the other Loan Documents shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of the Agent in the Mortgaged Property, afford the Agent greater financial security in the Mortgaged Property and/or tend to assure payment of the Debt and performance of the Obligations in full, shall control. The granting of consent by Agent to any matter as to which such consent is required by the provisions of this Loan Agreement or of any of the other Loan Documents shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Borrower and Agent that such property be treated for all purposes

under this Loan Agreement and each of the other Loan Documents as real estate. If Borrower is ever more than one person (or entity), the obligations of Borrower hereunder and under the other Loan Documents are joint and several.

(q) Right to Contest. After prior written notice to Agent, Borrower may contest, in good faith and by appropriate legal proceedings timely commenced and diligently prosecuted with continuity to completion, the validity or amount of any mechanic's or materialmen's Lien, provided that:

(1) no Event of Default, nor any event or circumstance which, with the giving of notice or passage of time or both would constitute an Event of Default shall exist;

(2) Borrower or such owner shall provide to Agent such cash or other security assuring payment of the Lien contested, with interest and penalties in amounts satisfactory to Agent, as Agent may request;

(3) Such contest operates as a stay of or prevents enforcement of any Lien (or any judgment based thereon) against the Mortgaged Property;

(4) Borrower shall pay all fees and expenses of Agent reasonably incurred in connection with any such contest or proceeding, including without limitation reasonable attorney's fees and expenses;

(5) Agent shall have the right to pay or require payment of any such Lien at any time when Agent reasonably believes that continuation of such contest or failure to pay such Lien could jeopardize or impair the value or safety of Agent's security; and any amount so paid by Agent shall be added to the Debt, shall bear interest at the Default Rate until paid, and shall be secured by the Mortgage; and

(6) If such contest is terminated adversely to the Borrower or discontinued, Borrower shall immediately pay such Lien.

IN WITNESS WHEREOF, Borrower, Agent and Lenders have duly executed this Loan Agreement as of the day and year first above written.

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

"BORROWER"

[Add signature blocks appropriate to the following:]

"MD LENDER"

"AGENT"

"HIGBEE"

This instrument prepared by:
John C. Hickey, Esq.
Lewis, Rice & Fingersh
One Petticoat Lane, Suite 500
1010 Walnut
Kansas City, Missouri 64106
(816) 421-2500

PURCHASE MONEY DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS PURCHASE MONEY DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING (as the same may be amended or supple-
mented at any time, the "Deed of Trust") is made as of _____, 2011, by and among:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal
authority, having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, as
grantor; AND

THE PUBLIC TRUSTEE OF JEFFERSON COUNTY, COLORADO, as trustee;

FOR THE BENEFIT OF:

_____, as Agent for MD Lender and Higbee, with Agent having an address
at _____, as beneficiary.

RECITALS

A. Certain capitalized terms used in these Recitals and elsewhere herein are defined
in §19.7 of this Deed of Trust. Other terms are defined throughout the text of this Deed of Trust
or, if not defined herein, are used herein as defined in the Loan Agreement.

B. Borrower has requested that Lenders make the Loan to Borrower, as purchase
money financing for Borrower's acquisition of the Mortgaged Property.

C. Lenders will not make the Loan unless Borrower grants this Deed of Trust to
Trustee for the benefit of Agent as security for payment of the Debt and performance of the
Obligations, and Borrower is willing to do so.

GRANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of Lender's agreement to make the Loan secured hereby upon and subject to the terms of the Loan Documents, and of the payment of ten dollars (\$10.00) and other good and valuable consideration given by Lenders to Borrower, the receipt and sufficiency of which are hereby acknowledged by Borrower, at all times until the Debt is fully paid and the Obligations fully performed, Borrower hereby acts, and covenants, promises and agrees with Trustee, Agent and Lenders, as follows:

1. GRANTING CLAUSES

1.1. Grant of the Real Estate Security. Borrower, to secure the payment of the Debt and payment and performance of the Obligations, hereby grants, bargains, sells, mortgages, warrants, assigns, conveys and transfers to the Trustee, in trust with power of sale, all of the following described property:

(a) The Land, together with all of Borrower's right, title and interest, if any, in and to: the Improvements; the easements, rights of way, privileges, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances belonging or appertaining to the Land; the streets and ways adjacent to the Land; all reversions and remainders pertaining to the Land; and all air rights, development rights, water rights (including but not limited to, conditional water rights, ditch rights, ditch stock, pipeline well, spring and reservoir rights whether or not adjudicated or evidenced by stock or shares, or evidenced by any well or other permit; all rights with respect to noncontributory ground water underlying the Land; any permit to construct any water well; all water and sewer taps; and all of Borrower's right, title and interest under any decreed or pending plan of augmentation or water exchange plan) and mineral rights appurtenant or belonging to the Land or relating to the Land; and

(b) The Fixtures, and

(c) All of the Borrower's right title and interest to its leasehold estates under the Ground Leases and any and all other benefits thereof; and

(d) All of Leases and the Rents and all the other benefits of any of the Land, Improvements and Fixtures; and

(e) All proceeds of the conversion, voluntarily or involuntarily, of any of the property described in this §1.1 into cash or liquidated claims, including proceeds of insurance and Condemnation Awards.

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, his/her/its successors and assigns, forever.

UNDER AND SUBJECT to Permitted Encumbrances.

IN TRUST HOWEVER, for the purpose of securing in such order of priority as Agent shall elect, the payment of the Debt and the performance of the Obligations, in accordance with their respective terms.

1.2. Grant of Security Interest and Assignment. Borrower, to secure payment of the Debt and payment and performance of the Obligations, hereby transfers and assigns to the Trustee and to Agent, and grants to the Trustee and the Agent a security interest under the Code in and to, the following described property, whether now owned or hereafter acquired by Borrower:

(a) All of the Fixtures and all other property described in §1.1 thereof which, under any applicable law, may be deemed to be personal property or fixtures, the creation and perfection of a lien on which is governed by the Code;

(b) All of the Intangibles;

(c) All of the Collateral; and

(d) All the proceeds of any of the property described in this §1.2.

This Deed of Trust creates a security interest in the Personal Property Security, and shall constitute a Security Agreement under the Code.

1.3. Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns, transfers, pledges, grants a lien upon and encumbers in favor of Agent all of the Leases and Rents, as security for the prompt and timely payment of the Debt and performance of the Obligations. This assignment is in addition to any absolute assignment made pursuant to any separate lease assignment. Agent shall apply any amounts received pursuant to this assignment to the payment of the Debt, the performance of the Obligations, and/or to the operation and Maintenance of the Mortgaged Property, in such order as Agent may elect, without regard to the adequacy of the security or the solvency of the Borrower. Notwithstanding such assignment, Agent hereby grants to Borrower a revocable license to collect and retain the Rents for Borrower's own account, until an Event of Default shall occur; but upon occurrence of any Event of Default, the right herein granted to Borrower to collect the Rents shall at Agent's option, terminate. Borrower shall apply any Rents collected in accordance with the terms of the Loan Agreement. This assignment of Rents to Agent is intended to be an absolute assignment from Borrower to Agent and not merely the passing of a security interest. The Rents are hereby assigned absolutely by Borrower to Agent subject only to Borrower's license to collect such amounts prior to the occurrence of any Event of Default.

Notwithstanding anything seemingly to the contrary contained herein or in any of the other Loan Documents, Borrower may enter into or execute any Lease of any of the Mortgaged Property without the prior written approval of such Lease by Agent provided that such Lease shall be subordinate in all respects to this Deed of Trust.

Borrower hereby represents and warrants to Agent: (A) That Borrower has full right and power to assign the Leases and Rents to Agent, and has not executed any prior and now existing assignment of any of its rights under any Lease or to any portion of the Rents to any person other than Agent; and (B) That Borrower has not done any act or thing which might prevent Agent from enjoying the benefits of the Leases and Rents assigned hereby.

Borrower hereby covenants, promises and agrees that Borrower will: (i) Observe, fulfill and perform each and every condition, covenant and provision of the Leases to be fulfilled or performed by Borrower; (ii) Enforce at the sole cost and expense of Borrower the performance or observance of each and every material covenant and condition of each of the Leases; (iii) At the sole cost and expense of Borrower, appear in and defend any action growing out of or in any manner connected with any of the Leases, Rents or the obligations or liabilities of Borrower or any party thereunder; (iv) From time to time, upon request by Agent, execute and deliver to Agent, acknowledge when appropriate and record or file in the public records when appropriate, any and all writings, including without limitation further assignments of any Lease or Leases, financing statements and other writings that Agent may deem necessary or desirable to carry out the purpose and intent of this assignment, or to enable Agent to enforce any right or rights hereunder; and (v) From time to time, upon request by Agent, furnish to Agent a true copy of any Lease.

Borrower will not, without the prior written consent of Agent in each instance: (A) Modify or alter any of the terms or provisions of any of the Leases; (B) Anticipate Rents for more than one calendar month prior to the accrual thereof under the terms of the Leases; (C) Waive, or release any party under any of the Leases; (D) Pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents; (D) In any other manner impair the value of the Leases or Rents or the security of the assignment thereof as provided herein; or (E) Execute any Lease except for actual occupancy by the lessee thereunder. Notwithstanding the foregoing, Borrower may terminate any of the Leases or Ground Leases without the prior written consent of Agent, but Borrower shall provide notice to Agent of such termination in each instance.

1.4. Fixture Filing. From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all the Fixtures. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a
Colorado urban renewal agency.

Address: as set forth above.

(b) Name and Address of Secured Party:

Address: as set forth above.

(c) Borrower's organizational identification number is _____.

(d) This document covers goods which are or are to become, or may be or become, fixtures. This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit A. Borrower is the record owner of the real estate.

2. COVENANTS AS TO PAYMENT, PERFORMANCE AND TITLE; WARRANTIES

2.1. Payment of Note. Borrower and/or the City shall pay to Higbee and MD Lender the entire Debt, punctually as and when the same shall become due, without offset, counterclaim or defense. Borrower will fully and faithfully observe and perform all of the provisions of the Loan Documents. The Loan Documents are incorporated herein by this reference.

2.2. Defeasance. If all the Debt shall be paid and the Obligations shall be performed, all at the times and in the manner provided in the Loan Documents, then the Trustee shall release or reconvey to Borrower all of the Mortgaged Property and shall release this Deed of Trust of record.

2.3. Warranty of Title. Borrower warrants that: Borrower has taken no action to impair the title conveyed to Borrower concurrently with the execution of this Deed of Trust. Borrower shall not, without the prior written consent of Agent, install in or locate on the Mortgaged Property any equipment or fixtures which are subject to any Lien other than Permitted Encumbrances. None of the Rents will be assigned except to Agent as security for any of the Debt and/or Obligations.

2.4. Agreement to Defend. Borrower shall preserve Borrower's title and interest in the Mortgaged Property as described in §2.3, subject only to Permitted Encumbrances.

2.5. Additions to the Mortgaged Property. All right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, Borrower, or constructed, assembled or placed by Borrower on the Land, immediately upon such acquisition, release, construction, assembling or placement, and in each such case, without any further act by Borrower, shall become subject to the lien and security interest of this Deed of

Trust as though they were now owned by Borrower and specifically described in the granting clauses hereof.

2.6. Easements Outside the Land. In the event any easements or rights in common or otherwise (other than revocable rights) in any lands not covered by the lien of this Deed of Trust are granted as an appurtenance to the use and operation of any of the Mortgaged Property, including without limitation the easements and rights created by the Reciprocal Easement Agreement, then this Deed of Trust shall attach to and be a lien on such easements and rights in such other lands, and the lien hereof spread to cover such easements and rights with the same force and effect as though specifically described in the granting clauses hereof. Borrower shall not amend or terminate the Reciprocal Easement Agreement without the prior written consent of Agent.

2.7. Further Assurances. Promptly upon request of Agent, Borrower shall do all acts and things, including but not limited to the execution and delivery of any further deeds, conveyances, mortgages, assignments, financing statements, continuation statements, and further assurances, deemed necessary or desirable by Agent to establish, confirm, maintain and continue the Lien and security interest created and intended to be conferred hereby and the priority thereof. Borrower hereby appoints Agent as attorney-in-fact for Borrower to execute, deliver and file any and all such documents, writings, and other instruments as Agent may require, in order to perfect and maintain the priority of such Lien and security interest.

3. COVENANTS AS TO IMPOSITIONS

3.1. Payment of Impositions. Prior to the date on which any interest or penalties shall commence to accrue thereon, Borrower will pay and discharge all Impositions.

3.2. Evidence of Payment. Within thirty (30) days after the date when any Impositions which are or could become a Lien on any part of the Mortgaged Property would become delinquent, Borrower will furnish to Agent official receipts of the appropriate Governmental Authorities to which the Impositions are payable, or other evidence reasonably satisfactory to Agent evidencing the payment thereof. The certificate, advice or bill of the appropriate official designated by law to receive payment of any Imposition indicating non-payment of such Imposition shall be conclusive evidence (as between Agent and Borrower) that such Imposition is due and unpaid, and Agent may rely thereon.

4. INSURANCE

4.1. INSURANCE REQUIRED. Borrower will obtain, keep in force and maintain the following insurance coverages at all times until this Deed of Trust is satisfied of record:

(a) Property Insurance. At all times until this Deed of Trust has been satisfied of record, Borrower shall maintain coverage for property claims ("Commercial Property

Insurance”) on the Improvements and Fixtures through the Colorado Intergovernmental Risk Sharing Agency and/or through a commercial insurance company having a rating of A-, VII or better by the A.M. Best Company in an amount not less than the full replacement cost of the Improvements and Fixtures.

(b) Liability Insurance. At all times until this Deed of Trust has been satisfied of record, Borrower shall maintain through the Colorado Intergovernmental Risk Sharing Agency and/or a commercial insurance company having a rating of A-, VII or better by A.M. Best Company a CGL Policy, with coverage on an "occurrence" basis, with a "per occurrence" limit of not less than \$5,000,000. Agent shall be named as an additional insured with Borrower on all liability policies. All policies required by this §4.1(b) shall name Agent as an additional insured under an endorsement satisfactory to Agent.

4.2. REQUIREMENTS RE: INSURING COMPANIES, POLICIES, MORTGAGEE CLAUSE, COVERAGE INCREASES, DEDUCTIBLES, ETC. All policies of insurance required herein: (a) shall be issued by and maintained with Colorado Intergovernmental Risk Sharing Agency and/or a commercial insurance company having a rating of A-, VII or better by A.M. Best Company; (b) include a provision naming Agent, its successors and assigns as their interests may appear: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee on all property insurance policies under a standard non-contributory mortgagee clause (or Agent's loss payable clause), and (3) as the Agent's loss payee on all loss of rents or loss of business income insurance policies. Each insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Agent prior to any policy reduction or cancellation for any reason other than non-payment of a premium and at least ten (10) days' prior written notice to Agent prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Agent in accordance with the terms of such policy notwithstanding any act, omission or negligence of Borrower which might otherwise result in forfeiture of such insurance; and (iii) shall waive all rights of subrogation against Agent. Such policies shall be evidenced by ACORD certificates so identifying the Agent, in form and substance satisfactory to Agent.

4.3. AGENT NOT RESPONSIBLE FOR INSURANCE. Agent, by approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, shall not incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment of lawsuits and expenses, and Borrower hereby expressly assumes full responsibility therefor and for any liability, if any, thereunder.

4.4. PROCEEDS ON FORECLOSURE. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property in extinguishment of the Debt, all right, title and interest of the Borrower in and to all proceeds of any insurance policies required hereby then in force shall pass to the purchaser or grantee.

4.5. PROOF OF LOSS; ADJUSTMENT OF CLAIMS. If any Casualty shall occur, Borrower shall promptly make proof of loss to the insurers; but Agent may itself make proof of loss if Agent gives written notice to Borrower electing to make such proof of loss. Borrower shall not adjust or compromise any claim under any insurance required hereby without the written consent of Agent.

4.6. DELIVERY OF POLICIES; RENEWALS. Borrower, as of the date hereof, shall deliver to Agent evidence that the insurance policies required hereby have been prepaid as required above and either duplicate originals of such policies, if required by Agent, or certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, and satisfactory to Agent. Borrower shall renew all such insurance and deliver to Agent certificates and policies evidencing such renewals at least thirty (30) days before any such insurance shall expire.

4.7. BLANKET POLICIES. Any insurance policies required hereby may be in the form of a blanket policy provided that the blanket policy must properly identify and fully protect the Mortgaged Property as if a separate policy were issued for full replacement cost (insurable value) thereof, without reduction for depreciation, at the time of loss and otherwise meet all of Agent's insurance requirements set forth in this §4. Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Mortgaged Property or by any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Mortgaged Property to be insured by a separate, single-property policy.

4.8. MAINTENANCE OF OTHER INSURANCE. Borrower shall not obtain insurance for the Mortgaged Property in addition to that required by Agent and contributing, in the event of loss, with any insurance required hereby, without the prior written consent of Agent, which consent will not be unreasonably withheld provided that: (a) Agent is a named insured on such insurance, (b) Agent receives complete copies of all policies evidencing such insurance, and (c) such insurance complies with all of the requirements set forth herein.

4.9. AGENT'S RIGHT TO INSURE. If Borrower fails at all required times to maintain the insurance coverages required hereby, or fails to deliver to Agent the policies and evidences of insurance and renewals thereof required hereby, or if Agent receives notice that any insurance required hereby will be cancelled, Agent shall have the right to obtain such insurance and any sums expended by Agent in obtaining such insurance shall be due and payable to Agent on demand, shall be a part of the Obligations, and shall be secured hereby.

5. MAINTENANCE AND REMOVAL; PERMITTED USES

5.1. Permitted Removal; Waste. Except as permitted by Section 9, Borrower will not cause or permit any Improvement to be removed or demolished. No Fixture shall be removed, severed or destroyed, without the prior written consent of Agent, unless simultaneously with, or

prior to, any such permitted removal such Fixture has been replaced with another Fixture of at least equal value. By such removal and replacement Borrower shall be deemed to have subjected such Fixtures to the Lien of this Deed of Trust. Borrower will not abandon, or cause or permit any waste to, the Mortgaged Property.

5.2. Maintenance. Throughout the term of this Deed of Trust, Borrower will do all necessary Maintenance required to keep the Mortgaged Property in the same condition as existed when the Mortgaged Property was conveyed to Borrower, and Borrower shall in any event do all Maintenance necessary to comply with all Legal Requirements. Borrower will not permit any condition to exist on the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

5.3. Inspection of Agent. Without notice to Borrower, Agent and Agent's representatives may enter the Mortgaged Property at reasonable times to inspect the same. If any Event of Default occurs, Agent may, at its option, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Agent shall not be liable for any such entry upon the Mortgaged Property.

5.4. Permitted Uses. Borrower will use the Mortgaged Property solely for Permitted Uses.

6. COMPLIANCE WITH LAWS, ORDINANCES, ETC.

Borrower shall promptly comply with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting the Mortgaged Property. Borrower will not make any application to any federal, state or local Governmental Authority for a change in zoning affecting the Mortgaged Property, nor will Borrower consent to any such change, without the prior written consent of Agent.

7. CHANGES AND ALTERATIONS BY BORROWER

Borrower shall not have the right to make changes and alterations in or to the Improvements without the prior written consent of Agent except as provided in Section 9 pertaining to restoration or demolition after a Casualty.

8. MECHANICS' AND OTHER LIENS

Borrower will pay, from time to time when the same shall become due, all claims and demands of contractors, subcontractors, architects, mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a Lien on any of the Mortgaged Property. Borrower will not create or permit to accrue or suffer to exist any Lien, except Permitted Encumbrances, upon any of the Mortgaged Property, including the Leases and Rents, and shall promptly cause any other Lien whatsoever to be paid and discharged. Borrower shall pay all Liens included in Permitted Encumbrances in accordance with their terms, when and as the same become due.

9. DAMAGE OR DESTRUCTION

9.1. Notice of Casualty; Covenant to Rebuild. If any Casualty shall occur, Borrower shall promptly give written notice thereof to Agent, describing the damage and the Casualty. Regardless of the damage resulting from any Casualty, and whether or not the Net Insurance Proceeds shall be sufficient or made available for the purpose, Borrower shall promptly either (i) commence the Restoration, and prosecute it with diligence and continuity to completion or (ii) demolish the damaged portion of the Improvements so that such damaged Improvements shall comply with all laws and regulations of all governmental authorities in effect as of the date of this Deed of Trust.

9.2. Application of Proceeds. Insurance proceeds not to exceed the outstanding balance of the Debt shall be paid to Agent and applied by Agent first to payment of the actual costs, fees and expenses, if any, incurred by Agent in connection with proof of and adjustment of the loss and settlement with the insurance company. The Net Insurance Proceeds held by the Agent shall be applied by Agent: (a) to the payment of the Debt and/or performance of the Obligations; or (b) at Agent's option, to the payment of any of the cost of the Restoration.

9.3. Disbursement of Proceeds. If Net Insurance Proceeds are to be applied to the Restoration, Agent shall hold such Net Insurance Proceeds and advance the same for costs of the Restoration from time to time as the Restoration progresses. Such funds will be advanced upon written request of Borrower, and upon Borrower's compliance with such requirements as to the disbursement thereof as Agent shall impose.

10. CONDEMNATION

10.1. Notice of Condemnation; Participation. Borrower shall give Trustee and Agent immediate notice of any actual or threatened Condemnation. In the event that any of the Mortgaged Property shall be taken in Condemnation proceedings, Agent may participate in such Condemnation proceedings. Borrower shall not adjust, contest, accept, reject or compromise any proposed Condemnation Award without approval of Agent. Agent may collect the Condemnation Award and endorse any drafts therefor. All Condemnation Awards shall be deposited with Agent. Borrower will execute any and all further documents that may be required in order to facilitate collection of any Condemnation Award and the payment of any Condemnation Award to Agent.

10.2. Condemnation. If a Condemnation shall occur, the Net Condemnation Award received by Agent shall, at the option of Agent, (i) be applied to the payment of the Debt and/or performance of the Obligations, or (ii) be held by Agent and applied and paid over toward the cost of Restoration, substantially in the same manner and subject to the same conditions as those provided in §9 hereof with respect to Net Insurance Proceeds and other monies.

10.3. Expenses of Collection. Trustee and Agent shall be entitled as a first priority to reimbursement out of any Condemnation Award for all reasonable costs and fees of, expenses

incurred by, and reimbursements to, the Trustee and Agent with respect to the determination and collection of any Condemnation Award.

11. EVENTS OF DEFAULT AND REMEDIES

11.1. Events of Default Defined. The occurrence of any "Event of Default" as defined in the Loan Agreement shall constitute an Event of Default under this Deed of Trust.

11.2. Remedies Upon an Event of Default.

(a) Acceleration of Debt. Upon the occurrence of an Automatic Acceleration Event of Default, the entire unpaid Debt (principal, interest and otherwise), shall automatically become immediately due and payable without notice or demand. Upon the occurrence of any other Event of Default, at Agent's option, the entire unpaid Debt (principal, interest and otherwise), shall become immediately due and payable without notice or demand.

(b) Other Remedies. Upon the occurrence of any Event of Default, Agent and/or Trustee may immediately undertake any one or more of the following:

(1) Foreclosure. Institute an action to foreclose this Deed of Trust, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the Mortgaged Property, and proceed thereon to final judgment and judicial sale or execution thereon for the entire unpaid balance of the Debt, including interest at the rates and pursuant to the methods of calculation specified in the Note, together with all costs of suit, interest at the Default Rate on any judgment obtained by Agent from and after the date of any judicial sale of the Mortgaged Property until actual payment is made to Agent of the full amount due Agent, and an attorneys' reasonable fee for collection, any usage or custom to the contrary notwithstanding.

(2) Entry. Agent personally, or by its agents or attorneys, to the extent permitted by applicable law, may enter into and upon any of the Mortgaged Property and may exclude Borrower and its agents wholly therefrom without liability for trespass, damages or otherwise and Borrower agrees to surrender possession to Agent on demand after the happening of any Event of Default. Upon such an entry, Agent may: (i) use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its agents or receivers and exercise all rights and powers of Borrower with respect thereto either in the name of Borrower or otherwise as Agent shall deem best; (ii) restore the Mortgaged Property; (iii) complete the construction of any Improvements under construction or renovation and in the course of such completion may make such changes in the contemplated or completed Improvements as Agent may deem desirable and may insure the same; and (iv) do all such Maintenance as to Agent may reasonably deem advisable. Agent shall be entitled to collect and receive all Rents, and after deducting the expenses of conducting the business thereof and of all necessary Maintenance and amounts necessary to pay for Impositions, premiums for insurance and other proper charges upon any of the Mortgaged Property, as well as just and reasonable compensation for the services of Agent and for all attorneys and agents properly engaged and employed by Agent, Agent shall apply the remaining Rents in such order as Agent may elect, to

the payment of the Debt and/or performance of the Obligations, and the payment of any other sums required to be paid by Borrower under any of the Loan Documents. Agent shall be liable to account only for Rents actually received by Agent.

(3) Receivership. If an Event of Default occurs and be continuing, Agent, as a matter of right upon *ex parte* application and without notice to Borrower or anyone claiming under Borrower and without regard to the then value of the Mortgaged Property or the solvency of Borrower or any other Person who may be liable to pay any of the Debt and/or perform any of the Obligations shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Borrower and each such Person shall be deemed to have waived such proof and Borrower and each such Person hereby irrevocably consents to such appointment and waives notice of any application therefor. Should Agent or any receiver collect Rents, the moneys so collected shall not be substituted for payment of the Debt nor can they be used to cure the Event of Default, without the prior written consent of Agent. Borrower hereby expressly consents to the appointment of a receiver for the Mortgaged Property upon the occurrence of any Event of Default, and waives any requirement for the posting of any bond or other security in connection with such appointment and such receiver, and for any hearing in connection with such appointment.

(4) Sale of personal property. Agent shall also have such rights and remedies in respect of any of the Personal Property Security and Fixtures as are provided by the Code and such other rights and remedies in respect thereof which Agent may have at law or in equity or under any of the Loan Documents, including the right to take possession of the Mortgaged Property wherever located and to sell all or any portion thereof at public or private sale, without prior notice to Borrower, except as otherwise required by law (and if notice is required by law, after 10 days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Agent in its sole discretion may determine. Agent shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by Agent in connection with such sale or collection, including reasonable attorney's fees and legal expenses, and second to the payment of the Debt and performance of the Obligations, and then to pay the balance, if any, as required by law. Upon the occurrence of any Event of Default Borrower, upon demand by Agent, shall promptly assemble any personal property and Fixtures included in the Mortgaged Property and make it available to Agent at a place to be designated by Agent which shall be reasonably convenient to Agent and Borrower. Both Borrower and Agent shall be eligible to purchase any part or all of such property at any such disposition.

(5) Power of Sale for the Mortgaged Property. Agent may elect to cause any of the Mortgaged Property to be sold as follows:

(A) Agent may proceed as if all of the Mortgaged Property were real property in accordance with §11.2(b)(5) hereof, or Agent may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land and Improvements without causing structural damage thereto as if the same were personal property

and dispose of the same in accordance with §11.2(b)(4), separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(B) Upon the occurrence of an Event of Default, Agent may file notice with Trustee declaring such default, violation, or breach and making its election and demand for sale in writing as provided by law and requesting that the Mortgaged Property be advertised for sale and sold in accordance with the laws of the State of Colorado. Upon receipt of such notice of election and demand for sale, Trustee shall cause a copy of the same to be recorded in the clerk and recorder's office of the county in which the Mortgaged Property is located, and thereupon Trustee shall sell and dispose of the Mortgaged Property at public auction, public notice having been previously given of the time and place of such sale at such place authorized by law and specified in such notice in accordance with the laws of the State of Colorado in a newspaper of general circulation at the time published in said county, together with such other notice, if any, as may then be required by law and shall issue, execute, and deliver a certificate of purchase, public trustee's deed, or certificate of redemption in the manner provided by law to the party entitled thereto. The public trustee's deed may be in the ordinary form of conveyance. Trustee shall, out of the proceeds of such sale, after first paying and retaining all fees, charges, and costs of making such sale, pay to Agent the then existing amount of indebtedness, including a reasonable sum for attorney's fees secured hereby and pay the surplus, if any, to Borrower, its successors and assigns or to such other party as may be entitled thereto by law, provided that it shall not be the obligation of Agent to see to the application of such funds. Agent may bid for and purchase the Mortgaged Property at the sale, and may credit the amount of any indebtedness secured hereby against the amount of Agent's bid. If a release of deed of trust is required, Borrower shall pay the costs and expense thereof. The purchaser at any foreclosure sale shall not be obligated to look to the application of the proceeds thereof. If the Agent should become the purchaser, it shall be entitled to credit any of the unpaid balance of the Debt against the amount of the purchase price. The purchaser at any sale or foreclosure sale hereunder may disaffirm any easement granted or Lease made in violation of any provision of this Deed of Trust, and may take the Mortgaged Property free from, and despite the terms of, such grant of easement or Lease. Borrower hereby expressly waives any right which Borrower may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto. In the event of a sale or other disposition of any of the Mortgaged Property, and the execution of a deed or other conveyance pursuant thereto, the recitals in such deed or conveyance of facts, such as default, the giving of notice of default and notice of sale, terms of sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. In case of any sale under this Deed of Trust by virtue of judicial proceedings, or under the power of sale, the Mortgaged Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Agent in its sole discretion may elect. Notwithstanding anything to the contrary contained herein, Trustee shall (to the extent permitted by applicable law) allocate or apply the proceeds of sale (including the amount of any credit bid) in such manner and in such priority as Agent may elect in its sole and absolute discretion.

(C) Agent may cause any such sale or other disposition to be conducted as soon as permitted under applicable law, or Agent may delay any such sale or other disposition for such period of time as Agent deems to be in its best interest. Should Agent desire that more than one such sale or other disposition be conducted, Agent may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Agent may deem to be in its best interest.

(D) Agent, at its option, may set aside any declared acceleration of maturity of the Note, whereupon the terms and provisions therein stated and the covenants, terms and conditions in this Deed of Trust shall revive and continue with the same force and effect as if such acceleration had not occurred.

(E) Upon the occurrence of an Event of Default hereunder, Agent in pursuance of the foregoing remedies, or in addition thereto, shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as Agent may think fit without impairing Agent's lien in, or rights to, any of such securities and without affecting the liability of any Person for the Debt.

11.3. Waivers and Releases.

(a) Consent to Jurisdiction, Venue, etc. Borrower hereby consents to the jurisdiction of the courts of the State in and for the county in which the Mortgaged Property is located with respect to any action, suit or other legal proceeding commenced by Agent pursuant to any of the Loan Documents, and hereby waives any right to transfer any such action to any other court.

(b) Waiver of Marshalling, etc. Borrower, for itself and its successors in title, hereby waives all rights at law or in equity to have the Mortgaged Property marshaled in the event of the foreclosure of this Deed of Trust. Borrower will not at any time insist upon, plead, or in any manner whatsoever claim or take any benefit or advantage of any present or future laws pertaining to the administration of the estates of decedents, exempting any of the Mortgaged Property from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, or providing for the valuation or appraisal of any of the Mortgaged Property prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court. Borrower hereby covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Agent, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

(c) Waiver of Notices. Borrower hereby waives all notices not herein elsewhere specifically required, of Borrower's default or of Agent's exercise, or election to exercise, any option or election under this Deed of Trust.

(d) Waiver of Personal Service. Borrower hereby waives personal service of process in any action or proceeding at any time commenced to enforce this Deed of Trust, and agrees that such process shall be deemed properly and adequately served if sent to Borrower at the address

provided in or pursuant to §12 hereof for the giving of notices to Borrower, by certified or registered mail, return receipt requested, in the manner provided in §12 hereof for the giving of notices to Borrower.

(e) Foreclosure Subject to Leases. In the event that Agent shall have the right to foreclose this Deed of Trust, Borrower authorizes Agent at its option to foreclose subject to the rights of any tenants, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be asserted by Borrower as a defense to any proceeding instituted by Agent to collect any of the Debt or any deficiency after foreclosure.

12. NOTICES

12.1. Addresses. All notices, demands, requests and consents required under this Deed of Trust shall be in writing, and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other overnight delivery service; or (d) if sent by facsimile transmission, confirmed by certified or registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender, and addressed if to Borrower at the Borrower's address hereinabove set forth, or if to the Trustee, at the Trustee's address hereinabove set forth, or if to the Agent, at the Agent's address hereinabove set forth, or at such other address or addresses as any party hereto may hereafter designate for itself by written notice to each other party hereto.

12.2. Manner of Delivery. Notices, demands and requests hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission, with confirmation by certified or registered mail, on the date such facsimile transmission is received by the Person to whom it is sent.

13. CERTAIN SECURITY AGREEMENT PROVISIONS

13.1. Status of Borrower. Borrower's exact legal name is correctly set forth at the end of this Deed of Trust. Borrower is an organization of the type specified in the first paragraph of this Deed of Trust. Borrower is incorporated in or organized under the laws of the Formation State. Borrower will not cause or permit any change to be made in its name, identity or corporate, limited liability company or partnership structure unless the Borrower shall have first notified the Agent in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by the Agent for the purpose of perfecting or protecting the lien and security interest of the Agent. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the

entire period of the existence of the Borrower) and will continue to be the address of the Borrower set forth at the end of the Deed of Trust (unless Borrower notifies the Agent in writing at least 30 days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in §1.4(c) of this Deed of Trust. Borrower shall promptly notify the Agent of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, the Borrower promptly shall notify the Agent of such organizational identification number.

13.2. Authorization to File Financing Statements; Power of Attorney. Borrower hereby authorizes the Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of the Borrower as authorized by applicable law, as applicable to all or part of the Mortgaged Property. For purposes of such filings, the Borrower agrees to furnish any information requested by the Agent promptly upon request by the Agent. Borrower also ratifies its authorization for the Agent to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this security instrument. Borrower hereby irrevocably constitutes and appoints the Agent and any officer or agent of the Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Borrower or in the Borrower's own name to execute in the Borrower's name any documents and otherwise to carry out the purposes of this §13.1, to the extent that the Borrower's authorization above is not sufficient. To the extent not prohibited by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

14. NON WAIVER, ETC.

14.1. Waiver Not Affecting Deed of Trust. No failure by Agent to insist upon the strict performance by Borrower of any of the provisions hereof shall be deemed to be a waiver of any of the provisions hereof, and Trustee and Agent, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Borrower of all of the provisions of this Deed of Trust. Neither Borrower nor any Person liable for the payment of any of the Debt or the performance of any of the Obligations, nor any Person giving security for any of the Debt or for the performance of any of the Obligations, shall be relieved of any of such respective obligations, nor shall any security given by any of them be released, nor the position of any subordinate lienholder be improved, by reason of: (a) any failure by Agent to comply with any request by Borrower or of any other Person so obligated to foreclose or otherwise enforce this Deed of Trust; (b) the release, regardless of consideration, of any of the security held for payment of any of the Debt and/or the performance of any of the Obligations; (c) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Agent extending the time of payment or modifying the terms of the Note or any of the Loan Documents; (d) any grant of forbearance or extension of time for the payment of any of the Debt or the performance of the Obligations; (e) Agent's acceptance of any other or additional security for the payment of any of the Debt or the performance of any of the Obligations; (f) Agent's

waiver of or failure to exercise any right granted herein or in any of the Loan Documents; (g) any changes hereafter made in any of the terms, covenants, conditions or agreements of this Deed of Trust or in any other Loan Document; (h) Agent's giving of consent to the filing of any map, plat, replat or condominium declaration affecting any of the Mortgaged Property; (i) Agent's giving of consent to the granting of any easement or other right affecting the Mortgaged Property; or (j) Agent's making or consenting to any agreement subordinating the lien hereof.

14.2. Right to Cure Defaults. If Borrower shall fail to fully and timely perform any of the Obligations, Agent shall be under no obligation to take action to correct such failures. However, at its option, Agent may take such action and expend such sums as Agent deems necessary to correct such failures and/or any consequences thereof. Such action or payment by Agent shall not constitute a waiver by Agent of the performance of said act, and Agent may treat Borrower's failure to perform such act as a default (and, upon expiration of any applicable grace period, an Event of Default) notwithstanding Agent's having undertaken (or completed) the performance of the act. Borrower will repay to Agent upon demand any amounts expended by Agent to correct each such failure and/or any consequences thereof, and all expenses of Agent in taking such action, with interest at the Default Rate from the incurring of such expense or the making of such payment, as the case may be. The payment of such amounts to Agent shall be secured by this Deed of Trust.

15. GENERAL COVENANTS

15.1. Estoppel Certificate. Borrower, within three (3) days upon request in person or within ten (10) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Agent setting forth the amount of the Debt then secured by this Deed of Trust, and stating either that no offsets or defenses exist against the Debt, or if such offsets or defenses are alleged to exist, the nature and extent thereof, and containing such other matters as Agent shall reasonably request.

15.2. Agent and Trustee Expenses. Borrower shall promptly pay upon request all expenses and costs incurred by Agent or Trustee, including reasonable attorney's fees, together with interest thereon at the Default Rate from the date of the payment by Agent or Trustee, in connection with:

(a) any action, proceeding, litigation or claim instituted or asserted by or against Agent and/or Trustee or in which Agent and/or Trustee becomes engaged, wherein it becomes necessary in the opinion of Agent and/or Trustee to protect Agent's or Trustee's interests in the Mortgaged Property or the security afforded hereby, or by any of the Loan Documents, or to defend or uphold the Lien of this Deed of Trust, or the validity or effectiveness of any assignment of any claim, award, payment, insurance policy or any other right or property conveyed, encumbered or assigned by Borrower to Trustee or Agent under this Deed of Trust, or the priority of any of the same;

(b) any further assurances requested by Agent under §2.7, or any other provision hereof, including all filing and recording costs and costs of searches;

(c) all taxes, fees and other assessments, including stamp taxes, if any, upon any documents or transactions contemplated by this Deed of Trust or in connection with the recording and filing of any Loan Document;

(d) the collection and/or enforcement of any Debt and/or Obligations, including the realization upon any of the Mortgaged Property or other security for any of the Debt or Obligations; and

(e) the collection and application of any insurance proceeds and Condemnation Awards.

All such expenses and costs, with interest thereon at the Default Rate as provided above, shall be added to and become part of the Debt and be secured by this Deed of Trust; provided, however, that in any action to foreclose this Deed of Trust or to recover or collect the sums due hereunder, the provisions of law and of this Deed of Trust relative to the recovery of costs, disbursements, commissions, allowances and attorneys' fees, shall prevail over any conflicting requirements of this §15.2. The provisions of this §15.2 shall survive payment of the Debt and performance of the Obligations and any release of, or reconveyance under, this Deed of Trust.

15.3. Amendments. No provision of this Deed of Trust shall be changed, altered, modified or released except by an agreement in writing signed by Borrower and Agent. No compliance with or failure to comply with any provision of this Deed of Trust shall be waived or excused except by a written instrument executed by Agent.

15.4. Subrogation. Agent shall be subrogated, notwithstanding their release of record, to any Liens, superior titles, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Property to the extent that the same are paid or discharged from the proceeds of the Loan or are otherwise paid by Agent.

15.5. Application of Moneys. Whenever in this Deed of Trust Agent is to apply, or shall elect to apply, any sum of money to payment of any of the Debt, or to performance of any of the Obligations, Agent may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Agent may elect, unless a different order of priority is required by applicable law.

15.6. Agent Not Liable; Indemnity. Neither Trustee, Lender nor Agent shall be responsible or liable in any way for any condition in or upon any of the Mortgaged Property (whether or not discovered by Agent or Lender), including any condition relating to the presence on the Mortgaged Property of any Hazardous Substance or any defects in any of the Mortgaged Property or any personal injury, death, damage to property, loss, cost, liability, damage or expense in any way arising out of or connected with the condition or maintenance of any of the Mortgaged Property or any construction or other work thereon, or Borrower's use and occupancy of the Mortgaged Property. For any such condition in or upon any of the Mortgaged Property which first arises after the date of this instrument, Borrower will indemnify, defend and hold

Agent, Lender and the Trustee harmless from and against all such liability and responsibility. The provisions of this Section 15.6. shall survive the payment of the Debt, performance of the Obligations, release of this Deed of Trust and the reconveyance of the Mortgaged Property for a period of three years from the date of such reconveyance of the Mortgaged Property.

15.7. Lease Priority. Each Lease hereafter made shall: (a) require the tenant to enter into an agreement with Agent, if Agent so requests, which will provide that, in the event of the sale of any of the Mortgaged Property under the power of sale herein contained, or under any judicial foreclosure hereof, or of a deed in lieu of foreclosure, such tenant will, upon the written request of any Person succeeding to the interest of Borrower as the result of said sale or deed, automatically become the tenant of any such successor in interest, without any change in the terms or other provisions of the Lease, and that said successor in interest shall not be bound by (i) any payment of rent for more than one (1) month in advance, (ii) any provision requiring the return of any security deposit or prepayment in the nature of security for the performance by said Tenant of its obligations under said Lease, or any provision entitling the Tenant to credit any such amounts to its obligations under its Lease, or (iii) any amendment or modification in the Lease made without the consent of Agent or any such successor in interest; and (b) require the tenant, upon Agent's request, to enter into an agreement in recordable form with Agent to provide, at the option of Agent, that this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to any Condemnation Awards or insurance proceeds), to such tenant's Lease. Borrower shall join in any of such agreements if Agent so requests. On request of Agent, Borrower shall obtain from the tenants and furnish to Agent the agreements required by this §15.7, all of which agreements shall be in form and substance satisfactory to Agent. Nothing set forth in this Section shall constitute an agreement of Agent to enter into any agreement for subordination, nondisturbance or attornment with any tenant.

16. TRANSFER OF MORTGAGED PROPERTY

16.1. Restrictions Upon Transfer. Lenders have made the Loan in reliance in part upon the identity of Borrower. Accordingly, without the prior written approval of Agent, Borrower, except as may be permitted by §16.2 hereof, shall not: (a) allow a Transfer of any of Borrower's interest in the Mortgaged Property to occur; or (b) permit any Transfer of any ownership interest (whether stock, general partnership interest or otherwise) in Borrower; or (c) permit or suffer to occur any Transfer of any ownership interest (direct or indirect) in any non-publicly traded Person which is a shareholder, partner, member or other owner of an interest in Borrower; and any such prohibited act shall be an Event of Default.

16.2. Permitted Transfers. Agent shall have the right to condition its consent to any Transfer prohibited by §16.1 hereof upon the payment of a fee or charge and/or upon an increase in the rate of interest and/or changes in the other provisions of any of the Loan Documents. References in this Deed of Trust to proceeds of any of the Mortgaged Property are not intended as a consent to, and do not authorize, any Transfer of any of the Mortgaged Property.

17. FUTURE ADVANCES

In addition to the indebtedness evidenced by the Note and all other Debt, this Deed of Trust, to the fullest extent permitted by the law of the State, shall secure also and constitute a Lien on the Mortgaged Property for all future advances made by Lenders or Agent to Borrower and future obligations incurred by Borrower to Lenders or Agent in connection with the Mortgaged Property or the Loan to the same extent as if such future advances were made or such future obligations incurred on the date of the execution of this Deed of Trust.

18. ENVIRONMENTAL MATTERS

18.1. Environmental Covenants. Borrower hereby covenants and agrees with Agent as follows:

(a) At all times until this Deed of Trust has been satisfied of record, the Mortgaged Property and the use and operation of the Mortgaged Property shall comply with all Environmental Requirements, all governmental permits, approvals and licenses required with respect to the Mortgaged Property by any Environmental Requirements shall be and remain in effect, and Borrower shall comply therewith. Any Hazardous Substance at any time present, handled or generated on the Mortgaged Property will be disposed of in strict compliance with all Environmental Requirements. Without limiting the foregoing, Borrower shall not allow or permit any Hazardous Substance to exist or be stored, located, discharged, manufactured, possessed, managed, processed or otherwise handled on the Mortgaged Property at any time, except in strict compliance with all applicable Environmental Requirements.

(b) Borrower will not place or allow any underground storage tanks or above-ground storage tanks to be placed on the Mortgaged Property while this Deed of Trust remains in effect.

(c) Borrower shall immediately notify Agent should Borrower become aware of any Hazardous Substance on, in, or under the Mortgaged Property, and any other environmental problem or liability with respect to the Mortgaged Property. Borrower shall immediately notify Agent and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Mortgaged Property or its compliance with Environmental Requirements.

(d) Borrower shall not do or take any action or omit or fail to take any action which will result in the unauthorized release of any Hazardous Substance or the existence of any environmental contamination in, on, under or with respect to, any of the Mortgaged Property.

(e) Failure of Borrower to comply with all Environmental Requirements and governmental safety requirements shall be a default under this Deed of Trust.

(f) Borrower shall promptly after obtaining knowledge thereof advise Agent in writing of (i) any governmental or regulatory actions instituted or threatened in writing under any Environmental Requirements affecting the Mortgaged Property or any Indemnity hereunder

including, without limitation, any notice of inspection, abatement or noncompliance, (ii) all claims made or threatened in writing by any third party against Borrower or the Mortgaged Property relating to any Hazardous Substance or to any alleged violation of an Environmental Requirement, and (iii) Borrower's discovery of any occurrence or condition on the Mortgaged Property or any real property adjoining or in the vicinity of the Mortgaged Property which could subject Borrower or the Mortgaged Property to a claim under any Environmental Requirement or to any restrictions on ownership, occupancy, transferability or use of the Mortgaged Property under any Environment Requirement. Borrower shall deliver to Agent all such documentation and records relating to any matter, notice of which is required by this §18.1, as Agent may reasonably request.

18.2. Right to Inspect, etc. Agent, in person or by agent, shall have the right, but not the obligation, at any time and from time to time to enter upon the Mortgaged Property, take samples, review Borrower's books and records, interview Borrower's employees and officers, and conduct similar activities to ascertain the status of Borrower's compliance with this §18. Borrower shall cooperate in the conduct of such an audit. Such entry may be made at any time or times upon not less than 24 hours notice (which may be oral notice) to Borrower. In addition, Agent may have tests (which may include drilling and sampling, among other things) and audits of the Mortgaged Property done for the purpose of testing for evidence of noncompliance.

19. DEFINITIONS, CONSTRUCTION AND INTERPRETATION.

19.1. Governing Law. This Deed of Trust shall be construed and enforced in accordance with the internal laws (without regard to the conflict of laws rules) of the State. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other document described herein, Borrower expressly consents to jurisdiction in the courts and laws of the State, and consents to the applicability of the laws of the State, with respect to any personal liability and any action for a deficiency judgment, whether before or after any exercise of a power of sale or any judicial foreclosure.

19.2. Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the Land, and shall apply to, bind and inure to the benefit of, the successors of Borrower and any subsequent owner of the Land or the Improvements, and the successors of Agent and any subsequent holders of the Note.

19.3. Provisions Severable. If any term or provision of this Deed of Trust or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

19.4. Multiple Counterparts. This Deed of Trust may be executed in any number of counterparts and by the parties hereto on different counterparts. Each such counterpart shall for all purposes be deemed to be an original and all such counterparts shall together constitute but

one and the same Deed of Trust. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

19.5. Other Interpretive Provisions. As used herein, the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "any of" shall mean all or any part of or interest in that with respect to which such phrase is used.

19.6. Miscellaneous Provisions. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Deed of Trust shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of the Agent in the Mortgaged Property, afford the Agent greater financial security in the Mortgaged Property and/or assure payment of the Debt and performance of the Obligations in full, shall control. Except as otherwise expressly stated herein, with respect to any matters which, under this Deed of Trust, Agent shall have the right to approve, consent to, be satisfied with, exercise its judgment with regard to or calculate, the decisions of Agent with respect to such matters shall be made in the sole discretion of Agent, may be given or withheld without regard to reasonableness, and shall be final and conclusive. The headings and captions in this Deed of Trust are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Deed of Trust. The granting of consent by Agent to any matter as to which such consent is required by the provisions hereof shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Borrower and Agent that such property be treated for all purposes hereunder as real estate. Each of the parties have participated in the negotiation and preparation of this Deed of Trust, with the advice of counsel, and this Deed of Trust shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Deed of Trust.

19.7. Definitions. As used herein, each of the following terms shall have the meaning indicated below, unless the context clearly requires otherwise:

"Agent's Address" shall mean c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205, or such other address as Agent, by written notice to the other parties, shall designate as "Agent's Address" for purposes of the Loan Documents.

"Agent-Related Persons" shall mean Agent, and any successor Agent appointed pursuant to the Loan Agreement, together with their respective officers, directors, employees, representatives, attorneys, agents and affiliates.

“Automatic Acceleration Event of Default” shall mean an “Automatic Acceleration Event of Default” as defined under the Loan Agreement.

“Borrower” shall mean **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal authority, their successors and assigns permitted under the Loan Documents.

"Borrower's Address" shall mean 4800 West 92nd Avenue, Westminster, Colorado 80031, or such other address as Borrower, by written notice to Lenders and Agent, shall designate as "Borrower's Address" for purposes of the Loan Documents.

"Casualty" shall mean any damage, destruction, or loss to or of any of the Mortgaged Property resulting from fire, any peril insured against, or any other cause except a Condemnation.

"Certified" shall mean certified: (a) if the Person providing the financial statement to be certified is a general or limited partnership, by the general partner or managing general partner(s) of such Person, and if such general partner is a corporation, the chief financial officer of such corporate general partner of such Person; (b) if such Person is a corporation, by the chief financial officer of the corporation; (c) if such Person is a trust, by the trustee; (d) if such Person is a limited liability company, by the manager or managing member, or if none, by all members; or (e) if such Person is one or more individuals, by each such individual.

“CERCLA” shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as now and hereafter amended.

“CGL Policy” shall mean a Commercial General Liability insurance policy meeting the requirements of §4.1(b) hereof.

“City” shall mean the **CITY OF WESTMINSTER**, a Colorado home rule city.

“Closing” shall mean the execution and delivery of the Loan Documents and their acceptance by Agent, satisfaction of all conditions of the Loan Agreement to the making of the Loan, and recording of the Mortgage.

“Closing Date” shall mean the date upon which the Closing is completed.

“Code” shall mean the Uniform Commercial Code as adopted and in effect in the State on the date hereof and as amended or supplemented at any time hereafter.

"Collateral" shall mean collectively the “Accounts”, “Chattel Paper”, “Deposit Accounts”, “Documents”, “Equipment”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, as such terms are defined in the Code, and all Personal Property, Records, Intellectual Property, and other assets, tangible or intangible, now owned or hereafter acquired by Borrower, and the Proceeds of each thereof.

"Condemnation" shall mean any condemnation or taking of any of the Mortgaged Property or the use thereof by any Governmental Authority or other Person pursuant to the power of eminent domain or condemnation, and any conveyance of any of the Mortgaged Property in lieu of condemnation.

"Condemnation Award" shall mean any and all awards, damages and other sums of money at any time owed or becoming payable, or paid, with respect to any Condemnation, including any payments for any conveyance in lieu of Condemnation, and awards for changes of grade of any streets.

"Debt" shall mean (i) all indebtedness of Borrower evidenced by the Notes, including principal, interest at the rate set forth in the Notes, additional interest if any, late charges, and interest after default at the rate set forth in the Note, (ii) any and all extensions, renewals, refinancings or refundings thereof in whole or in part, whether or not now provided for in the Loan Documents, (iii) all costs and expenses incurred by Agent in the collection of any of such indebtedness, including attorneys' fees and legal expenses, (iv) all future advances made by Agent for the protection or preservation of any of the Mortgaged Property, and (v) all other amounts coming due to Agent under any provision of any of the Loan Document.

"Default Rate" shall mean the "Default Rate" as defined in the Notes.

"Environmental Activity" (whether one or more), shall mean any one or more of the following: (1) any present or future storage, holding, existence, release, emission, discharge, generation, abatement, disposition, handling or transportation of any Hazardous Substance from, on, under or otherwise relating to the Mortgaged Property or any Migration Tract, or the use, operation or occupancy thereof, or any threat of any such activity, including but not limited to any failure of all "hazardous waste" (as defined in RCRA) generated or removed from the Mortgaged Property to be removed and disposed of at sites and transported by carriers which maintain valid permits under RCRA and any other applicable Environmental Requirements; (2) any failure of any Person, including without limitation the Borrower, to comply with any of the Environmental Requirements relating to the Mortgaged Property or the ownership, use, operation or occupancy thereof, or any Migration Tract, including but not limited to any failure by any Person to properly obtain or file any notices, permits, licenses or similar authorizations, if any, required under any Environmental Requirements in connection with the Mortgaged Property or the ownership, use, operation or occupancy thereof; (3) any investigation, inquiry, order or proceeding by any Governmental Authority, and/or any remedial obligations of the Borrower or any Person under any Environmental Requirements relating to the Mortgaged Property or any Migration Tract; (4) any failure of any representation or warranty set forth in §18 of this Deed of Trust to be true and correct in all respects when made; and (5) any failure of the Borrower to perform, or cause to be performed, any covenant in §18 of this Deed of Trust.

"Environmental Requirements" shall mean, collectively: CERCLA; RCRA; the Hazardous Materials Transportation Act (49 U.S.C. §1802 et seq.); the Federal Water Pollution Prevention and Control Act (33 U.S.C. §1251 et seq.); the Safe Drinking Water Act (42 U.S.C. §300f et

seq.); the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Clean Water Act, 33 U.S.C. §7401 et seq.; all international treaties, compacts, conventions and agreements having the force of law in the United States of America and all federal, state or local statutes, ordinances, codes, rules, regulations, orders and decrees, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect, each as now or hereafter amended; and any and all judgments, orders, decrees, permits, licenses, authorizations, concessions, grants, franchises, agreements or other governmental restrictions or requirements relating to the environment or to any Hazardous Substance or to any Environmental Activity.

"Event of Default" shall mean an Event of Default as defined in §11.1 hereof, and any event, omission or circumstance otherwise specifically stated in this Deed of Trust to be an Event of Default.

"FEMA" shall mean the Federal Emergency Management Agency, and its successors.

"Fixtures" shall mean all fixtures, equipment, apparatus, machinery, fittings and appliances, chattels, building materials and tangible personal property of every kind and character, now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy, operation and/or maintenance of the Improvements or the Land, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the removal of dust, refuse or garbage, and all renewals, replacements and substitutions thereof, additions and accessions thereto, and all spare parts for any of the same.

"Formation State" shall mean the State of Colorado, under the laws of which the Borrower is organized or formed.

"Governmental Authority" shall mean the United States of America, the State, any political subdivision of either of them, and any court, agency, department, commission, board, bureau, officer or instrumentality of any of them.

"Ground Leases" shall mean collectively (i) Lease dated June 21, 1976 between Mersco Realty Co., Inc. and Westminster Mall Company, as amended and assigned and (ii) Lease dated January 14, 1986 between Frank S. Morgan, et al and Westminster Mall Company, as amended and assigned.

"Hazardous Substance" shall mean: (a) any "hazardous substance" as such term is presently defined in CERCLA; (b) any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substance" for the purposes of CERCLA; (c) any element, substance, compound or mixture, including disease-causing agents, now or hereafter designated as, or containing components designated as, hazardous, dangerous, toxic, harmful, and/or subject to regulation by any Environmental Requirement, including asbestos in any form

and any substance containing asbestos, mold, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid or polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials, lead and any waste, substance or material now or hereafter regulated by any Environmental Requirement; (d) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2014, as now or hereafter amended; (e) any lead-based paint; and (f) mold, fungus, microbacterial contamination or pathogenic organisms.

“Higbee” shall mean **THE HIGBEE COMPANY**, a Delaware corporation, and the holder of one of the Notes.

"Higbee's Address" shall mean 1600 Cantrell Road, Little Rock, Arkansas 72205, Attn: Vice President, Real Estate, or such other address as Higbee, by written notice to the other parties, shall designate as "Higbee's Address" for purposes of the Loan Documents.

“Impositions” shall mean all taxes and assessments of every kind and nature now or hereafter assessed against or levied upon any of the Mortgaged Property or the revenues, rents, issues or profits thereof by any Governmental Authority, including real and personal property taxes, general and special assessments, inspection and license fees, water and sewer rents and charges

“Improvements” shall mean the buildings, structures and other improvements now or hereafter located on the Land.

“Indemnified Liabilities” shall mean all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, charges, expenses or disbursements (including attorney's fees and expenses) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loan or the termination, resignation or replacement of any Agent or any Lender) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Agreement or any other Loan Document and any other document or instrument contemplated by or referred to herein or therein, or the transactions contemplated hereby and thereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to the exercise by Agent of any of its rights or remedies under any of the Loan Documents, and any investigation, litigation or proceeding (including any bankruptcy, insolvency, reorganization or other similar proceeding or appellate proceeding) related to this Agreement or any other Loan Document or the Loan, or the use of the proceeds thereof.

“Intangibles” shall mean all goodwill, trademarks, trade names, option rights, purchase contracts, computer records and software, books and Records and general intangibles of the Borrower relating to any of the Mortgaged Property, all Intellectual Property, all rights of the Borrower under or with respect to all accounts, contract rights, instruments, chattel paper and other rights of the Borrower for payment of money for property sold or lent, for services

rendered, for money lent, or for advances or deposits made, all rights of the Borrower to plans and specifications, designs, drawings, models and other matters prepared for any construction or renovation on the Land, all rights of the Borrower under any contracts executed by the Borrower as owner with any provider of goods or services in connection with any construction or renovation undertaken on, or services performed or to be performed in connection with, any part of the Mortgaged Property, and all other intangible property of the Borrower related to or used in connection with any of the Mortgaged Property, and shall specifically include, without limiting the foregoing, all trade insignia and logos (including goodwill related thereto), if any, used in connection with the operation of the Mortgaged Property.

"Intellectual Property" shall mean all patents, trademarks, trade names, and service marks, and related goodwill, now or hereafter acquired by Borrower.

"ISO" shall mean the Insurance Services Office.

"Land" shall mean all of the real property and interests in real property described on Exhibit A attached to and incorporated into this Deed of Trust.

"Lease" shall mean any of the Leases.

"Leases" shall mean all agreements for use and occupancy of any part of the Mortgaged Property, now existing or hereafter entered into, including all present and future leases (including subleases), licenses, concessions, rights in respect of tenants holding over and tenancies following attornment, and all extensions, modifications, renewals or supplements to any lease, license or concession, and all cash or securities deposited with the Borrower to secure performance of the tenant's obligations under such Lease.

"Legal Requirements" shall mean collectively (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, including those with respect to zoning, subdivision, building, safety, fire protection, wetlands protection, historical preservation, access for the handicapped or disabled, ecological or environmental matters; and (ii) all covenants, restrictions and conditions now or hereafter of record which may apply to any of the Mortgaged Property or the use, occupancy, possession, Maintenance, Restoration or enjoyment thereof.

"Lender or Lenders" shall mean MD Lender and Higbee, the holders of the Notes.

"Lien" shall mean any mortgage, deed of trust, security agreement, financing statement, security interest, judgment lien, mechanic's or materialman's lien, any other lien, encumbrance, charge, retention or reservation of title as security, pledge, hypothecation or assignment as security, of any of, or upon, the Mortgaged Property, whether now existing or hereafter created, suffered or incurred.

"Loan" shall mean the loan in the Loan Amount made by Lenders to Borrower and the City pursuant to the Loan Agreement.

"Loan Agreement" shall mean that certain Loan Agreement dated the date hereof among Borrower, City, Agent, MD Lender and Higbee, and any amendments, extensions and supplements thereto made at any time.

"Loan Amount" shall mean the maximum aggregate principal amount of the Loan, which is THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS (U.S. \$3,500,000.00).

"Loan Documents" shall mean collectively the Loan Agreement, the Notes, this Deed of Trust, financing statements to evidence security interests securing the Loan, and all other instruments, documents and agreements now or hereafter evidencing, securing or supporting any of the Debt or the Obligations, and any amendments, extensions and supplements to any of them made at any time.

"Maintenance" shall mean all repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property (whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen), that are necessary to keep the Mortgaged Property in good order, condition and repair, consistent with the standard described in §5.2 and suitable for the Permitted Uses.

"Maturity Date" shall mean the Maturity Date as set forth in the Note.

"MD Lender" shall mean collectively, **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, the holders of one of the Notes.

"MD Lender's Address" shall mean c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205, or such other address as MD Lender, by written notice to the other parties, shall designate as "MD Lender's Address" for purposes of the Loan Documents.

"Member" shall mean any member of Borrower, if applicable.

"Migration Tract" shall mean any property other than the Land, from which any Hazardous Substance may move or migrate onto, into or under the Land (including the groundwater thereunder), and any property other than the Land into, onto or under which any Hazardous Substance may move or migrate from the Land (including the groundwater thereunder).

"Mortgaged Property" shall mean collectively all the property and interests, tangible and intangible, described or referred to in §§1.1, 1.2 and 1.3 hereof, whether now owned or hereafter acquired by Borrower.

"Net Condemnation Award" shall mean a Condemnation Award, less the costs and expenses, including reasonable attorney's fees, incurred by Agent and/or Trustee in connection with such Condemnation Award and the Condemnation to which it relates.

"Net Insurance Proceeds" shall mean all of the proceeds and sums of money owed or becoming due or paid under any policy of insurance upon any of the Mortgaged Property, including any sums paid in settlement of any claim under any such insurance policy, less the costs and expenses, including reasonable attorney's fees, incurred by Agent and/or Trustee in connection with such insurance proceeds and the Casualty to which they relate.

"Note" shall mean the two Notes, collectively or one of the two Notes as the context requires.

"Notes" shall mean the two certain Promissory Note of even date herewith each in one-half of the Loan Amount from Borrower and the City to the order of MD Lender and Higbee, as amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

"Obligations" shall mean the obligation to pay the Debt and all obligations of Borrower and the City to Lenders and Agent arising from or out of any of the Loan Documents.

"Permitted Encumbrances" shall mean only those matters listed as exceptions to coverage on Schedule B to the Agent's policy of title insurance insuring the lien of this Deed of Trust; except that those matters which are listed in said policy as matters which are subordinate to the lien of this Deed of Trust shall be included as "Permitted Encumbrances" only as matters which are so subordinate, and notwithstanding any provision of any of the Loan Documents seemingly to the contrary, none of the Loan Documents shall be subject to such items so listed as subordinate.

"Permitted Uses" shall mean use solely as a retail shopping center and activities incidental thereto.

"Person" shall mean an individual, corporation, general partnership, limited partnership, limited liability company, unincorporated association, trust or any other legal entity.

"Personal Property" shall mean all tangible personal property now owned or hereafter acquired by Borrower.

"Personal Property Security" shall mean, collectively, all the Fixtures, Intangibles, and all other property described in §1.2 hereof, whether now owned or hereafter acquired by Borrower.

"Proceeds" shall mean all "Proceeds" as defined in the Code, with respect to the Collateral or Mortgaged Property, and includes without limitation proceeds of insurance payable by reason of loss or damage to Collateral or Mortgaged Property.

"RCRA" shall mean the Resources Conservation and Recovery Act of 1976, as now or hereafter amended (42 U.S.C. §6901 et seq.) and any regulations promulgated thereunder.

"Reciprocal Easement Agreement" shall mean Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986 and recorded February 18, 1986 under Reception No. 86016389 , as amended, assigned, and supplemented.

"Records" shall mean all "Records" as defined in the Code, now owned or hereafter acquired by Borrower, and includes without limitation all books, records, computer records and software relating to any part of the Mortgaged Property.

"Rents" shall mean: all rentals, security deposits, reimbursements and other sums of money now or hereafter due to Borrower under any Lease; all of the rents, issues, profits, royalties, income, receipts, revenues and earnings now or hereafter due Borrower under any Lease or arising from the use and enjoyment of any of the Mortgaged Property; all damages for default by any party under any Lease; all proceeds of any policy of insurance covering loss of rents or business interruption resulting from any Casualty; all rights of Borrower to collect and recover any of such amounts; and the proceeds of all such Rents.

"Restoration" shall mean the restoration, repair, rebuilding, alteration and/or replacement of any of the Mortgaged Property made necessary by any Casualty or Condemnation, to a condition as nearly as possible to its condition prior to such Casualty or Condemnation (but with such changes as Borrower may make pursuant to §7 hereof), and includes demolition, temporary repairs and the protection of the Mortgaged Property pending the completion of Restoration.

"State" shall mean the State of Colorado.

"Transfer" shall mean: (a) with respect to Borrower's interest in the Mortgaged Property, any sale, assignment, lease, transfer or conveyance (whether voluntarily, involuntarily, by operation of law or otherwise) of any of Borrower's interest in the Mortgaged Property, or any agreement by Borrower to do any of the same; and (b) with respect to any ownership interest (whether stock, partnership interest, membership interest or otherwise) of any Person in Borrower, or any ownership interest (direct or indirect) in any Person which is a shareholder, partner, member or other owner of an interest in Borrower, any sale, assignment, conveyance, transfer, grant of a security interest in or encumbrance of any of such interest, or any agreement by any such Person to do so.

"Trustee" shall mean the Public Trustee of Jefferson County, Colorado.

"Usury Law" shall mean any law or regulation of any Governmental Authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money and applicable to the Debt and/or any of the Obligations.

"WEDA" shall mean WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal agency.

20. WAIVER OF TRIAL BY JURY

20.1. Waiver of Trial By Jury. AGENT, BORROWER AND THE TRUSTEE IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY COURT IN ANY ACTION: (A) AGENT OR THE TRUSTEE BRINGS TO COLLECT AMOUNTS OWED UNDER OR SECURED BY THIS DEED OF TRUST; (B) ALLEGING THAT (I) AGENT OR THE TRUSTEE OR BORROWER HAS BREACHED THIS AGREEMENT OR ANY AGREEMENT SECURED BY THIS AGREEMENT, (II) AGENT, THE TRUSTEE OR BORROWER HAS BREACHED ANY OTHER AGREEMENT, EXPRESS OR IMPLIED, (III) AGENT OR THE TRUSTEE OR ANY OF AGENT'S OR THE TRUSTEE'S OFFICERS, EMPLOYEES OR AGENTS HAVE ACTED WRONGFULLY, NEGLIGENTLY OR OTHERWISE TORTIOUSLY WITH RESPECT TO BORROWER; OR (C) TO WHICH BORROWER, AGENT AND/OR THE TRUSTEE ARE PARTIES. THIS WAIVER OF TRIAL BY JURY DOES NOT WAIVE EITHER BORROWER'S, THE TRUSTEE'S OR AGENT'S RIGHT TO BRING A LAWSUIT THAT A JUDGE, WITHOUT A JURY, WOULD DECIDE.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the day and year first above written.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

"BORROWER":

EXHIBIT A
Legal Description

EXHIBIT G

[INTENTIONALLY DELETED]

EXHIBIT H

Form of Deed

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

BARGAIN AND SALE DEED

WESTMINSTER MALL COMPANY, a Colorado general partnership, THE HIGBEE COMPANY, a Delaware corporation, successor by merger to Mersco Realty Co., Inc., an Ohio corporation, MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company, and MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company (“Grantor”) for the consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in hand paid, hereby sells and conveys to WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Grantee”), whose address is c/o Finance Department, City of Westminster, Colorado, 4800 W. 92nd Avenue, Westminster, CO 80031, all the right, title, interest, claim and demand which the Grantor has, if any, in and to the following real property, situate, lying and being in the County of Jefferson and State of Colorado, to wit:

SEE EXHIBIT A ATTACHED HERETO (the “Property”).

This instrument does not convey, and shall not be construed to convey, any interest of Grantor under the purchase money deed of trust or other conveyance made by Grantee to Grantor and/or other parties in connection with the Grantee’s acquisition of the Property. Grantor hereby states and confirms that the conveyance of the Property to the Grantee is made under threat of condemnation.

IN WITNESS WHEREOF, the Grantor has executed this Bargain and Sale Deed as of the ____ day of _____, 2011.

GRANTOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

THE HIGBEE COMPANY, a Delaware corporation,
successor by merger to Mersco Realty Co., Inc., an Ohio
corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 1ST TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

MD WESTMINSTER 2ND TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation, successor by merger to Mersco Realty Co., Inc., an Ohio corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 1ST TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 2ND TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A
THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT I

Form of Bill of Sale

BILL OF SALE

THIS BILL OF SALE ("**Bill of Sale**") is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership ("**Assignor**") and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority ("**Assignee**").

RECITALS:

A. Concurrently with the execution and delivery of this Bill of Sale, Assignee has purchased from Assignor and from The Higbee Company, MD Westminster 1st Tract, LLC, and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the "**Real Property**").

B. The parties have agreed that Assignor will assign to Assignee all of Assignor's right, title and interest in and to the "FF&E" (hereinafter defined) relating to the Real Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby GIVE, GRANT, BARGAIN, SELL, ASSIGN, CONVEY and DELIVER unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to all furniture, furnishings, fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, supplies and other tangible personal property of every kind and description and all replacements thereof now owned by Assignor and located in or on, attached to or used in operating the Real Property ("**FF&E**") EXCEPT that property listed on **Exhibit B** attached hereto; and

2. The sale and assignment hereunder is made "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**." Assignor makes no representations or warranties whatsoever, express or implied or otherwise, as to the merchantability, condition, workmanship, quality, fitness or suitability for any purpose of the FF&E, and Assignor expressly disclaims any and all warranties.

3. This Bill of Sale shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. This Bill of Sale may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

The remainder of this page is intentionally blank.
The parties' signatures are on the next page.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Bill of Sale effective as of the date first above written.

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado general partnership

By: M D Management, Inc., a Missouri corporation, Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation, Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

EXCLUDED PERSONALTY

Office computers of bookkeeper, manager, management assistant and security

Front End loader

Truck

EXHIBIT J

Form of Assignments of Ground Leases

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

(First Ground Leasehold)

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between THE HIGBEE COMPANY, a Delaware corporation and MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company (collectively, “**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, MD Westminster 2nd Tract, LLC and Westminster Mall Co., the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Lease” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the lease described on **Exhibit B** attached hereto and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Lease**”) together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor or the landlord under the Ground Lease accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Lease accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Lease occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out a breach by Assignor of its obligations under the Ground Lease occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\ALRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment First Ground Lease 042711.doc

ASSIGNOR:

THE HIGBEE COMPANY, a Delaware corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 1ST TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____

J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 1ST TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

GROUND LEASE

Lease dated 6/21/76 between Mersco Realty Co., Inc., an Ohio Corporation, Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded July 21, 1976, in Book 2879 at Page 852

Agreement Amending Lease dated 6/28/76

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

(Second Ground Leasehold)

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this “Assignment”), is made as of the _____ day of _____, 2011, by and between THE HIGBEE COMPANY, a Delaware corporation and MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company (collectively, “Assignor”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Assignee”) and the CITY OF WESTMINSTER, a Colorado home rule city (“City”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, MD Westminster 1st Tract, LLC and Westminster Mall Co., the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “Property”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Lease” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the lease described on **Exhibit B** attached hereto and any and all amendments, extensions, modifications and supplements thereto (the “Ground Lease”) together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor or the landlord under the Ground Lease accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Lease accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“Assignor Parties”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Lease occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Ground Lease occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment of Second Ground Lease 042711.doc

ASSIGNOR:

THE HIGBEE COMPANY, a Delaware corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 2ND TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____

J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 2ND TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

GROUND LEASE

Lease dated 1/14/86 between Frank S. Morgan, et al., Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded February 18, 1986, under Reception No. 86016387

EXHIBIT K

Form of Assignment of Penney Lease

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF PENNEY LEASE

THIS ASSIGNMENT AND ASSUMPTION OF PENNEY LEASE (this “**Agreement**”), is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Agreement, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminister, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in and to the Penney Lease (as defined herein) and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest in, to and under the lease described on **Exhibit B** attached hereto and made a part hereof and any and all amendments, extensions, modifications and supplements thereto (the “**Penney Lease**”), together with any guaranties relating thereto.

2. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, provisions, covenants and conditions of the Penney Lease on the part of Landlord to be performed and agrees not to use or occupy the Property in any manner which would constitute a violation of the terms of the Penney Lease. The provisions hereof are directly enforceable by J.C. Penney Properties, Inc.

3. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Agreement shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

4. This Agreement may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Agreement effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment of Penney Lease 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____

J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

PENNEY LEASE

Lease dated 2/13/86 between Westminster Mall Co and J.C. Penney Properties, Inc. (a partial copy of which was recorded 2/18/86 at Reception No. 86016388)

Memorandum of Lease between Westminster Mall Co and J.C. Penney Properties, Inc.

Letter Guaranty from J.C. Penney Company to Westminster Mall Co. dated 2/13/86

Letter from Westminster Mall Co to J.C. Penney Properties, Inc. dated 2/13/86 (regarding Tenant's Parcel)

Letter from Westminster Mall Co to J.C. Penney Properties, Inc. dated 2/13/86 (regarding leases)

Term Agreement between Westminster Mall Co and J.C. Penney Properties, Inc. dated 6/18/93

EXHIBIT L

Form of Assignment of Tenant Leases

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF LEASES

(WESTMINSTER MALL COMPANY)

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Leases” (hereinafter defined) and the “Leases” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under (i) the leases described on **Exhibit B** attached hereto and made a part hereof and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Leases**”) and (ii) all leases, subleases and occupancy agreements for premises in the Property, amendments, extensions, modifications and supplements thereto, including without limitation those with tenants or occupants described on **Exhibit C** attached hereto and made a part hereof (the “**Leases**”), together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor, the tenant under the Ground Leases, or the landlord under the Leases accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Leases or the Leases accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Leases or Leases occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Ground Leases or Leases occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\ALRF\MMM\md\westminster\City\Deed and Assignments\Assignment and Assumption of Tenant Leases 042711 comp.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

**WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority**

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

**CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city**

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B
GROUND LEASES

First Ground Lease

Lease dated 6/21/76 between Mersco Realty Co., Inc., an Ohio Corporation, Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded July 21, 1976, in Book 2879 at Page 852

Agreement Amending Lease dated 6/28/76

Second Ground Lease

Lease dated 1/14/86 between Frank S. Morgan, et al., Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded February 18, 1986, under Reception No. 86016387

EXHIBIT C

1. Space 12: Things Remembered
2. Space 16: Footlocker Store Number #7512
3. Space 18: Spencer's Gifts
4. Space 20: Rivera Clothing
5. Space 22: GNC
6. Space 23: Bath and Body
7. Space 35: Dillards Juniors
8. Space 43: Infinite Design Jewelry
9. Space 44: Footlocker (Owned by Footlocker)
10. Space 45: Doctor's Vision World
11. Space 49: Journey's
12. Space 50A: Claires Boutiques
13. Space 58: Victoria's Secret
14. Space 72: Pet City
15. [intentionally deleted]
16. Space 139: Champs (Owned by Footlocker)
17. Space K12: Compass Bank ATM
18. Space K15: Compass Bank ATM
19. Space Main 3: Dillard's Department Store
20. Space Main 4: JC Penney Department Store
21. Space Pad 2: US Bank
22. Space Pad 5: Olive Garden
23. Space Pad 6: Sears TBA
24. Temporary Tenant: Corn LTD
25. Temporary Tenant: Extreme Mini Golf

EXHIBIT M

Form of Assignment of Contracts

ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS (this “Assignment”) is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“Assignor”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Assignee”), and the CITY OF WESTMINSTER, a Colorado home rule city (“City”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor and from The Higbee Company, MD Westminster 1st Tract, LLC, and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “Property”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in the “Contracts” (hereinafter defined) relating to the Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby SELL, TRANSFER, ASSIGN and SET OVER unto Assignee, all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the contracts relating to the Property described in **Exhibit B** attached hereto (the “Contracts”), and Assignee hereby accepts such assignment and hereby assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor under the Contracts from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Contracts accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“Assignor Parties”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Contracts occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Contracts occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and the City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

4. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Contracts effective as of the date first above written.

F:\LRF\MMM\nd\westminster\City\Deed and Assignments\CMP Assignment of Contracts 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

CONTRACTS

1. Service Agreement dated January, 2011 and Renewal Mechanical Service Agreement dated December 8, 2010 with Long Mechanical Solutions.
2. Service Agreement Non-Hazardous Waste dated January 25, 1989 with Waste Management.
3. Maintenance and Guarantee Agreement dated April 17, 2007 with Plantek Distinctive Interiorscaping, Inc.

EXHIBIT N

Form of Assignment of RCOEA and Other Agreements

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF RCOEA AND ADDITIONAL AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF RCOEA AND ADDITIONAL AGREEMENTS (this "Assignment") is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership ("Assignor"), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority ("Assignee") and the CITY OF WESTMINSTER, a Colorado home rule city ("City").

RECITALS:

A. Assignor is a party to that certain Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986 and recorded February 18, 1986 under Reception No. 86016389, as the same may have been amended, supplemented, assigned or modified (collectively, "RCOEA").

B. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd, LLC, the real property legally described in Exhibit A attached hereto in the City of Westminister, Jefferson County, Colorado (the "Property"), and the parties have agreed that Assignor will assign to Assignee all of Assignor's right, title and interest in the RCOEA and the "Additional Agreements" (hereinafter defined).

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby SELL, TRANSFER, ASSIGN and SET OVER unto Assignee, all of Assignor's right, title and interest in, to and under the RCOEA, all agreements relating to the RCOEA which are identified in Exhibit B attached hereto as "supplemental agreements", and all recorded easements and other recorded documents affecting the Property (collectively, the "Additional Agreements") and Assignee hereby accepts such assignment and hereby assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor thereunder accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the RCOEA or Additional Agreements accruing prior to the date of this Assignment excepting and excluding, however any and all obligations under the "May Supplemental Agreement" or "Mervyn's Supplemental Agreement" identified in Exhibit B, or under the RCOEA or any other Additional Agreements with respect to either the May Site or the Mervyn's Site (as defined in the RCOEA) or as to which the City of Westminister is a party.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them ("Assignor Parties"), from any and all

losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the RCOEA or Additional Agreements occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the RCOEA or Additional Agreements occurring before the date of this Assignment, excepting and excluding any and all matters with respect to the May Supplemental Agreement or Mervyn's Supplemental Agreement, or under the RCOEA or other Additional Agreements with respect to either the May Site or the Mervyn's Site or as to which the City of Westminster is a party.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and City and their respective successors and assigns.

4. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment effective as of the date first above written.

F:\ALRF\MM\nd\westminster\City\Deed and Assignments\Assignment of RCOEA 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

SCHEDULE OF ADDITIONAL AGREEMENTS

The following documents (“**Supplemental Agreements**”):

1. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and The May Department Stores Company (“**May Supplemental Agreement**”)
2. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and Mervyn’s (“**Mervyn’s Supplemental Agreement**”)
3. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and Carter Hawley Hale Stores, Inc.
4. Assignment and Assumption of Agreements recorded February 8, 1990 under Reception No. 90011510.
5. REA Assignment and Assumption Agreement recorded February 22, 1996 under Reception No. F0189712.
6. Assignment and Assumption of Operating Agreements recorded September 27, 2004 under Reception No. F2102228.
7. Assignment and Assumption Agreement recorded January 11, 2006 under Reception No. 2006004250.
8. Assignment and Assumption of Operating Agreement recorded May 18, 2009 under Reception No. 2009045088.

and the following additional documents:

1. THE RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES THEREBY GRANTED AND RIGHTS OF WAY FOR DITCHES AND CANALS AS RESERVED IN UNITED STATES PATENT RECORDED IN BOOK 32, PAGE 107.
2. THE RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES THEREBY GRANTED AND RIGHTS OF WAY FOR DITCHES AND CANALS AS RESERVED IN UNITED STATES PATENT RECORDED IN BOOK 119, PAGE 54.
3. TERMS, CONDITIONS, PROVISIONS, BURDENS, AND OBLIGATIONS SET FORTH IN WESTMINSTER MALL SUBDIVISION AGREEMENT RECORDED JANUARY 14, 1976 IN BOOK 2809 AT PAGE 337.

4. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL RECORDED JANUARY 14, 1976 UNDER RECEPTION NO. 758563.

5. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL AMENDED RECORDED APRIL 16, 1976 UNDER RECEPTION NO. 779637.

6. EASEMENT GRANTED TO THE ALLEN DITCH COMPANY BY THE INSTRUMENT RECORDED OCTOBER 5, 1976 IN BOOK 2911, PAGE 261.

7. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION AGREEMENT RECORDED OCTOBER 15, 1976 IN BOOK 2915 AT PAGE 453.

8. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 25, 1976, IN BOOK 2919 AT PAGE 34.

9. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR UTILITIES AND INCIDENTAL PURPOSES BY THE INSTRUMENT RECORDED JANUARY 31, 1977 IN BOOK 2956, PAGE 777.

10. AN EASEMENT FOR STORM AND SANITARY SEWER LINES, WATER LINES AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED SEPTEMBER 1, 1977 IN BOOK 3063, PAGE 242.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

11. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED AUGUST 18, 1978 AT RECEPTION NO. 78076109.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF BRUNSWICK CENTER RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076112.

NOTE: PLAT RATIFICATION RECORDED SEPTEMBER 28, 1978 UNDER RECEPTION NO. 78089787.

13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BRUNSWICK CENTER SUBDIVISION AGREEMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076110.

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN OFFICIAL DEVELOPMENT PLAN FOR BRUNSWICK SUBDIVISION

PLANNED UNIT DEVELOPMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076111.

15. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED SEPTEMBER 8, 1978 AT RECEPTION NO. 78082939.

16. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY BY THE INSTRUMENT RECORDED APRIL 3, 1979 AT RECEPTION NO. 79028820.

17. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1979, UNDER RECEPTION NO. 79113496.

18. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE OFFICIAL DEVELOPMENT PLAN FOR WESTMINSTER MALL, RECORDED AUGUST 25, 1980 AT RECEPTION NO. 80062536 AND AS AMENDED BY ODP MAP RECORDED MARCH 5, 1981 AT RECEPTION NO. 81014999, AND AMENDMENT THERETO RECORDED JUNE 6, 1983, UNDER RECEPTION NO. 83051906 AND AMENDMENT THERETO RECORDED JUNE 14, 1993 UNDER RECEPTION NO. 93084172 AND AMENDMENT THERETO RECORDED FEBRUARY 8, 1985 UNDER RECEPTION NO. 85012857.

19. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED DECEMBER 18, 1980 AT RECEPTION NO. 80098451.

20. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED DECEMBER 18, 1980 AT RECEPTION NO. 80098452.

21. EASEMENT FOR PUBLIC WALKWAY AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED JANUARY 20, 1981 AT RECEPTION NO. 81004595.

22. EASEMENT FOR STORM DRAINAGE AND INCIDENTAL PURPOSES GRANTED TO THE CITY OF WESTMINSTER BY THE INSTRUMENT RECORDED SEPTEMBER 3, 1982 AT RECEPTION NO. 82061813.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

23. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 16, 1984 AT RECEPTION NO. 84005094.

24. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 16, 1984 AT RECEPTION NO. 84005095.

25. AN EASEMENT FOR UTILITY PURPOSES AS RESERVED IN ORDINANCE NO. 1488 SERIES OF 1985 VACATING A PORTION OF WEST 91ST AVENUE, RECORDED MAY 10, 1985 AT RECEPTION NO. 85044026.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

26. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED MAY 16, 1985 AT RECEPTION NO. 85045599.

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE PRELIMINARY DEVELOPMENT PLAN AND OFFICIAL DEVELOPMENT PLAN RECORDED SEPTEMBER 5, 1985 AT RECEPTION NO. 85084672, AND AS AMENDED BY MAPS RECORDED NOVEMBER 25, 1985 AT RECEPTION NO. 85113479 AND RECORDED OCTOBER 25, 1991 AT RECEPTION NO. 91098710, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710 AND AMENDMENT THERETO RECORDED APRIL 28, 1993 UNDER RECEPTION NO. 93056877 AND AMENDMENT THERETO RECORDED MAY 11, 1994 UNDER RECEPTION NO. 94086564 AND AMENDMENT THERETO RECORDED JULY 12, 1996 UNDER RECEPTION NO. F0267601.

NOTE: RELEASE OF CERTAIN PROPERTY RECORDED DECEMBER 18, 1985 UNDER RECEPTION NO. 85122760.

28. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, ET AL AND BRUNSWICK CORPORATION RECORDED DECEMBER 16, 1985 AT RECEPTION NO. 85121733.

29. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL 2ND AMENDED RECORDED FEBRUARY 14, 1986 UNDER RECEPTION NO. 86016236.

30. EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND INCIDENTAL PURPOSES GRANTED TO MERVYNS, A CALIFORNIA CORPORATION BY THE INSTRUMENT RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016383.

31. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS SPECIFIED UNDER THE EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN ET AL AND CARTER HAWLEY HALE STORES, INC. RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016386.

32. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR SIDEWALKS, CURBS AND INCIDENTAL PURPOSES GRANTED TO THE MAY DEPARTMENT STORES COMPANY BY THE INSTRUMENT RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016384.

33. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED APRIL 2, 1986 AT RECEPTION NO. 86033564.

34. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 19, 1986, UNDER RECEPTION NO. 86096170.
35. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED SEPTEMBER 3, 1986 AT RECEPTION NO. 86103237.
36. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 5, 1987 AT RECEPTION NO. 87001381.
37. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE AGREEMENT AND WAIVER BY AND BETWEEN THE CITY OF WESTMINSTER AND WESTMINSTER MALL COMPANY RECORDED FEBRUARY 12, 1987 AT RECEPTION NO. 87019125.
38. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004112.
39. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004113.
40. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004114.
41. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004115.
42. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004116.
43. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED NOVEMBER 9, 1992 AT RECEPTION NO. 92144664.
44. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 30, 1992, UNDER RECEPTION NO. 92169138.
45. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 27, 1993, UNDER RECEPTION NO. 93012257.

46. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CITY OF WESTMINSTER AGREEMENT FOR POSSESSION AND USE OF RIGHT-OF-WAY RECORDED AUGUST 14, 1997 UNDER RECEPTION NO. F0460650.

47. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FIRST AMENDED OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL SUBDIVISION FOR SEARS AUTO CENTER RECORDED MARCH 29, 2001 UNDER RECEPTION NO. F1208340.

EXHIBIT O
Commitment



Land Title Guarantee Company

CUSTOMER DISTRIBUTION

Date: 04-28-2011

Our Order Number: ABD70297803-10

Property Address:
WESTMINSTER MALL

If you have any inquiries or require further assistance, please contact one of the numbers below:

For Closing Assistance:

Leigh Renfro
3033 E 1ST AVE #600
DENVER, CO 80206
Phone: 303-331-6231
Fax: 303-331-6374
EMail: lrenfro@ltgc.com

Closer's Assistant:

Laurie McKee
Phone: 303-331-6238
Fax: 303-331-6373
EMail: lmckee@ltgc.com

For Title Assistance:

Commercial Title "ABD" Unit
David Knapp
5975 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111
Phone: 303-850-4174
Fax: 303-393-4947
EMail: dknapp@ltgc.com

LAND TITLE GUARANTEE COMPANY
3033 E 1ST AVE #600
DENVER, CO 80206
Attn: Leigh Renfro
Phone: 303-331-6231
Fax: 303-331-6374
Copies: 1
EMail: lrenfro@ltgc.com

LEWIS RICE & FINGERSON
ONE PETICOAT LANE
1010 WALNUT #500
KANSAS CITY, MO 64106
Attn: MICHELE MCCUE
Phone: 816-472-2536
Fax: 816-472-2500
Copies: 1
EMail: mmmccue@lrf-kc.com
Linked Commitment Delivery

MURRAY DAHL KUECHENMEISTER & RENAUD
1530 16TH STREET
SECOND FLOOR
DENVER, CO 80202
Attn: MALCOLM M. MURRAY
Phone: 303-493-6677
Copies: 1
EMail: mmurray@mdkrlaw.com
Linked Commitment Delivery

LEWIS RICE & FINGERSON
ONE PETICOAT LANE
1010 WALNUT #500
KANSAS CITY, MO 64106
Attn: BRAD MADDOCK
Phone: 816-472-2561
Copies: 1
EMail: bjmaddock@lrf-kc.com
Linked Commitment Delivery

BANKS & IMATANI, PC
225 UNION BLVD. #310
LAKEWOOD, CO 80228
Attn: BARBARA BANKS
Phone: 303-984-5605
Copies: 1
EMail: bsbei@earthlink.net
Linked Commitment Delivery

CITY OF WESTMINSTER
CITY ATTORNEY'S OFFICE
4800 W. 92ND AVENUE
WESTMINSTER, CO 80031
Attn: TAMI CANNON
Phone: 303-658-2235
Copies: 1
EMail: tcannon@cityofwestminster.us
Linked Commitment Delivery



Land Title Guarantee Company

Date: 04-28-2011

Our Order Number: ABD70297803-10

Property Address:
WESTMINSTER MALL

Buyer/Borrower:
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

Seller/Owner:
WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

Wire Information:

Bank: FIRSTBANK OF COLORADO
10403 W COLFAX AVENUE
LAKEWOOD, CO 80215
Phone: 303-237-5000
Credit: LAND TITLE GUARANTEE COMPANY
ABA No.: 107005047
Account: 2160521825
Attention: Leigh Renfro

Note: Once an original commitment has been issued, any subsequent modifications will be emphasized by underlining.

Need a map or directions for your upcoming closing? Check out Land Title's web site at www.ltgc.com for directions to any of our 54 office locations.

ESTIMATE OF TITLE FEES

ALTA Owners Policy 06-17-06	\$15,253.00
ALTA Loan Policy 06-17-06	\$150.00
Deletion of General Exception 4 (Owner)	\$25.00
Endorsement 103.1 #9 & #10 (Owner)	\$1,000.00
Tax Report (x29)	\$725.00

If Land Title Guarantee Company will be closing this transaction, above fees will be collected at that time.

TOTAL \$17,153.00

First American Title Insurance Company

ALTA COMMITMENT

Our Order No. ABD70297803-10

Schedule A

Cust. Ref.:

Property Address:
WESTMINSTER MALL

1. **Effective Date:** April 25, 2011 at 5:00 P.M.

2. **Policy to be Issued, and Proposed Insured:**

"ALTA" Owner's Policy 06-17-06 \$22,000,000.00

Proposed Insured:
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

"ALTA" Loan Policy 06-17-06 \$3,500,000.00

Proposed Insured:
WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; THE HIGBEE COMPANY, A DELAWARE CORPORATION; MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY; AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

3. **The estate or interest in the land described or referred to in this Commitment and covered herein is:**

A Fee Simple

4. **Title to the estate or interest covered herein is at the effective date hereof vested in:**

WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

5. **The Land referred to in this Commitment is described as follows:**

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018.
AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

Item (c) Payment of all taxes, charges or assessments levied and assessed against the subject premises which are due and payable.

Item (d) Additional requirements, if any disclosed below:

1. (ITEM INTENTIONALLY DELETED)
2. (ITEM INTENTIONALLY DELETED)
3. (ITEM INTENTIONALLY DELETED)
4. BARGAIN AND SALE DEED FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY TO WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY CONVEYING SUBJECT PROPERTY.

NOTE: PURSUANT TO RESOLUTION OF THE MEMBERS AND MANAGERS OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE MANAGERS (MD MANAGEMENT, INC., A MISSOURI CORPORATION AND DILLARD STORE SERVICES, INC., AN ARIZONA CORPORATION) MAY EXECUTE SAID DEED ON BEHALF OF SAID PARTNERSHIP.

NOTE: PURSUANT TO RESOLUTION OF THE MEMBERS AND MANAGERS OF WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY, THOMAS S. MORGAN MAY EXECUTE SAID DEED AS MANAGER OF EACH LIMITED LIABILITY COMPANY.

5. CERTIFIED COPY OF RESOLUTION OF THE GOVERNING BOARD OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AUTHORIZING THE ACQUISITION OF THE LAND AND THE BORROWING OF MONEY AND EXECUTION OF NECESSARY DOCUMENTS AND RECITING THAT THE BOARD HAS BEEN DULY AUTHORIZED IN THE PREMISES. SAID RESOLUTION

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

MUST BE PROPERLY CERTIFIED. SAID RESOLUTION MUST BE SUBMITTED TO AND APPROVED BY LAND TITLE GUARANTEE COMPANY BUT NEED NOT BE RECORDED.

6. DEED OF TRUST FROM WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; THE HIGBEE COMPANY, A DELAWARE CORPORATION; MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY; AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY TO SECURE THE SUM OF \$3,500,000.00.

7. RELEASE OF DEED OF TRUST DATED DECEMBER 31, 2002 FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; MERSCO REALTY CO., INC., AN OHIO CORPORATION; SHERMAN W. DREISESZUN, TRUSTEE UNDER A SELF-DECLARATION OF TRUST DATED FEBRUARY 29, 1988; THOMAS S. MORGAN AND MARILYN J. MORGAN, CO-TRUSTEES OF FRANK W. MORGAN CHARITABLE LEAD UNITRUST U.T.A. DATED OCTOBER 23, 1993; ROBERT J. O'HALLORAN, AS SUCCESSOR TRUSTEE OF MARILYN J. FEINGOLD TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF MICHAEL B. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF MARK A. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF THOMAS S. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF TODD D. MORGAN TRUST #2 DATED APRIL 1, 1976; AND ROBERT J. O'HALLORAN, AS TRUSTEE OF THE DREISESZUN GRANDCHILDREN TRUST DATED OCTOBER 28, 1976 TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF GOLD BANK, A KANSAS BANKING ASSOCIATION TO SECURE THE SUM OF \$40,000,000.00 RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642585.

SAID DEED OF TRUST WAS FURTHER SECURED BY ASSIGNMENT OF LEASES AND RENTS RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642586.

8. TERMINATION OF FINANCING STATEMENT BY GOLD BANK, THE SECURED PARTY, RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642587, F1642588, F1642589, F1642590, F1642591, F1642592, F1642593, F1642594, F1642594, F1642596.

9. RECORDATION OF THAT CERTAIN ASSIGNMENT OF DEED OF TRUST FROM M&I MARSHALL & ILSLEY BANK, SUCCESSOR TO GOLD BANK TO WESTMINSTER MALL COMPANY REGARDING DEED OF TRUST RECORDED DECEMBER 31, 2002 UNDER RECEPTION NO. F1642585.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

10. WRITTEN APPROVAL OF THIS TRANSACTION BY THE PARTNERS OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THAT OWN AT LEAST 51% OF THE "DISTRIBUTION PERCENTAGE INTERESTS" OF SAID PARTNERSHIP AS REQUIRED UNDER ARTICLE II OF THE PARTNERSHIP AGREEMENT.

NOTE: SAID APPROVAL MUST ALSO NAME THE "MANAGERS" WHO ARE AUTHORIZED TO EXECUTE DOCUMENTS ON BEHALF OF THE PARTNERSHIP.

11. WRITTEN APPROVAL OF THIS TRANSACTION BY THE MEMBERS OF MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY OWNING AT LEAST 55% OF THE "DISTRIBUTION PERCENTAGES" OF SAID LIMITED LIABILITY COMPANY, AS REQUIRED UNDER ARTICLE 6.3 OF THE OPERATING AGREEMENT FOR SAID LIMITED LIABILITY COMPANY.
12. WRITTEN APPROVAL OF THIS TRANSACTION BY THE MEMBERS OF MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY OWNING AT LEAST 55% OF THE "DISTRIBUTION PERCENTAGES" OF SAID LIMITED LIABILITY COMPANY, AS REQUIRED UNDER ARTICLE 6.3 OF THE OPERATING AGREEMENT FOR SAID LIMITED LIABILITY COMPANY.
13. NOTICE AND AFFIDAVIT OF LEASE TERMINATION EXECUTED BY WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP CONFIRMING THE TERMINATION OF THOSE CERTAIN LEASES RECORDED SEPTEMBER 15, 1977 IN BOOK 3070 AT PAGE 142, JUNE 6, 1978 UNDER RECEPTION NO. 78050335, JULY 26, 1988 UNDER RECEPTION NO. 88072446, DECEMBER 7, 1992 UNDER RECEPTION NO. 92158098 AND AUGUST 23, 1993 UNDER RECEPTION NO. 93128826 AND ALSO CONFIRMING THE RENT ROLL ATTACHED THERETO.

NOTE: (OWNER'S POLICY ONLY) UPON THE APPROVAL OF THE COMPANY AND THE RECEIPT OF A NOTARIZED FINAL LIEN AFFIDAVIT, ITEM NO. 4 OF THE GENERAL EXCEPTIONS WILL BE AMENDED AS FOLLOWS:

ITEM NO. 4 OF THE GENERAL EXCEPTIONS IS DELETED AS TO ANY LIENS OR FUTURE LIENS RESULTING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY ONLY.
FIRST AMERICAN TITLE INSURANCE COMPANY SHALL HAVE NO LIABILITY FOR ANY LIENS ARISING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF ANY OTHER

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

PARTY, INCLUDING, BUT NOT LIMITED TO WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY.

NOTE: ITEM 5 OF THE GENERAL EXCEPTIONS WILL BE DELETED IF LAND TITLE GUARANTEE COMPANY CONDUCTS THE CLOSING OF THE CONTEMPLATED TRANSACTION(S) AND RECORDS THE DOCUMENTS IN CONNECTION THEREWITH.

NOTE: UPON PROOF OF PAYMENT OF 2010 TAXES, ITEM 6 OF THE GENERAL EXCEPTIONS WILL BE AMENDED TO READ:

TAXES AND ASSESSMENTS FOR THE YEAR 2011 AND SUBSEQUENT YEARS, A LIEN, NOT YET DUE AND PAYABLE.

NOTE: ITEM 7 OF THE GENERAL EXCEPTIONS IS HEREBY DELETED.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
8. TERMS, CONDITIONS AND PROVISIONS OF EXISTING LEASES AS SET FORTH IN THE RENT ROLL.
9. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 10, 1885, IN BOOK 32 AT PAGE 107.

(AFFECTS LOTS 1, 3 THROUGH 7, 9, 10, 12, 14, 15, 16 AND 18)

10. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 22, 1905, IN BOOK 119 AT PAGE 54.

(AFFECTS LOTS 1, 2 AND 12)

11. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

WESTMINSTER MALL SUBDIVISION AGREEMENT RECORDED JANUARY 14, 1976 IN BOOK 2809 AT PAGE 337.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL RECORDED JANUARY 14, 1976 UNDER RECEPTION NO. 758563.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

13. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL AMENDED RECORDED APRIL 16, 1976 UNDER RECEPTION NO. 779637.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

14. LEASE BETWEEN MERSCO REALTY CO., INC., AN OHIO CORPORATION, LESSOR, AND WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED JULY 21, 1976, IN BOOK 2879 AT PAGE 852.

(AFFECTS PORTIONS OF LOTS 1 AND 10, AND ALL OF LOTS 9, 17, 18 AND 19)

15. EASEMENT GRANTED TO THE ALLEN DITCH COMPANY, FOR IRRIGATION CONDUIT, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 05, 1976, IN BOOK 2911 AT PAGE 261.

(AFFECTS LOT 15)

16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION AGREEMENT RECORDED OCTOBER 15, 1976 IN BOOK 2915 AT PAGE 453.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

17. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 25, 1976, IN BOOK 2919 AT PAGE 34.

(AFFECTS LOTS 1, 10, 17 AND 19)

18. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 31, 1977, IN BOOK 2956 AT PAGE 777.

(AFFECTS LOT 16)

19. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN LEASE AND DECLARATION OF RESTRICTIONS RECORDED APRIL 07, 1977 IN BOOK 2985 AT PAGE 672, AND FIRST AMENDMENT THERETO RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016381.

(AFFECTS ALL LOTS)

20. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT BY AND BETWEEN MERSCO REALTY CO., INC., AN OHIO CORPORATION, DAVID HAHN, TRUSTEE, AND THE JOSLIN DRY GOODS COMPANY, A COLORADO CORPORATION RECORDED APRIL 07, 1977 IN BOOK 2985 AT PAGE 685, AND AMENDMENT THERETO RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016380.

(AFFECTS A PORTION OF LOTS 1, 10 AND 17)

21. EASEMENT GRANTED TO THE PUBLIC, FOR STORM AND SANITARY SEWER LINES, WATER LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 01, 1977, IN BOOK 3063 AT PAGE 242.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 10, 12 AND 14 THROUGH 19)

22. (ITEM INTENTIONALLY DELETED)

23. (ITEM INTENTIONALLY DELETED)

24. EASEMENT GRANTED TO THE PUBLIC , FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 18, 1978, UNDER RECEPTION NO. 78076109.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 10)

25. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF BRUNSWICK CENTER RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076112.

NOTE: PLAT RATIFICATION RECORDED SEPTEMBER 28, 1978 UNDER RECEPTION NO. 78089787.

(AFFECTS LOT 1)

26. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BRUNSWICK CENTER SUBDIVISION AGREEMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076110.

(AFFECTS LOT 1)

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN OFFICIAL DEVELOPMENT PLAN FOR BRUNSWICK SUBDIVISION PLANNED UNIT DEVELOPMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076111,.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOT 1)

28. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 08, 1978, UNDER RECEPTION NO. 78082939.

(AFFECTS LOT 7)

29. EASEMENT GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED APRIL 03, 1979, UNDER RECEPTION NO. 79028820.

(AFFECTS LOTS 1, 15, 16, 18 AND 19)

30. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1979, UNDER RECEPTION NO. 79113496.

(AFFECTS LOT 12)

31. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN WESTMINSTER MALL OFFICIAL DEVELOPMENT PLAN RECORDED AUGUST 25, 1980 UNDER RECEPTION NO. 80062536, AND AMENDMENT THERETO RECORDED MARCH 5, 1981 UNDER RECEPTION NO. 81014999, AND AMENDMENT THERETO RECORDED JUNE 6, 1983, UNDER RECEPTION NO. 83051906 AND AMENDMENT THERETO RECORDED JUNE 14, 1993 UNDER RECEPTION NO. 93084172 AND AMENDMENT THERETO RECORDED FEBRUARY 8, 1985 UNDER RECEPTION NO. 85012857.

(AFFECTS LOTS 1, 9, 10, 12, 14, 15 AND 16)

32. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1980, UNDER RECEPTION NO. 80098451.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 18 AND 19)

33. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1980, UNDER RECEPTION NO. 80098452.

(AFFECTS LOTS 1, 15 AND 16)

34. EASEMENT GRANTED TO THE PUBLIC, FOR PUBLIC WALKWAY, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 20, 1981, UNDER RECEPTION NO. 81004595.

(AFFECTS LOTS 1, 15, 16, 18 AND 19)

35. EASEMENT GRANTED TO THE CITY OF WESTMINSTER, FOR STORM DRAINAGE, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 03, 1982, UNDER RECEPTION NO. 82061813.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 5)

36. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 16, 1984, UNDER RECEPTION NO. 84005094.

(AFFECTS LOTS 1, 18 AND 19)

37. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 16, 1984, UNDER RECEPTION NO. 84005095.

(AFFECTS LOTS 1 AND 16)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

38. LEASE BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSOR, AND CENTRAL BANCORPORATION, INC., A COLORADO CORPORATION, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED MARCH 27, 1985, UNDER RECEPTION NO. 85028159.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

39. AN EASEMENT FOR UTILITY PURPOSES AS RESERVED IN ORDINANCE #1488, SERIES OF 1985, VACATING A PORTION OF WEST 91ST AVENUE, RECORDED MAY 10, 1985 UNDER RECEPTION NO. 85044026.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 10)

40. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED MAY 16, 1985, UNDER RECEPTION NO. 85045599.

(AFFECTS LOTS 15 AND 16)

41. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN PRELIMINARY DEVELOPMENT PLAN AND OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL RECORDED SEPTEMBER 05, 1985 UNDER RECEPTION NO. 85084672, AND FIRST AMENDMENT THERETO RECORDED NOVEMBER 22, 1985 UNDER RECEPTION NO. 85113479, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710 AND AMENDMENT THERETO RECORDED APRIL 28, 1993 UNDER RECEPTION NO. 93056877 AND AMENDMENT THERETO RECORDED MAY 11, 1994 UNDER RECEPTION NO. 94086564 AND AMENDMENT THERETO RECORDED JULY 12, 1996 UNDER RECEPTION NO. F0267601.

NOTE: RELEASE OF CERTAIN PROPERTY RECORDED DECEMBER 18, 1985 UNDER RECEPTION NO. 85122760.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS ALL LOTS)

42. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, ET AL., AND BRUNSWICK CORPORATION RECORDED DECEMBER 16, 1985 UNDER RECEPTION NO. 85121733.

(AFFECTS LOT 1)

43. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL 2ND AMENDED RECORDED FEBRUARY 14, 1986 UNDER RECEPTION NO. 86016236.

(AFFECTS ALL LOTS)

44. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AS GRANTED AND RESERVED IN SPECIAL WARRANTY DEED FROM FRANK S. MORGAN, ET AL., TO MERVYN'S, A CALIFORNIA CORPORATION, RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016383.

(AFFECTS LOTS 1 THROUGH 7 AND 10)

45. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, ET AL., AND CARTER HAWLEY HALE STORES, INC., A DELAWARE CORPORATION RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016386.

(AFFECTS LOT 1)

46. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR SIDEWALK AND CURB AS GRANTED AND RESERVED IN SPECIAL WARRANTY DEED FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, TO THE MAY DEPARTMENT STORES COMPANY, A NEW YORK CORPORATION RECORDED FEBRUARY 18,

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1986 UNDER RECEPTION NO. 86016384.

(AFFECTS LOT 1)

47. (ITEM INTENTIONALLY DELETED)

48. LEASE BETWEEN FRANK S. MORGAN, ET AL., LESSOR, AND WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED FEBRUARY 18, 1986, UNDER RECEPTION NO. 86016387.

(AFFECTS LOTS 1 THROUGH 7 AND 10)

49. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN INDENTURE OF LEASE BY AND BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, AND JC PENNEY PROPERTIES, INC., A DELAWARE CORPORATION RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016388.

NOTE: TERM AGREEMENT RECORDED JULY 12, 1993 UNDER RECEPTION NO. 93101704 AND RECORDED JANUARY 10, 1994 UNDER RECEPTION NO. 94005874.

(AFFECTS ALL LOTS)

50. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN WESTMINSTER MALL RECIPROCAL CONSTRUCTION, OPERATION AND EASEMENT AGREEMENT RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016389.

NOTE: ASSIGNMENT AND ASSUMPTION OF AGREEMENTS RECORDED FEBRUARY 8, 1990 UNDER RECEPTION NO. 90011510.

REA ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED FEBRUARY 22, 1996 UNDER RECEPTION NO. F0189712.

NOTE: ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS RECORDED SEPTEMBER

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

27, 2004 UNDER RECEPTION NO. F2102228.

NOTE: ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED JANUARY 11, 2006 UNDER RECEPTION NO. 2006004250.

NOTE: ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT RECORDED MAY 18, 2009 UNDER RECEPTION NO. 2009045088.

(AFFECTS ALL LOTS)

51. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED APRIL 02, 1986, UNDER RECEPTION NO. 86033564.

(AFFECTS LOTS 3 THROUGH 7)

52. (ITEM INTENTIONALLY DELETED)

53. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 19, 1986, UNDER RECEPTION NO. 86096170.

(AFFECTS LOTS 1, 5, 6 AND 10)

54. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 03, 1986, UNDER RECEPTION NO. 86103237.

(AFFECTS LOT 16)

55. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 05, 1987, UNDER RECEPTION NO. 87001381.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1 AND 10)

56. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT AND WAIVER BY AND BETWEEN THE CITY OF WESTMINSTER AND WESTMINSTER MALL COMPANY RECORDED FEBRUARY 12, 1987 UNDER RECEPTION NO. 87019125.

(AFFECTS LOT 1)

57. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE SHAW HEIGHTS BASIN SPECIAL IMPROVEMENT DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED AUGUST 07, 1987, UNDER RECEPTION NO. 87101964.

(AFFECTS LOT 1)

58. (ITEM INTENTIONALLY DELETED)

59. (ITEM INTENTIONALLY DELETED)

60. (ITEM INTENTIONALLY DELETED)

61. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004112.

(AFFECTS LOT 1)

62. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004113.

(AFFECTS LOT 1)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

63. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004114.

(AFFECTS LOT 12)

64. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004115.

(AFFECTS LOT 1)

65. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004116.

(AFFECTS LOTS 1, 3, 4 AND 5)

66. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED NOVEMBER 09, 1992, UNDER RECEPTION NO. 92144664.

(AFFECTS LOTS 1, 15 AND 16)

67. (ITEM INTENTIONALLY DELETED)

68. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 30, 1992, UNDER RECEPTION NO. 92169138.

(AFFECTS LOT 12)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

69. LAND SURVEY PLAT RECORDED JANUARY 25, 1993 UNDER RECEPTION NO. 93011161.

(AFFECTS LOTS 1 AND 3 THROUGH 7)

70. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 27, 1993, UNDER RECEPTION NO. 93012257.

(AFFECTS LOT 16)

71. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN MEMORANDUM OF SUBLEASE WITH CONSENT OF LENDER AND GROUND LESSOR BY AND BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSOR, AND GENERAL MILLS RESTAURANTS, INC., A FLORIDA CORPORATION, LESSEE, RECORDED MAY 14, 1993 UNDER RECEPTION NO. 93067818 AND RECORDED OCTOBER 19, 1993 UNDER RECEPTION NO. 93167959.

NOTE: NON-DISTURBANCE AND ATTORNMENT AGREEMENT OF GROUND LEASE RECORDED MAY 14, 1993 UNDER RECEPTION NO. 93067819.

(AFFECTS ALL LOTS)

72. (ITEM INTENTIONALLY DELETED)

73. (ITEM INTENTIONALLY DELETED)

74. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CITY OF WESTMINSTER AGREEMENT FOR POSSESSION AND USE OF RIGHT-OF-WAY RECORDED AUGUST 14, 1997 UNDER RECEPTION NO. F0460650.

(AFFECTS LOTS 1, 6, 7, 15, 16, 18 AND 19)

75. ALTA/ACSM LAND TITLE SURVEY RECORDED DECEMBER 31, 1998 UNDER RECEPTION NO. F0769556.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 3, 4 AND 5)

76. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FIRST AMENDED OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL SUBDIVISION FOR SEARS AUTO CENTER RECORDED MARCH 29, 2001 UNDER RECEPTION NO. F1208340.

(AFFECTS LOTS 1, 4 AND 5)

77. LAND SURVEY PLAT RECORDED JULY 26, 2002 UNDER RECEPTION NO. F1531073.

(AFFECTS LOTS 1, 4 AND 5)

78. (THIS ITEM MOVED TO SCHEDULE B, SECTION 1.)

79. (THIS ITEM MOVED TO SCHEDULE B, SECTION 1.)

80. (ITEM INTENTIONALLY DELETED)

LAND TITLE GUARANTEE COMPANY and LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION
DISCLOSURE STATEMENTS

Note: Pursuant to CRS 10-11-122, notice is hereby given that:

- A) The subject real property may be located in a special taxing district.
- B) A Certificate of Taxes Due listing each taxing jurisdiction may be obtained from the County Treasurer's authorized agent.
- C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- D) The Company must receive payment of the appropriate premium.
- E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments containing a mineral severance instrument exception, or exceptions, in Schedule B, Section 2.

- A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, information to an insurance company for the purpose of defrauding or incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

First American Title Insurance Company

PRIVACY POLICY

We are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, the First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- * Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- * Information about your transactions with us, our affiliated companies, or others; and
- * Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested to us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information values. We currently maintain physical, electronic, and procedural safeguards that comply with referral regulations to guard your nonpublic personal information.

WEBSITE

Information on the calculation of premiums and other title related charges are listed at First American's website: www.firstam.com

NOTICE OF PRIVACY POLICY OF
LAND TITLE GUARANTEE COMPANY, INC., A COLORADO CORPORATION
AND
MERIDIAN LAND TITLE, L.L.C., A COLORADO LIMITED LIABILITY COMPANY, D/B/A
LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION

This Statement is provided to you as a customer of Land Title Guarantee Company, a Colorado corporation and Meridian Land Title, LLC, d/b/a Land Title Guarantee Company - Grand Junction.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- * applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
- * your transactions with, or from the services being performed by, us, our affiliates, or others;
- * a consumer reporting agency, if such information is provided to us in connection with your transaction; and
- * the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- * We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- * We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- * Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- * We regularly access security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows. Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured names in Schedule A, as owner or mortgage of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of the Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issued one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules as www.alta.org

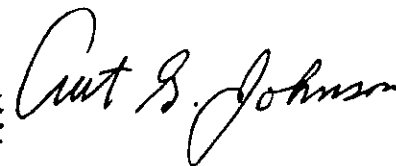

Issued by:

LAND TITLE GUARANTEE COMPANY
3033 EAST FIRST AVENUE
SUITE 600
PO BOX 5440 (80217)
DENVER, CO 80217


Authorized Officer or Agent

FIRST AMERICAN TITLE INSURANCE COMPANY



AMERICAN
LAND TITLE
ASSOCIATION



EXHIBIT P

Form of Dillard Modification Agreement

**FIRST AMENDMENT TO AMENDED AND RESTATED LEASE
AND DECLARATION OF RESTRICTIONS**

This FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AND DECLARATION OF RESTRICTIONS (this "Amendment") is dated _____ and made between the Westminster Economic Development Authority ("Lessor"), and HIGBEE LANCOMS, LP, a Delaware limited partnership ("Lessee").

RECITALS

In accordance with a Lease and Declaration of Restrictions (the "Original Lease") effective September 9, 1976 and made between Westminster Mall Company ("WMC"), as landlord, and The Joslin Dry Goods Company ("Joslin"), as tenant, Joslin leased from WMC certain property (the "Demised Premises") at Westminster Mall in Westminster, Jefferson County, Colorado. The legal description of the Demised Premises is attached to this Agreement as Exhibit A. A memorandum of the Original Lease was recorded in Deed Book 2985 at Page 672 among the records of Jefferson County, Colorado.

The Original Lease has been amended by First Lease Modification Agreement dated July 1, 1977; by Amendment No. 1 to Lease and Declaration of Restrictions dated February 1, 1979; by Amendment and Modification No. 2 to Lease and Declaration of Restrictions dated October 10, 1985; by First Amendment to Lease and Declaration of Restrictions dated February 13, 1986; and by Second Lease Modification Agreement dated February 13, 1986.

On December 6, 1987, the parties amended and restated the Original Lease by Amended and Restated Lease and Declaration of Restrictions. The Original Lease, as amended and restated to date, is referred to as the "Lease".

By merger effective January 28, 2006, Mercantile Operations, Inc. acquired Joslin's interest in the Lease. By merger dated February 4, 2007, The Higbee Company acquired Mercantile Operations, Inc.'s interest in the Lease. By Assignment of Assumption of Lease dated December 31, 2011, Lessee acquired The Higbee Company's interest in the Lease.

As part of the settlement of ongoing litigation between WMC and Lessor, WMC and Lessor entered a Settlement Agreement dated _____ (the "Settlement Agreement"). As a part of the Settlement Agreement, on _____ Lessor acquired the Demised Premises by Deed dated _____ and recorded at Rec. No. _____, and also acquired WMC's interest in the Lease by Assignment of Lease dated _____ and recorded at Rec. No. _____, both among the records of Jefferson County, Colorado.

As part of the Settlement Agreement and Lessor's acquisition of the Demised Premises, Lessor agreed to terminate the Lease. As such, Lessor and Lessee enter this Amendment to confirm their respective rights and obligations under the Lease after this Amendment takes effect.

AGREEMENT

NOW, THEREFORE, in consideration of \$10.00, the mutual promises and covenants contained in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Definitions. All capitalized terms not defined by this Amendment have the meaning provided by the Lease.

2. Article IV. Article IV of the Lease is hereby amended by adding the following as Section 4.5:

4.5 TERMINATION. (a) Notwithstanding anything to the contrary contained in this LEASE, this LEASE will be cancelled and terminated on a date (the "TERMINATION DATE") no more than 90 days after the date (the "ACQUISITION DATE") on which LESSOR acquires the lessor's interest in the LEASE.

(b) The period of time from the ACQUISITION DATE through the TERMINATION DATE is referred to as the "WINDING DOWN PERIOD."

(c) LESSEE shall notify LESSOR of the exact TERMINATION DATE no fewer than ten days before the TERMINATION DATE. This notice will be effective as of the date sent by LESSEE, and will be sent by overnight courier, to LESSOR'S attention, using the notice address provided in Section 15.12.

(d) If the ACQUISITION DATE is not the final day of a month, then LESSOR and LESSEE shall prorate as of the ACQUISITION DATE the final charges due under the Lease. All prorated amounts must be paid no more than 30 days after the Termination Date.

3. Article V. Article V of the Lease is hereby modified by adding the following as Section 5.6:

5.6 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING DOWN PERIOD, LESSEE shall not be required to make any payments under Article V of this LEASE.

4. Article XII. Article XII of the Lease is hereby modified by adding the following as Section 12.4:

12.4 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING-DOWN PERIOD, LESSEE shall not be required to make any payments under Article XII of this LEASE.

5. Article XIV Article XIV of the Lease is hereby modified by adding the following as Section 14.7:

14.7 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING-DOWN PERIOD, LESSEE shall not be required to make any payments under Article XIV of this LEASE.

6. Article XV. Article XV of the Lease is hereby modified as follows:

(a) Section 15.3 is hereby modified by adding the following:

Notwithstanding any terms contained in the LEASE, LESSOR shall as of the TERMINATION DATE accept LESSEE'S surrender of the DEMISED PREMISES in its AS IS, WHERE IS, and WITH ALL FAULTS condition.

(b) Section 15.12 of the Lease is hereby deleted in its entirety and replaced with the following:

15.12 NOTICE. All notices, demands, or other communications given under this LEASE must be in writing and are to be deemed duly received:

(a) *When delivered personally to the addresses set forth below, or upon confirmed receipt by facsimile, provided if such confirmed receipt is after 5:00 p.m. EST., delivery shall be deemed to occur the next business day;*

(b) *one Business Day after deposit (for overnight delivery) with a national, overnight courier service; or*

(c) *upon delivery (or refused deliver) by U.S. Postal Service as certified mail, return receipt requested, postage prepaid.*

Notices must be sent to the following addresses:

*If to LESSOR: Westminster Economic Development Authority
Attn: Brent McFall, Executive Director
4800 West 92nd Avenue
Westminster, CO 80003*

*If to LESSEE: Higbee LANCOMS, LP
1600 Cantrell Road
Little Rock, AR 72201
Attn: James W. Cherry, Jr., Vice President
Facsimile: 501-399-7502*

or to such other address or to such other person as any party shall designate to the others for such purpose in the manner set forth above.

(c) Section 15.16 of the Lease is hereby modified by adding the following sentence:

During the WINDING-DOWN PERIOD, LESSEE shall not be required to make payments under this Section 15.16.

MISCELLANEOUS PROVISIONS

7. (a) Lessor represents that it is the owner of the lessor's interest in the Lease, and that Lessor has the authority to amend, terminate, and cancel the Lease without the consent of any person or entity other than Lessee and persons and entities from which consent has been obtained.

(b) Lessee represents that it is the owner of the lessee's interest in the Lease, and that Lessee has the authority to amend, terminate, and cancel the Lease without the consent of any person or entity other than Lessor and persons and entities from which consent has been obtained.

8. (a) Effective as of the Termination Date, Lessor shall release and discharge Lessee from any and all agreements, covenants, representations, obligations, and liability under or in connection with the Lease that first arise after the Termination Date.

(b) Effective as of the Termination Date, Lessee shall release and discharge Lessor from any and all agreements, covenants, representations, obligations, and liability under or in connection with the Lease that first arise after the Termination Date.

9. At Lessor's option, it may file in the appropriate records of Jefferson County, Colorado, a notice of termination of the Lease. Lessor shall pay all costs associated with this recordation and shall forward a duly recorded copy to Lessee.

10. Lessor hereby acknowledges that all amounts due under the Lease for periods prior to the Acquisition Date have been paid in full by Lessee. Lessor shall not seek reimbursement for any amounts due for periods before the Acquisition Date. The payments to be made in accordance with this Agreement are a complete and final settlement of all monetary obligations between Lessor and Lessee under the Lease.

11. This Agreement, in conjunction with the Settlement Agreement, contains the entire agreement of Lessor and Lessee with respect to the terms contained in this Amendment, and supersedes all prior agreements, understandings, or representations, whether written or oral.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be signed on the dates shown below.

LESSOR:

Westminster Economic Development Authority

By: _____
J. Brent McFall
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

LESSEE:

HIGBEE LANCOMS, LP,
a Delaware limited partnership

By: LANCOMS GP, LLC,
a Delaware limited liability company
its general partner

By: The Higbee Company,
a Delaware corporation
its sole member

By: _____
Name:
Title:

STATE OF ARKANSAS §
 §
COUNTY OF _____ §

This _____, 2011, personally came before me, _____
_____, a Notary Public in and for the said County and State, _____
_____, who being by me duly sworn, says that he/she is the
_____ of The Higbee Company, a Delaware corporation and ultimate
signatory for HIGBEE LANCOMS, LP, a Delaware limited partnership, and that this writing
was signed and sealed by him, on behalf of that entity, by its authority duly given, and he/she,
acknowledged this writing to be the act and deed of that entity.

WITNESS my hand and seal on _____, 2011.

Notary Public

(Notarial Seal)

My Commission Expires

ATTACHMENTS OF SCHEDULES TO PSA

Schedule 7(x)

All percentage or other rents payable by any tenant listed on Exhibit C in respect of such tenant's sales for March and April 2011

Schedule 10(b)(iv)

Unsettled Insurance Claims

None

Schedule 10(b)(v)

Service Contract and Lease Defaults

As set forth in that certain letter dated March 11, 2011 from Sears Holdings to WMC, a copy of which has been provided to Purchaser and which Purchaser acknowledges having received.



Agenda Item 3 B

Agenda Memorandum

City Council Meeting
May 2, 2011



SUBJECT: Resolution No. 14 re Pledging City Cash Reserves for Repayment of a Promissory Note for the Purchase of the Westminster Mall

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

Recommended City Council Action

Adopt Resolution No. 14 irrevocably pledging present cash reserves in an amount equal to \$3.5 million, plus the required interest, in connection with a promissory note that will finance, in part, acquisition of property for the Westminster Center Urban Reinvestment Project.

Summary Statement

- As part of the acquisition of the Westminster Mall, a note in the amount of \$3.5 million will be issued to finance a portion of the \$22 million total cost of acquisition.
- The City may assist WEDA in its implementation of the Westminster Center Urban Reinvestment Project (“Project”) by helping the Authority acquire property for the Project.
- As further security for the repayment of this note, the City has been requested to cosign the note along with WEDA.
- Pursuant to TABOR, in order for the City to join WEDA as a party to the promissory note, the City must irrevocably pledge adequate present cash reserves for repayment of the promissory note.
- There is no prepayment penalty on the promissory note, and it becomes due and payable one year after closing on the purchase of the property, which is currently proposed for May 9, 2011. The note requires monthly interest-only payments at a rate of 6% per annum during the term. Accordingly, depending on the time of repayment of the note, there will be some interest expense in addition to the \$3.5 million principal payment.

Expenditure Required: \$3,500,000 plus any monthly interest incurred

Source of Funds: 2011 General Cash Reserves



Policy Issue

Should City Council pass the resolution irrevocably pledging adequate cash reserves for repayment of the promissory note?

Alternatives

1. Approve the resolution. Staff recommends approval of the resolution, as it will further the City's interest in WEDA's accomplishment of the Project.
2. Do not approve the resolution. This alternative is not recommended, as it may compromise WEDA's ability to move forward on the Project.

Background Information

Staff has been working to implement the Westminster Center Urban Reinvestment Project ("WURP"), as part of the Westminster Center Urban Reinvestment Plan, approved on April 13, 2009, to redevelop the property within the vicinity of 88th Avenue and Sheridan Boulevard (historically known as the Westminster Mall). The redevelopment of the Westminster Mall site is the City Council's top strategic plan priority, as outlined in the City's five-year Strategic Plan. Land assemblage and the installation of public infrastructure are key components of the redevelopment plans for this Project.

WEDA and the City have invested significant funds in furtherance of the WURP Project. These include planning, consulting, land assembly and other predevelopment costs. WEDA previously acquired the Mervyn's, Macy's and Trail Dust properties from their respective owners with the assistance of the City.

The majority of the remaining Mall property is owned by the Westminster Mall Company and related entities who, in 2010, filed a lawsuit challenging WEDA's right to condemn the remaining property and the City's blight determination as to the property, and alleging that various actions by the City and WEDA had diminished the value of the Mall property. A Purchase and Sale Agreement to be considered by WEDA, if approved, will result in WEDA ownership of all the key remaining property needed to allow the Urban Renewal Project to move forward.

The Purchase and Sale Agreement anticipates that the City will join with WEDA in a promissory note for \$3.5 million of the \$22 million total property acquisition price. The note is payable in full one year from the date of closing on the property acquisition. Article X, Section 20, of the Colorado Constitution ("TABOR"), specifically, Section 20(4)(b), authorizes the City to join in this note by irrevocably pledging present cash reserves to be held for payment in the next fiscal year.

Action on this item meets three goals from the City's Strategic Plan: Financially Sustainable City Government Providing Exceptional Services, Strong Balanced Local Economy and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. **14**

INTRODUCED BY COUNCILLORS

SERIES OF 2011

**A RESOLUTION IRREVOCABLY PLEDGING PRESENT CASH
RESERVES IN CONNECTION WITH THE WESTMINSTER
CENTER URBAN REINVESTMENT PROJECT**

WHEREAS, the City of Westminster, Colorado (the “City”) is a Colorado Home Rule Municipality operating pursuant to Article XX, section 6 of the Colorado Constitution and the provisions of the City Charter; and

WHEREAS, the Westminster Economic Development Authority (the “Authority”) is a public body corporate and politic, and has been duly created, organized, established and authorized by the City to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, the Authority has previously adopted an urban renewal plan (the “Plan”) for the redevelopment of certain property in the vicinity of 88th Avenue and Sheridan Boulevard historically known as the Westminster Mall, and referred to in said Plan as the Westminster Center Urban Reinvestment Project (the “Project”); and

WHEREAS, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, pursuant to section 31-25-10 of the Act, the City Council is authorized to aid or cooperate with the Authority in connection with the planning or undertaking of any plans, projects, programs, works, operations or activities, including the Project;

WHEREAS, the respective governing bodies of the City and the Authority have authorized the acquisition of certain property for the Project as described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

WHEREAS, said acquisition is the subject of that certain purchase and sale agreement (the “Agreement”), which is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, the Agreement includes, as partial consideration for the acquisition, a note in the amount of \$3.5 million, plus interest as set forth therein (the Note”); and

WHEREAS, the Council has determined that it is in the best interest of the City to assist the Authority in acquiring the Property by joining the Authority as a party to the Note; and

WHEREAS, pursuant to Colo. Const. Article X, section 20 (also known as “TABOR”) the City may join as a party to the Note if the City irrevocably pledges adequate present cash reserves to be held for the repayment of the Note.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO:

Section 1. Present cash reserves of the City in an amount equal to \$3.5 million plus interest at the rate and in the amount specified in the Note are hereby irrevocably pledged and shall be held for repayment of the Note in accordance with the terms thereof.

Section 2. The officers, employees and agents of the City shall take all action necessary or reasonably required to carry out, give effect to and consummate the transaction contemplated hereby.

Section 3. If any section, paragraph, clause or provision of this resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 4. All acts, orders and resolutions of the Council, and parts thereof, inconsistent with this resolution are hereby repealed, but only to the extent of any such inconsistency. This repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

Section 5. This resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED this 2nd day of May, 2011.

CITY OF WESTMINSTER, COLORADO

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)
) SS.
CITY OF WESTMINSTER)

I, Linda Yeager, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the City Council (the "Council") at a regular meeting held on May 2, 2011.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of May 2, 2011, by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Council were present at such meeting and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

WITNESS my hand and the seal of the City affixed _____, 2011.

City Clerk

(SEAL)

EXHIBIT A

Real Property

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1,
WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF
COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF
WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;
AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED
RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

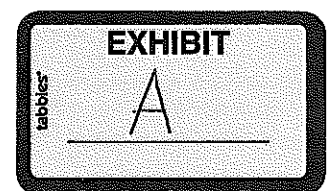


Exhibit B

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is made as of this _____ day of _____, 2011 (the “**Effective Date**”), by and between **WESTMINSTER MALL COMPANY**, a Colorado general partnership (“**WMC**”), **THE HIGBEE COMPANY**, a Delaware corporation and successor by merger to Mersco Realty Co., Inc., an Ohio corporation (“**Higbee**”), **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company (“**MD1**”), and **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company (“**MD2**”) (WMC, Higbee, MD1 and MD2, collectively, “**Seller**”) and the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal authority (the “**Authority**”), and the **CITY OF WESTMINSTER**, a Colorado home rule city (“**City**”) (Authority and City, collectively, “**Purchaser**”). Seller and Purchaser are sometimes referred to herein as the “**Parties**”.

WHEREAS, the City of Westminster is a home rule municipality organized under the laws of the State of Colorado.

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to Part I of Article 25 of Title 31, C.R.S. On April 13, 2009, the City Council made a determination that the Westminster Center Urban Renewal Area (“**Plan Area**”) was a blighted area and appropriate for an urban renewal project pursuant to the Act.

WHEREAS, on April 13, 2009, the City Council approved the Westminster Center Urban Reinvestment Plan (“**Plan**”) covering the Plan Area as defined therein and authorizing the Authority to acquire property, by condemnation if necessary, and to redevelop property within the Plan Area.

WHEREAS, Seller owns certain interests in portions of the Plan Area described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Real Property**”) which constitute part of the development commonly known as the Westminster Mall (the “**Shopping Center**”).

WHEREAS, on July 15, 2010, Seller filed a Complaint in *Westminster Mall Company, et al v. City of Westminster, et al.*, Case Number 10-CV-3231, Jefferson County District Court (“**Litigation**”) challenging, among other things, the legality of the Purchaser’s right to condemn the Property, blight determination with respect to the Real Property and the Plan.

WHEREAS, on or about the date hereof, the Parties have entered into a settlement agreement (“**Settlement Agreement**”) and, in connection therewith, the Parties have agreed that Seller will convey to Authority, and Authority shall acquire from Seller, the Property (as defined herein) in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual obligations, covenants and representations set forth herein, and other good and valuable consideration, the Parties mutually agree as follows:

Contracts”), but only to the extent the same are assignable by Seller to Purchaser without third party consent unless such consent is obtained.

2. **Conveyance in Lieu of Condemnation.** The Parties hereby acknowledge, confirm and agree that this Agreement and the sale of the Property to the Authority is made under threat of condemnation.

3. **Purchase Price.** The Purchase Price for the Property shall be Twenty-Two Million and 00/100 Dollars (\$22,000,000.00) (“**Purchase Price**”). The Purchase Price for the interests of each Seller (including the “Deferred Amount” described below) are hereby allocated by the Parties as set forth in the attached **Exhibit E.** The Purchase Price, as adjusted under Section 7, shall be deposited by Purchaser on the Closing Date as follows: (i) Eighteen Million Five Hundred Thousand and 00/100 Dollars (\$18,500,000.00) in immediate same-day federal funds (which shall comply with the Colorado “good funds” law) wired for credit into the escrow account established by Escrow Agent for this transaction (“**Cash**”), all of which Cash shall be paid solely to WMC, and (ii) two promissory notes in the aggregate original principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (“**Deferred Amount**”), the form of which are attached hereto as **Exhibit F-1** and incorporated herein by this reference (“**Notes**”) (and WMC hereby directs that payment of its portion of the Deferred Amount be made to MD Westminster Holdings, LLC and TM Westminster Holdings, LLC as provided in the Notes). The Notes provide for monthly interest-only payments calculated at the rate of 6% per annum payable in advance on the first day of each calendar month, with no prepayment penalty, and the outstanding principal amount due and payable in full no later than one (1) year after the Closing Date. Pursuant to a loan agreement to be entered into at Closing, the form of which is attached hereto as **Exhibit F-2 (“Loan Agreement”)** and incorporated herein by this reference, the Notes shall be secured by a deed of trust (“**Deed of Trust**”) encumbering the Property, the form of which is attached hereto as **Exhibits F-3** and incorporated herein by this reference, and such other documents contemplated to secure the Notes as is provided in the Notes, Loan Agreement or Deed of Trust (all of the same being collectively called the “**Loan Documents**”).

4. **Closing.** The escrow closing (“**Closing**”) of the transactions contemplated hereby shall take place on May 10, 2011 or on such earlier date as Seller and Purchaser shall mutually agree upon in writing (“**Closing Date**”), at the office of the Escrow Agent whose business address is Land Title Guarantee Company, 5875 Greenwood Plaza Boulevard, Greenwood Village, CO 80111 (“**Title Company**”) or such other date or place as the parties shall agree; provided, however, that the prorations and adjustments set forth in Section 7 hereof may be made as of 11:59 P.M. on a date other than the Closing Date if Seller and Purchaser shall mutually agree upon such other date in writing (“**Proration Date**”); and if no such other date is agreed upon then the Closing Date shall be the Proration Date).

5. **Cooperation in Transition.** From the execution of this Agreement through the date of Closing, WMC will cooperate with Purchaser, at no expense to Seller, in providing an orderly transition of management responsibility from WMC to Authority. In such connection, during such period, WMC will make the current Shopping Center management team available to meet with Authority, its employees and contractors at times mutually acceptable to the parties for

(f) Seller shall deliver to Authority, at the on-site mall office, not later than seven (7) days following the Closing Date, the following documents to the extent currently within Seller's possession or control and not delivered to Purchaser prior to the Closing: copies (or originals as determined by Seller) of all civil, architectural, structural, electrical, mechanical-plumbing, fire sprinkler and landscape working drawings, specifications, as-built construction plans, architectural renderings or models or any other plans developed or prepared for the Property, and all engineer's letters or certifications.

7. **Closing Adjustments.** The following items pertaining to the Property shall be prorated or credited as of the Proration Date, and appropriate adjustments made to the Cash portion of the Purchase Price or as otherwise set forth below. The Title Company, with the assistance of Seller and Authority shall prepare a proration statement in reasonable detail showing each item prorated, allocated or adjusted in accordance with this Section ("**Proration Statement**").

(a) **Taxes.** The following terms shall have the following meanings: (i) "**Taxes**" shall mean the real estate taxes and assessments, both general and special, imposed against or encumbering the Real Property and Improvements and personal property taxes imposed against or encumbering the Personalty; (ii) "**Excluded Taxes**" shall mean the Taxes payable by the tenants under the Leases with Sears, Roebuck and Co. ("**SR**") covering the Sears TBA ("**Sears TBA Lease**"), Penney, Olive Garden and U.S. Bank (collectively "**Excluded Taxes Leases**") (Sears TBA: 29-244-02-017 ("**Sears TBA Tax Parcel**"); Penney: 29-244-02-028; Olive Garden: 29-244-02-030 ("**Olive Garden Tax Parcel**"); U.S. Bank: 29-244-02-027 ("**Bank Tax Parcel**")) and (iii) the term "**Applicable Taxes**" shall mean the Taxes excluding the Excluded Taxes. The Applicable Taxes for years prior to the year of Closing, including the second installment of 2010 taxes, as well as the second installment of 2010 Taxes for the Sears TBA Tax Parcel, Olive Garden Tax Parcel and Bank Tax Parcel (collectively, "**Outparcel 2010 Installments**"), shall be paid by WMC at Closing. The Applicable Taxes for 2011 payable in 2012 shall be split between WMC and Authority as of the Proration Date, with WMC responsible for the 2011 Applicable Taxes due from January 1, 2011 to the Proration Date. Authority acknowledges that Authority is tax exempt and that the Property will be removed from the real estate tax rolls as of the Proration Date; therefore, the total 2011 Applicable Taxes billing from the county Treasurer may reflect only the amount payable by WMC. WMC's share of the 2011 Applicable Taxes shall be escrowed in an interest-bearing account with the Title Company for payment of 2011 Applicable Taxes on or before the last date on which the 2011 Applicable Taxes are due and payable without penalty. The escrowed amount shall be equal to the 2010 Applicable Taxes prorated for the number of days from January 1, 2011 to the Proration Date. Authority shall remit originals or copies of all 2011 tax bills to WMC and Title Company within ten (10) days after receipt thereof by Authority and in all events prior to the date such taxes are due. The Title Company shall pay WMC's 2011 Applicable Taxes prior to delinquency and promptly remit to WMC after such payment all funds escrowed in excess of the actual amount. The escrow fee of the Title Company shall be paid by Authority. Notwithstanding the foregoing, Seller retains and reserves any and all rights of protest, appeal and abatement related to the valuation, taxes and assessments for the Real Property and Improvements ("**Tax Appeals**"), both past and future, to the extent that such Tax Appeals apply to the year of Closing or any tax periods prior thereto. Authority agrees to reasonably cooperate in all such Tax Appeals with the local taxing authorities at no out of

foregoing or anything else herein, from and after the Proration Date the parties release and discharge each other from any and all claims, demands or liability for Additional Charges or any other obligations under the “May Supplemental Agreement” or “Mervyn’s Supplemental Agreement” (as each are identified on Exhibit B to the Assignment of RCOEA and Other Agreements attached hereto) or under the RCOEA or any other agreements with respect to either the “**May Site**” or the “**Mervyn’s Site**”, as each are as defined in the RCOEA, which release and discharge shall survive the Closing and delivery of the Deed.

(e) Sears Charges. The term “**Sears Supplemental Agreement**” shall mean that certain Supplemental Agreement dated February 13, 1986 between WMC and Sears Development Co. (“**SDC**”), as successor in interest to Carter Hawley Hale Stores, Inc. The term “**Sears Common Area Charges**” shall mean the amount payable by (i) SR under the Sears TBA Lease for its share of “Operating Costs” (as therein defined) for each fiscal year applicable thereto under the Sears TBA Lease and (ii) SDC under the Sears Supplemental Agreement for its share of “Common Facilities Operating Expenses” (as therein defined) for the fiscal year applicable thereto under the Sears Supplemental Agreement. For the respective fiscal year(s) under the Sears TBA Lease and Sears Supplemental Agreement upon which the Sears Common Area Charges are computed, the Sears Common Area Charges shall be prorated between WMC and Authority as of the Proration Date with WMC being entitled all payments allocable to the period prior to the Proration Date, subject to adjustment as hereinafter provided. At the conclusion of the fiscal year(s) under the Sears TBA Lease applicable to the Sears Common Area Charges thereunder, WMC’s allocable share of the actual Sears Common Area Charges as of the Proration Date under the Sears TBA Lease shall be determined by multiplying (A) the amount of the Sears Common Area Charge payable thereunder for such fiscal year by (B) a fraction, the numerator of which is “Operating Costs” thereunder incurred by WMC prior to the Proration Date and the denominator of which is WMC’s and Authority’s total Operating Costs incurred for the entire fiscal year. At the conclusion of the fiscal year(s) under the Sears Supplemental Agreement applicable to the Sears Common Area Charges thereunder, WMC’s allocable share of the actual Sears Common Area Charges as of the Proration Date under the Sears Supplemental Agreement shall be determined by multiplying (y) the amount of the Sears Common Area Charge payable thereunder for such fiscal year by (z) a fraction, the numerator of which are WMC’s “Common Facilities Operating Expenses” under the Sears Supplemental Agreement incurred by WMC prior to the Proration Date and the denominator of which are WMC’s and Authority’s Common Facilities Operating Expenses incurred for the entire fiscal year. If, on the basis of amounts actually incurred and the estimated payments received by WMC from Sears prior to the Proration Date, WMC has retained amounts in excess of its allocable share, it shall remit such excess to Authority within 30 days, and if WMC has retained less than its allocable share from the total payments of Sears Additional Charges payable by Sears for such fiscal year, Authority shall remit such amount to WMC within 30 days after the Authority receives such amounts from Sears under the annual reconciliation process.

(f) Sears Letter. Further, the parties acknowledge that SR and SDC are disputing the Sears Common Area Charges for years prior to Closing as set forth in that certain letter dated March 11, 2011 from Sears Holdings to WMC (“**Sears Letter**”), a copy of which Seller has furnished Purchaser and of which Purchaser acknowledges receipt. Accordingly, (i) WMC reserves and retains any and all right and interest to any Sears Common Area Charges or other charges owed to WMC under the Sears TBA Lease or Sears Supplemental Agreement for any

(w) first, towards the payment of rent and Additional Charges (including Sears Common Area Charges) attributable to the calendar month in which the Proration Date occurs (including, without limitation, percentage rent so attributable but due after the Proration Date; i.e., percentage rent payable in May, 2011 based on sales for April, 2011),

(x) second, to payment of rent and Additional Charges described on Schedule 7(x), (“**Schedule 7(x) Amounts**”) (provided, however, (1) Seller reserves the right to pursue all Schedule 7(x) Amounts, and (2) Purchaser shall not waive any Schedule 7(x) Amounts nor reduce any of the same),

(y) third, to payment of rent and Additional Charges (including Sears Common Area Charges) attributable to periods after the Proration Date,

(z) fourth, to the payment of rent and Additional Charges (including Sears Common Area Charges) which were past due as of the Proration Date (“**Additional Delinquent Amounts**”) (provided, however, (1) all Reserved Sears Charges shall be retained by Seller and Purchaser shall have no rights with respect thereto, (2) Seller reserves the right to pursue all Additional Delinquent Amounts, and (3) Purchaser shall not waive any Additional Delinquent Amounts nor reduce any of the same).

Subject to the foregoing, any amounts received by Authority for the period on or prior to the Proration Date shall be paid to WMC within 30 days of receipt and any amounts received by WMC attributable to the period after the Proration Date shall be paid to Authority within 30 days of receipt. The obligations in this Section 7 shall survive Closing. In all cases in this Section 7 in which WMC is to pay any amount to Authority, if WMC fails to timely pay such amount, then the other parties constituting Seller agree to pay such amount in accordance with the provisions of Section 7.

8. Closing Deliveries. (i) On or before the Closing Date, Seller shall deliver to Escrow Agent each of the following documents, in recordable form where applicable:

(a) an executed original of the bargain and sale deed in the form attached hereto as **Exhibit H** (“**Deed**”);

(b) two (2) originals executed by the applicable Seller of each of the Bill of Sale in the form attached hereto as **Exhibit I**, the Assignment of First Ground Lease and the Assignment of Second Ground Lease (collectively, “Assignments of Ground Lease”) in the forms attached hereto as **Exhibit J**, the Assignment of the Penney Lease in the form attached hereto as **Exhibit K**, the Assignment of the Tenant Leases in the form attached hereto as **Exhibit L**, the Assignment of Contracts in the form attached hereto as **Exhibit M**, and the Assignment of RCOEA and Other Agreements in the forms attached hereto as **Exhibit N** (collectively, the “Assignments”);

(c) A Request for Release of that certain deed of trust, dated December 31, 2002, to the Public Trustee of Jefferson County for the benefit of Gold Bank, a Kansas banking association recorded December 31, 2002, at reception no. F1642585 together with the original promissory note and original or certified copy of such deed of trust, as may be required by

- (d) the Proration Statement executed by Authority;
- (e) the Tenant and Vendor Notices executed by Authority;

(f) Two (2) originals executed by the Authority and the tenant under the Dillard's lease of a lease modification agreement in the form attached hereto as **Exhibit P** (the "**Dillard Modification**"); and

(g) Such other documents, instruments or agreements that Purchaser may be required to execute and/or deliver on or prior to Closing pursuant to any provision of this Agreement or the Loan Documents or required by any laws to be executed by Purchaser in connection with the contemplated transactions or the Loan Documents, together with such other documents, instruments or agreements that Purchaser may be required to execute and/or deliver on or prior to Closing by the Title Company, including without limitation, documents necessary to endorse the Owner's policy of Title Insurance with extended coverage.

9. Closing Costs. Purchaser shall pay all closing, escrow and other fees charged by Escrow Agent; all premiums and other costs of the Lender's Policy and of any title policy it may obtain and any endorsements thereto; all real property transfer taxes, documentary fees, or mortgage fees imposed in connection with the conveyance of the Property or the Loan Documents; and the cost of recording any documents to be recorded in connection with the Closing, except that Seller shall pay the cost to record the Seller DT Release.

10. Representations and Warranties

(a) Purchaser represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

(i) Authority (1) is a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, (2) has full power, authority and legal right to execute, deliver and perform under this Agreement and all of the Exhibits hereto, and under the Loan Documents, and (3) has obtained all necessary consents and approvals of all requisite parties to execute this Agreement;

(ii) This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms; and

(iii) There are no actions, suits, proceedings, orders or investigations pending or threatened against or affecting Purchaser at law or in equity, or before or by any governmental body which might adversely affect Purchaser's performance under this Agreement.

Purchaser's representations and warranties set forth in this Section shall survive the Closing and shall remain in full force and effect for a period ending the earlier of one year following Closing or until satisfaction and payment of all obligations under the Note and other Loan Documents.

the phrase "to the actual knowledge of Seller" means to the actual, present knowledge of Milton Brod, Chief Financial Officer of MD Management, Inc. (in such capacity and not in his individual capacity, and without the imposition of any personal liability) on the Effective Date, without any duty of inquiry.

(c) Seller shall provide to the Title Company such authorizations of the authority of the Seller to enter into this Agreement and close the transaction contemplated hereby as shall be reasonably required by the Title Company in order for it to issue an Owner's Policy of title insurance to Authority at Closing, at Purchaser's expense, should Purchaser wish to obtain such policy.

(d) Seller and Purchaser represent and warrant, each to the other, that they have not dealt with any real estate broker, sales person or finder in connection with this transaction and no other person initiated or participated in the negotiation of this Agreement or showed the Property to Purchaser, and to the knowledge of Seller and Purchaser, there are no real estate brokerage commissions, finder's fees, or other similar fees due any person or entity on account of or as a result of this transaction, except as set forth herein. Seller and Purchaser each agree to defend and hold the other harmless from and against any loss, cost, liability or expense suffered or incurred by the other party as a result of a claim or claims for brokerage commissions, finder's fees or other similar fees from any party or firm that is based on the act or omission of the party in breach of the above warranty. The provisions of this paragraph shall survive the Closing.

11. No Seller Warranties; Release; AS IS.

(a) **No Seller Warranties.** THE ENTIRE AGREEMENT BETWEEN THE SELLER AND PURCHASER WITH RESPECT TO THE SALE OF THE PROPERTY IS EXPRESSLY SET FORTH IN THIS AGREEMENT. SELLER IS NOT BOUND BY ANY AGREEMENTS, UNDERSTANDINGS, PROVISIONS, CONDITIONS, REPRESENTATIONS OR WARRANTIES (WHETHER WRITTEN OR ORAL AND WHETHER MADE BY SELLER OR ANY AGENT, EMPLOYEE OR PRINCIPAL OF SELLER OR ANY OTHER PARTY) EXCEPT AS EXPRESSLY SET FORTH AND STIPULATED (i) IN SUBSECTIONS (b) (THE "**10(b) WARRANTY**") AND (d) (THE "**10(d) WARRANTY**") OF SECTION 10 HEREOF (AND SUBJECT TO THE LIMITATIONS SET FORTH IN SAID SECTION) AND (ii) IN THE DEED AND ASSIGNMENTS (THE "**CONVEYANCE DOCUMENTS**") TO BE SIGNED AND DELIVERED BY SELLER AT CLOSING (COLLECTIVELY, THE "**CONVEYANCE WARRANTIES**"). PURCHASER ACKNOWLEDGES THAT (A) PURCHASER HAS FULLY INSPECTED ALL OF THE PROPERTY, AND IS FULLY AND COMPLETELY SATISFIED WITH THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ALL REAL PROPERTY AND IMPROVEMENTS, THE PERSONALTY, THE LEASES, AND THE CONTRACTS), (B) PURCHASER IS FULLY FAMILIAR WITH THE FINANCIAL AND PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION THEREOF, AND (C) THE PROPERTY IS BEING PURCHASED BY PURCHASER IN AN "AS IS" AND "WHERE IS" CONDITION AND WITH ALL DEFECTS AND FAULTS (PATENT AND LATENT) AND WITHOUT RELIANCE ON ANY AGREEMENT, UNDERSTANDING, CONDITION, WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), FINANCIAL,

PARTNERS, EMPLOYEES, MANAGERS, AGENTS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, REPRESENTATIVES, CONSULTANTS, AND ATTORNEYS (“**SELLER PARTIES**”) FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES WHETHER SUIT IS INSTITUTED OR NOT) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (HEREINAFTER COLLECTIVELY CALLED THE "**CLAIMS**") ARISING FROM, REGARDING OR OTHERWISE RELATING TO THE PROPERTY, THE MAY SITE OR THE MERVYN'S SITE (INCLUDING WITHOUT LIMITATION ALL REAL PROPERTY AND IMPROVEMENTS, PERSONALTY, LEASES, RCOEA, SUPPLEMENTAL AGREEMENTS AND SERVICE CONTRACTS), INCLUDING WITHOUT LIMITATION AS TO (I) ANY DEFECTS (PATENT OR LATENT), ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY WHETHER THE SAME ARE THE RESULT OF NEGLIGENCE OR OTHERWISE, OR (II) ANY OTHER CONDITIONS, INCLUDING ENVIRONMENTAL AND OTHER PHYSICAL CONDITIONS, FINANCIAL, TITLE, OR OTHER MATTERS OR CONDITIONS AFFECTING THE PROPERTY WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE. THIS RELEASE SPECIFICALLY INCLUDES, WITHOUT LIMITATION, ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS OR THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED, AS THOSE LAWS MAY BE AMENDED FROM TIME TO TIME AND ANY REGULATIONS, ORDERS, RULES OF PROCEDURES OR GUIDELINES PROMULGATED IN CONNECTION WITH SUCH LAWS, REGARDLESS OF WHETHER THEY ARE IN EXISTENCE ON THE DATE OF THIS AGREEMENT. IN THIS CONNECTION, PURCHASER ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, CONTROVERSIES, DAMAGES, COSTS, LOSSES OR EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND PURCHASER FURTHER ACKNOWLEDGES THAT THIS RELEASE HAS BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THE FOREGOING. PURCHASER EXPRESSLY WAIVES ANY PROVISION OF STATUTORY OR DECISIONAL LAW TO THE EFFECT THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN SUCH PARTY'S FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY SUCH PARTY, MUST HAVE MATERIALLY AFFECTED SUCH PARTY'S SETTLEMENT WITH THE RELEASED PARTIES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF PURCHASER'S SELECTION AND PURCHASER IS GRANTING THIS RELEASE OF ITS OWN VOLITION AND AFTER CONSULTATION WITH PURCHASER'S COUNSEL.

(B) **Environmental Definitions.** As used in this Section: (i) The term “**Environmental Law**” shall mean any common law or any federal, state or local law, statute, code, ordinance, rule or regulation, and any amendments thereto (whether such state or local law, statute, code, ordinance, rule or regulation derives its authority from the constitution or laws of the United States or the State of Colorado) relating to either the waters of the United States or the State of Colorado or to the emission, discharge, spill, release or threatened release of any Hazardous Substance into the environment (including, but not limited to, ambient air, surface

(D) **Effect of Disclaimers.** PURCHASER ACKNOWLEDGES AND AGREES THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED TO TAKE INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD SUBJECT TO THE PROVISIONS OF THIS SECTION 11 AND THAT SELLER WOULD HAVE CHARGED A HIGHER PURCHASE PRICE IF THE PROVISIONS OF THIS SECTION 11 WERE NOT AGREED UPON BY THE PURCHASER. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE DEED AND SHALL BE DEEMED INCORPORATED BY REFERENCE AND MADE A PART OF ALL DOCUMENTS DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE SALE OF THE PROPERTY AND THE TRANSACTIONS CONTEMPLATED HEREIN.

12. Default (a) If Seller shall fail to perform any of its material obligations hereunder, and if such failure is not cured within ten (10) days after written notice to Seller specifying such failure, Purchaser shall have the following rights: (i) proceed to Closing without any reduction or abatement of the Purchase Price; (ii) terminate this Agreement, in which event all amounts deposited by Purchaser shall be promptly returned to Purchaser; or (iii) in the event that Seller refuses to complete the transactions provided for in this Agreement, Purchaser shall be entitled to specific performance (and Purchaser shall not be entitled to any monetary damages). The remedies set forth in this Section shall be Purchaser's sole and exclusive remedies in the event of Seller's default.

(b) If Purchaser shall default in the performance of any of its obligations hereunder including, without limitation, Purchaser's failure to close, Seller shall have the right at its election to pursue all remedies available at law or in equity.

13. Like-Kind Exchange by Seller. (a) It is understood and agreed that Seller shall have the option to qualify this transaction as part of a tax deferred like-kind exchange under Section 1031 of the Internal Revenue Code. Purchaser shall cooperate with Seller in effecting such exchange and to undertake such customary accommodations as Seller and its attorneys may request to accomplish the exchange in a tax deferred manner (including, without limitation, executing such documents to acknowledge such exchange as are reasonably necessary for Seller to effect such exchange); provided, however, that Purchaser shall not be obligated to incur any expense directly resulting from Seller's exchange unless Seller agrees to reimburse Purchaser for such expenses, and, provided, that such like-kind exchange shall not delay the Closing.

(b) **Condemnation Replacement.** It is understood and agreed that Seller is selling the Property to Purchaser in lieu of condemnation and Seller desires to have the opportunity to replace the Property with similar in use or like-kind property under Section 1033 of the Internal Revenue Code. Purchaser agrees to cooperate with Seller in effecting such replacement and to undertake such accommodations as Seller and its attorneys may request to accomplish such replacement in a tax deferred manner (including, without limitation, modifying the payees and terms of promissory notes and related security documents which the Seller gives in such manner as is requested by Purchaser as long as such modifications do not increase the aggregate amount Seller has to pay under such notes); provided, however, that Purchaser shall not be obligated to incur any expense directly resulting from Seller's replacement unless Seller agrees to reimburse Purchaser for such replacement, and, provided, further, that such replacement shall not delay the Closing.

16. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Colorado.

17. **No Third Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances, rules, regulations, orders or decrees.

18. **Entirety and Amendments.** This Agreement contains the entire agreement among the parties hereto with respect to its subject matter and shall supersede all negotiations, prior discussions, agreements, letters of intent and understandings between Seller, Purchaser, and their respective employees, agents and representatives, all of same being merged herein and extinguished. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. This Agreement has been drafted through a joint effort of the parties and, therefore, shall not be construed in favor of or against either of the parties, but shall be construed in accordance with its fair meaning.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

20. **Time.** Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

21. **Assignment.** This Agreement may not be assigned by Purchaser without the prior written consent of the Seller. Subject to the foregoing, all terms, covenants, conditions and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, executors, administrators, legal representatives, and permitted successors in interest and assigns.

22. **Waiver and Consent.**

(a) One or more waivers of any term, covenant or condition of this Agreement by any party shall not be construed as a waiver of any subsequent breach of the same or any other term, covenant or condition; nor shall any delay or omission by any party in seeking a remedy for any breach of this Agreement, or in exercising any right accruing to such party by reason of any such breach, be deemed a waiver by such party of its rights or remedies with respect to such breach.

(b) The failure of any party to insist upon the strict performance of any provision of this Agreement, or the failure of any party to exercise any right, option or remedy hereby reserved or granted, shall not be construed as a waiver for the future of any such provision, right, option or remedy, or as a waiver of any subsequent breach thereof, or as an alteration or modification of this Agreement.

(c) No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing, signed by the party against whom such waiver is sought to be enforced.

SELLER:

WESTMINSTER MALL COMPANY,
a Colorado general partnership

By: M D Management, Inc., a Missouri corporation, Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation, Manager

By: _____
Printed
Name: _____
Its: _____

THE HIGBEE COMPANY,
a Delaware corporation
and successor by merger to Mersco Realty Co., Inc., an Ohio corporation

By: _____
Printed
Name: _____
Its: _____

MD WESTMINSTER 1ST TRACT, LLC,
a Missouri limited liability company

By: _____
Thomas S. Morgan, Manager

MD WESTMINSTER 2ND TRACT, LLC,
a Missouri limited liability company

By: _____
Thomas S. Morgan, Manager

EXHIBIT A

Real Property

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

Excluded Personalty

Office computers of bookkeeper, manager, management assistant and security

Front End loader

Truck

EXHIBIT C

List of Leases

UNIT	TENANT	LEASE DOCUMENTS
012	Things Remembered, Inc.	Lease Extension Agreement dated 8/31/07 Second Lease Extension Agreement dated 1/1/09
016	Footlocker Retail, Inc. f/k/a Venator Group Retail Inc. f/k/a Kinney Shoe Corporation d/b/a Foot Locker	Lease dated 6/21/96 Lease Extension Agreement dated 9/16/03 Second Lease Extension Agreement dated 1/8/10 Third Lease Extension Agreement dated 3/21/11
018	Spencer Gifts LLC	Lease dated 1/12/98 Lease Extension Agreement dated 9/28/07 Second Lease Extension Agreement dated 11/28/08 Third Lease Extension Agreement dated 2/1/10 Letter dated April 21, 2001
020	Michael Amani d/b/a Riviera Clothing	Lease dated 7/11/05 Lease Extension and Amendment Agreement dated 11/1/08
022	General Nutrition Corporation	Lease dated 12/7/94 Lease Amendment and Extension Agreement dated 10/29/04 Second Lease Amendment and Extension Agreement dated 11/30/06 Third Lease Amendment and Extension Agreement dated 10/31/07 Fourth Lease Amendment and Extension Agreement dated 8/7/09 Fifth Lease Amendment and Extension Agreement dated 11/30/09 Guaranty by General Nutrition Centers Inc. dated 12/7/94
023	Bath & Body Works, LLC	Lease dated 11/08/96 Letter Agreement dated 7/19/10

035	Dillard Juniors	Part of premises under Dillard lease (Main 3) described below
042	Infinite Design Jeweler	Lease dated 2/23/06
044	FL Retail Operations d/b/a Foot Action	Lease dated 8/10/98 Guaranty of Lease dated 8/10/98 Assignment and Assumption of Lease Agreement dated 5/7/04 1 st Amendment dated 8/04 Second Lease Extension Agreement dated 3/21/11
045	Visionary Properties, Inc. d/b/a Doctor's Vision World	Lease dated 9/14/00
049	Genesco Inc. d/b/a Journey's	Lease dated 10/25/01 Lease Modification Agreement dated 11/1/08 Second Lease Modification Agreement dated 11/1/09 Third Lease Modification Agreement dated 10/1/10
050A	Claire's Boutiques	Lease dated 4/26/04 Letter dated December 7, 2004
058	Victoria's Secret Stores, Inc.	Lease dated 10/29/03 Lease Amendment Agreement dated 6/17/04 Second Lease Amendment Agreement dated 1/27/05 Termination letter dated October 28, 2010
072	Pet City, Inc.	Lease dated 4/17/01
139	Footlocker Retail, Inc. d/b/a Champ Sports	Lease dated 1/9/04 Lease Amendment Agreement dated 3/___/10 Second Lease Extension Agreement dated 3/21/11
K012	Compass Bank	Lease 11/11/2002

		Lease Extension 1/1/2005
K015	Compass Bank	Lease 11/11/2002
MAIN 3 & Unit 035	Dillard's f/k/a Higbee Lancoms, LP, a Delaware limited partnership (successor to The Joslin Dry Goods Company)	Lease and Declaration of Restrictions dated September 9, 1976 between Westminster Mall Company and The Joslin Dry Goods Company Memorandum of lease recorded in Book 2985 at Page 672 First Lease Modification Agreement dated July 1, 1977 Amendment No. 1 to Lease and Declaration of Restrictions dated February 1, 1979 Amendment and Modification No. 2 to Lease and Declaration of Restrictions dated October 10, 1985 First Amendment to Lease and Declaration of Restrictions dated February 13, 1986 Second Lease Modification Agreement dated February 13, 1986 Amended and Restated Lease and Declaration Restrictions dated 12/5/87
MAIN 4	J.C. Penney Properties, Inc.	The following documents constituting the "Penney Lease": Lease dated 2/13/86 (partial copy recorded at Reception. No. 86016388) Letter Guaranty from J.C. Penney Company dated 2/13/86 Letter Agreement dated 2/13/86 Letter Agreement dated 2/13/86 Term Agreement dated 6/18/93 recorded July 12, 1993 under Reception No. 93101704 and recorded January 10, 1994 under Reception No. 94005874
PAD2	U.S. Bank f/k/a Central Bancorporation	Lease dated 1/31/85 Memorandum of Lease recorded March 27, 1985 under Reception No. 85028159
PAD5	GMRI, Inc. d/b/a Olive Garden	Sublease dated 11/20/92 Memorandum of Sublease dated 4/22/93 recorded May 14, 1993 under Reception No. 93067818 and recorded October 19, 1993 under Reception No. 93167959 Attornment Agreement of Ground Lease recorded May 14, 1993 under

		<p>Reception No. 93067819</p> <p>Extension letter dated 3/21/05</p> <p>Extension letter dated 1/27/10</p>
PAD6	Sears & Roebuck Company (Sears Auto Center)	Lease dated 2/25/02
TEMP	Corn LTD	Agreement dated 09/08/09
TEMP	Extreme Mini Golf Inc.	Agreement dated 11/02/09

EXHIBIT D

Service Contracts

1. Service Agreement dated January, 2011 and Renewal Mechanical Service Agreement dated December 8, 2010 with Long Mechanical Solutions.
2. Service Agreement Non-Hazardous Waste dated January 25, 1989 with Waste Management.
3. Maintenance and Guarantee Agreement dated April 17, 2007 with Plantek Distinctive Interiorscaping, Inc.

EXHIBIT E

Allocated Interests and Purchase Price of each Seller Party

Seller Party	Total Purchase Price	Cash portion of Purchase Price	Deferred Amount of Purchase Price
WMC	\$19,125,000	\$18,500,000	\$625,000
MD1	\$250,000	\$0.00	\$250,000
MD2	\$1,187,500	\$0.00	\$1,187,500
Higbee, as to the property subject to the First Ground Lease	\$250,000	\$0.00	\$250,000
Higbee, as to the property subject to the Second Ground Lease	\$1,187,500	\$0.00	\$1,187,500

EXHIBITS F-1 – F-3
Loan Documents

EXHIBIT F-1

Higbee Promissory Note

PROMISSORY NOTE

\$1,750,000.00

May __, 2011

FOR VALUE RECEIVED, **CITY OF WESTMINSTER**, a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal agency (hereinafter collectively called "Borrower"), having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, promise to pay to the order of **THE HIGBEE COMPANY**, a Delaware corporation (hereinafter collectively called "Lender"), with an address at 1600 Cantrell Road, Little Rock, Arkansas 72205, Attn: Vice President, Real Estate, or at such other place as the Lender may from time to time designate in writing, the principal sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (U.S. \$1,750,000.00)**, together with interest thereon, as follows (*certain capitalized terms used herein are hereinafter defined*):

§1. Accrual of Interest; Interest Rate; Payments.

(a) Interest shall accrue on the outstanding principal balance under this Note from the date hereof through the Maturity Date at the Applicable Rate, or if applicable under the terms of this Note, the Default Rate.

(b) On June 1, 2011, and on the corresponding day of each succeeding calendar month to and including April 1, 2012, Borrower shall pay to Lender, the entire amount of interest accrued and then unpaid on the indebtedness evidenced hereby.

(c) The entire unpaid principal balance of this Note, together with all interest accrued but unpaid thereon, shall be due and payable on the Maturity Date. If Borrower should fail to repay this Note in full by the Maturity Date, then interest shall accrue at the Default Rate on the outstanding principal balance under this Note from the Maturity Date until this Note is repaid in full (notwithstanding the entry of any decree, order, judgment or other judicial action concerning this Note).

(d) Borrower acknowledges that the periodic interest payments described above will not provide any amortization of the Loan over the term of this Note, and that a payment of all principal owing under this Note (a balloon payment) will be required on the scheduled Maturity Date.

(e) All payments under this Note (other than payments of late charges) shall be first applied to interest and the remainder to principal. Remittances in payment of any part of the indebtedness evidenced hereby other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder

hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

§2. Prepayments. Borrower shall have the right to prepay this Note and the Related Note together, both in full without premium or penalty at any time upon giving written notice to Lender and Additional Lender specifying the date of prepayment not less than three (3) business days prior to such prepayment. No prepayment of this Note shall be accepted unless the Related Note is also paid in full at the same time. If notice of intention to prepay is given, the entire principal balance hereof and of the Related Note, together with all accrued, unpaid interest thereon, shall become due and payable on the date specified for prepayment in such notice.

§3. Security. This Note, together with the Related Note, is secured by the Mortgage, encumbering real property in Westminster, Colorado, and other security.

§4. Certain Terms Defined. In addition to words and terms defined elsewhere in this Note the following terms, as used in this Note, shall have the following meanings:

“Agent” shall mean _____, the Agent of the Lender and Additional Lender under the terms of the Loan Agreement.

“Additional Lender” shall mean collectively MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company, MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company, MD WESTMINSTER HOLDINGS, LLC, a Missouri limited liability company, and TM WESTMINSTER HOLDINGS, LLC, a Missouri limited liability company and collectively the payee of the Related Note.

“Applicable Rate” shall mean six percent (6%) per annum.

“Default Rate” shall mean a per annum interest rate equal to five percent (5%) in excess of the Applicable Rate.

“Event of Default” shall mean an “Event of Default” as defined in the Loan Agreement.

“Loan” shall mean all of the indebtedness evidenced hereby from time to time, whether principal, interest or otherwise, and all sums coming due Lender under this Note, together with all amounts due to Additional Lender under the Related Note and all sums due to Lender and Additional Lender under any of the Loan Documents from time to time.

“Loan Agreement” shall mean the Loan Agreement of even date herewith among Borrower, Lender, Additional Lender and Agent.

“Loan Documents” shall mean collectively this Note, the Related Note, the Loan Agreement, the Mortgage, and each other instrument, agreement or document now or hereafter evi-

dencing, securing, supporting, guaranteeing or executed in connection with the indebtedness evidenced hereby, and any amendments to any of the same hereafter made.

“Maturity Date” shall mean the date one year following the date of this Note.

“Mortgage” shall mean that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from Borrower for the benefit of Agent, on behalf of Lender and Additional Lender, encumbering the Mortgaged Property and securing repayment of the Loan, as the same may hereafter be amended.

“Mortgaged Property” shall mean the “Mortgaged Property” as defined in the Mortgage.

"Note" shall mean this Promissory Note, as the same may be amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

“Related Note” shall mean that certain promissory note of even date herewith in the principal amount of \$1,750,000.00 made by Borrower and payable to the order of Additional Lender.

"Usury Law" shall mean any law or regulation of any governmental authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money.

§5. Late Charge. If any payment due under this Note is not received by Lender within five (5) days after such payment is due, Borrower shall pay to Lender on demand a late charge in an amount equal to five percent (5.00%) of such overdue payment, to compensate Lender for some of the additional costs and expenses of processing late payments. Such five (5) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Lender or Agent may have and is in addition to any fees and charges of any agents or attorneys which Agent may employ upon the occurrence of an Event of Default, whether authorized herein or by law.

§6. Event of Default. If an Event of Default shall occur and exist, then: (a) the entire unpaid principal balance of the Loan and all other sums payable to Lender under this Note, the Related Note and/or any of the other Loan Documents, together with unpaid interest on the Loan and all such sums, shall at the option of Lender become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or other action, all of which are hereby waived by Borrower; and (b) notwithstanding any other provision of this Note, during the period of existence of such Event of Default, interest on the Loan shall accrue and be paid at the lesser of (i) the Default Rate, or (ii) the maximum lawful rate of interest under the applicable Usury Law. All of the rights, remedies, powers and privileges (together, "Rights") of the holder hereof provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust

it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by the holder hereof to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the holder hereof from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect. If any holder of this Note retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, reasonable attorneys' fees and expenses as permitted by law, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

§7. Joint and Several Liability; Certain Waivers. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute suit or exhaust its remedies hereunder against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the State in which payment is to be made as specified in this Note, and venue in the county in which payment is to be made as specified in this Note, over any suit, action or proceeding arising out of, or relating to, the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Agent to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full.

§8. Choice of Governing Law. This Note is to be delivered to and accepted by Lender in the State of Colorado. Lender and Borrower have therefore agreed, and do agree, that this Note is to be construed and enforced in all respects in accordance with the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other jurisdiction) of the State of Colorado, including but not limited to the Usury Laws of the State of Colorado.

§9. Compliance with Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Borrower to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto, then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If from any circumstance, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law.

§10. Revival of Liability. If any payments or proceeds received by Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

§11. Miscellaneous Provisions. This Note may not be changed, amended or modified except by agreement in writing signed by Borrower and Lender. Time is of the essence with respect to all of Borrower's obligations and agreements under this Note. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Section headings and captions herein are provided solely for convenience, and shall not be considered in interpreting or construing the provisions of this Note.

§12. Successors and Assigns. Whenever used in this Note, the words "Borrower" and "Lender" shall be deemed to include the respective successors of Borrower and of Lender, and "Lender" shall also include any subsequent holder of this Note. This Note shall be binding in

accordance with its terms upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower. The holder of this Note may, from time to time, sell or offer to sell the loan evidenced by this Note, or interests therein, to one or more assignees or participants and is hereby authorized to disseminate any information it has pertaining to the Loan evidenced by this Note, including, without limitation, any security for this Note and credit information on Borrower, any of its principals and any guarantor of this Note, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to this Note and the other Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

§13. Not for Nominee. Borrower hereby represents and warrants to Lender that: (a) Borrower is borrowing the Loan on Borrower's own behalf, and not as nominee, designee, or agent for another, and (b) Borrower is not acting for another in so borrowing the Loan. This Note and the other Loan Documents collectively: (a) constitute the final expression of the agreement between Borrower and Lender concerning the Loan; (b) contain the entire agreement among Borrower, Lender, Additional Lender and Agent respecting the matters set forth herein and in such other Loan Documents; (c) may not be contradicted by evidence of any prior or contemporaneous oral agreements or understandings among Borrower and Lender or Additional Lender or Agent; and (d) supersede all prior agreements and understandings among Borrower, Lender, Additional Lender and Agent respecting such matters.

§14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given: (a) three (3) days after being sent by certified United States Mail, return receipt requested, to Borrower and to Lender at their respective addresses hereinabove set forth, or to such other place or places as either party hereto may from time to time designate to the other for the purpose of receiving notices hereunder; or (b) if given in the manner provided for the giving of notices under the Mortgage.

§15. Waiver of Jury Trial. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER OR AGENT MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR

HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

“BORROWER”:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT F-2

MD Promissory Note

PROMISSORY NOTE

\$1,750,000.00

May __, 2011

FOR VALUE RECEIVED, **CITY OF WESTMINSTER**, a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal agency (hereinafter collectively called "Borrower"), having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, promise to pay to the order of **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company (hereinafter collectively called "Lender"), at its office at c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205 or at such other place as the Lender may from time to time designate in writing, the principal sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (U.S. \$1,750,000.00)**, together with interest thereon, as follows (*certain capitalized terms used herein are hereinafter defined*):

§1. Accrual of Interest; Interest Rate; Payments.

(a) Interest shall accrue on the outstanding principal balance under this Note from the date hereof through the Maturity Date at the Applicable Rate, or if applicable under the terms of this Note, the Default Rate.

(b) On June 1, 2011, and on the corresponding day of each succeeding calendar month to and including April 1, 2012, Borrower shall pay to Lender, the entire amount of interest accrued and then unpaid on the indebtedness evidenced hereby.

(c) The entire unpaid principal balance of this Note, together with all interest accrued but unpaid thereon, shall be due and payable on the Maturity Date. If Borrower should fail to repay this Note in full by the Maturity Date, then interest shall accrue at the Default Rate on the outstanding principal balance under this Note from the Maturity Date until this Note is repaid in full (notwithstanding the entry of any decree, order, judgment or other judicial action concerning this Note).

(d) Borrower acknowledges that the periodic interest payments described above will not provide any amortization of the Loan over the term of this Note, and that a payment of all principal owing under this Note (a balloon payment) will be required on the scheduled Maturity Date.

(e) All payments under this Note (other than payments of late charges) shall be first applied to interest and the remainder to principal. Remittances in payment of any part of the indebtedness evidenced hereby other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and

shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

§2. Prepayments. Borrower shall have the right to prepay this Note and the Related Note together, both in full without premium or penalty at any time upon giving written notice to Lender and Additional Lender specifying the date of prepayment not less than three (3) business days prior to such prepayment. No prepayment of this Note shall be accepted unless the Related Note is also paid in full at the same time. If notice of intention to prepay is given, the entire principal balance hereof and of the Related Note, together with all accrued, unpaid interest thereon, shall become due and payable on the date specified for prepayment in such notice.

§3. Security. This Note, together with the Related Note, is secured by the Mortgage, encumbering real property in Westminster, Colorado, and other security.

§4. Certain Terms Defined. In addition to words and terms defined elsewhere in this Note the following terms, as used in this Note, shall have the following meanings:

“Agent” shall mean _____, the Agent of the Lender and Additional Lender under the terms of the Loan Agreement.

“Additional Lender” shall mean The Higbee Company, a Delaware corporation and the payee of the Related Note.

“Applicable Rate” shall mean six percent (6%) per annum.

“Default Rate” shall mean a per annum interest rate equal to five percent (5%) in excess of the Applicable Rate.

“Event of Default” shall mean an “Event of Default” as defined in the Loan Agreement.

“Loan” shall mean all of the indebtedness evidenced hereby from time to time, whether principal, interest or otherwise, and all sums coming due Lender under this Note, together with all amounts due to Additional Lender under the Related Note and all sums due to Lender and Additional Lender under any of the Loan Documents from time to time.

“Loan Agreement” shall mean the Loan Agreement of even date herewith among Borrower, Lender, Additional Lender and Agent.

“Loan Documents” shall mean collectively this Note, the Related Note, the Loan Agreement, the Mortgage, and each other instrument, agreement or document now or hereafter evi-

dencing, securing, supporting, guaranteeing or executed in connection with the indebtedness evidenced hereby, and any amendments to any of the same hereafter made.

“Maturity Date” shall mean the date one year following the date of this Note.

“Mortgage” shall mean that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from Borrower for the benefit of Agent, on behalf of Lender and Additional Lender, encumbering the Mortgaged Property and securing repayment of the Loan, as the same may hereafter be amended.

“Mortgaged Property” shall mean the “Mortgaged Property” as defined in the Mortgage.

"Note" shall mean this Promissory Note, as the same may be amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

“Related Note” shall mean that certain promissory note of even date herewith in the principal amount of \$1,750,000.00 made by Borrower and payable to the order of Additional Lender.

"Usury Law" shall mean any law or regulation of any governmental authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money.

§5. Late Charge. If any payment due under this Note is not received by Lender within five (5) days after such payment is due, Borrower shall pay to Lender on demand a late charge in an amount equal to five percent (5.00%) of such overdue payment, to compensate Lender for some of the additional costs and expenses of processing late payments. Such five (5) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Agent or Lender may have and is in addition to any fees and charges of any agents or attorneys which Agent may employ upon the occurrence of an Event of Default, whether authorized herein or by law.

§6. Event of Default. If an Event of Default shall occur and exist, then: (a) the entire unpaid principal balance of the Loan and all other sums payable to Lender under this Note, the Related Note and/or any of the other Loan Documents, together with unpaid interest on the Loan and all such sums, shall at the option of Lender become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or other action, all of which are hereby waived by Borrower; and (b) notwithstanding any other provision of this Note, during the period of existence of such Event of Default, interest on the Loan shall accrue and be paid at the lesser of (i) the Default Rate, or (ii) the maximum lawful rate of interest under the applicable Usury Law. All of the rights, remedies, powers and privileges (together, "Rights") of the holder hereof provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust

it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by the holder hereof to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the holder hereof from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect. If any holder of this Note retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, reasonable attorneys' fees and expenses as permitted by law, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

§7. Joint and Several Liability; Certain Waivers. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute suit or exhaust its remedies hereunder against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the State in which payment is to be made as specified in this Note, and venue in the county in which payment is to be made as specified in this Note, over any suit, action or proceeding arising out of, or relating to, the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Agent to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full.

§8. Choice of Governing Law. This Note is to be delivered to and accepted by Lender in the State of Colorado. Lender and Borrower have therefore agreed, and do agree, that this Note is to be construed and enforced in all respects in accordance with the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other jurisdiction) of the State of Colorado, including but not limited to the Usury Laws of the State of Colorado.

§9. Compliance with Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Borrower to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto, then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If from any circumstance, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law.

§10. Revival of Liability. If any payments or proceeds received by Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

§11. Miscellaneous Provisions. This Note may not be changed, amended or modified except by agreement in writing signed by Borrower and Lender. Time is of the essence with respect to all of Borrower's obligations and agreements under this Note. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Section headings and captions herein are provided solely for convenience, and shall not be considered in interpreting or construing the provisions of this Note.

§12. Successors and Assigns. Whenever used in this Note, the words "Borrower" and "Lender" shall be deemed to include the respective successors of Borrower and of Lender, and "Lender" shall also include any subsequent holder of this Note. This Note shall be binding in

accordance with its terms upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower. The holder of this Note may, from time to time, sell or offer to sell the loan evidenced by this Note, or interests therein, to one or more assignees or participants and is hereby authorized to disseminate any information it has pertaining to the Loan evidenced by this Note, including, without limitation, any security for this Note and credit information on Borrower, any of its principals and any guarantor of this Note, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to this Note and the other Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

§13. Not for Nominee. Borrower hereby represents and warrants to Lender that: (a) Borrower is borrowing the Loan on Borrower's own behalf, and not as nominee, designee, or agent for another, and (b) Borrower is not acting for another in so borrowing the Loan. This Note and the other Loan Documents collectively: (a) constitute the final expression of the agreement between Borrower and Lender concerning the Loan; (b) contain the entire agreement among Borrower, Lender, Additional Lender and Agent respecting the matters set forth herein and in such other Loan Documents; (c) may not be contradicted by evidence of any prior or contemporaneous oral agreements or understandings among Borrower and Lender or Additional Lender or Agent; and (d) supersede all prior agreements and understandings among Borrower, Lender, Additional Lender and Agent respecting such matters.

§14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given: (a) three (3) days after being sent by certified United States Mail, return receipt requested, to Borrower, Lender and Agent at their respective addresses hereinabove set forth, or to such other place or places as either party hereto may from time to time designate to the other for the purpose of receiving notices hereunder; or (b) if given in the manner provided for the giving of notices under the Mortgage.

§15. Waiver of Jury Trial. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER OR AGENT MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR

HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

“BORROWER”:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT F-3

Loan Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT is made as of _____, 2011, by and among:

CITY OF WESTMINSTER (“City”), a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”)**, a Colorado urban renewal authority, each having an address at Borrower’s Address, and collectively referred to herein as **“Borrower”**;

AND

_____ [AGENT TO BE DETERMINED], having an office at Agent’s Address, as Agent for Lenders.

AND

THE HIGBEE COMPANY (“Higbee”), a Delaware corporation, **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company (collectively **“MD Lender”** Higbee and MD Lender are sometimes referred to individually as a **“Lender”** or collectively as **“Lenders”**).

RECITALS:

(A) Certain capitalized words and terms used herein are defined in Section 19.7 of that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from WEDA to the Public Trustee of Jefferson County, Colorado for the benefit of Agent encumbering among other things the Land and Improvements, and any amendments or supplements to the same hereafter made (the **“Mortgage”**), which Section 19.7 is incorporated herein by reference.

(B) Lenders have agreed to finance a portion of the cost of Borrower’s acquisition of the Mortgaged Property upon the terms and subject to the conditions hereinafter set forth.

Accordingly, Borrower, Lenders and Agent hereby agree as follows:

§1. INCORPORATION OF RECITALS. The Recitals to this Loan Agreement are incorporated herein as part of this Loan Agreement.

§2. USE OF PROCEEDS. The proceeds of the Loan will be used solely to finance Borrower’s acquisition of the Mortgaged Property, and related closing costs.

§3. THE LOAN

(a) Loan Advances. Borrower acknowledges receipt of the entire Loan Amount on the Closing Date.

(b) Loan Payments. Although the Loan is a single loan secured by the Mortgage and other Loan Documents, Higbee and MD Lender each hold a Note. Borrower shall make all payments on the loan 50% to Higbee and 50% to MD Lender, and in no event shall Borrower make any payment (whether of principal, interest, late charges or other amounts due under the Loan Documents) to Higbee without making a payment in identical amount to MD Lender or to MD Lender without making a payment in identical amount to Higbee. Failure of Borrower to comply with the requirements of this paragraph (b) shall constitute an Event of Default.

§4. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Agent as follows:

(a) Authority. The City of Westminster is a Colorado home rule city in good standing in the State of Colorado, and has all requisite legal capacity to own, mortgage, develop, lease, sell and otherwise deal in and with real and personal property in the State of Colorado and to execute, deliver and perform its obligations as provided in the Loan Documents. WEDA is a Colorado urban renewal authority in good standing in the State of Colorado, and has all requisite legal capacity to own, mortgage, develop, lease, sell and otherwise deal in and with real and personal property in the State of Colorado and to execute, deliver and perform its obligations as provided in the Loan Documents.

(b) No Conflict. The execution, delivery and performance by City and WEDA of the Loan Documents will not cause or constitute a violation of any law or regulation or any order, writ, injunction or decree of any court or Governmental Authority, or result in a breach of or constitute a default under any agreement to which either of them is bound.

(c) Binding Agreements. This Loan Agreement and all other Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

(d) Borrower Authorization. The execution, delivery and performance by Borrower of the Loan Documents to which Borrower is a party have been duly authorized by all necessary action on the part of Borrower.

(e) No Governmental Consent. No authorization, approval or consent by, or filing with, any Governmental Authority or public regulatory authority is necessary in connection with the authorization, execution, delivery and performance of any Loan Document by either the City or WEDA, other than the filing for record of the Mortgage.

(f) No Current Default. On the date hereof, there exists no Event of Default, nor any event, circumstance or situation which, with the giving of notice, the passage of time, or both, could become such an Event of Default.

All representations and warranties made in this §4 shall survive the closing of the Loan.

§5. COVENANTS. Until payment in full of the Note and performance of all of Borrower's other obligations under the Loan Documents:

(a) Notices. Borrower shall promptly give Agent notice of (1) any Event of Default or any event known to Borrower which, with notice or the lapse of time or both, would constitute an Event of Default, promptly after the same becomes known to Borrower, together with a written statement of the action being taken by Borrower to remedy the same, and (2) all litigation or proceedings before any court or Governmental Authority affecting any of the Mortgaged Property.

(b) Legal Requirements. Borrower shall comply with all Legal Requirements applicable to the Land and the Improvements, and with the agreements or instruments to which it is a party or by which its properties or assets may be bound.

(c) Liens. Borrower shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or encumbrance not created by one of the Loan Documents upon the Mortgaged Property or any part thereof, except Permitted Encumbrances, and except to the extent contested in compliance with §10(q) hereof. All equipment, furnishings, and fixtures to be affixed to or attached to the Mortgaged Property shall be owned by Borrower in Borrower's own name except for trade fixtures, equipment and furnishings owned by any of the tenants of the Mortgaged Property under occupancy leases.

(d) Application of Revenues. While any of the Loan remains outstanding, Borrower shall apply all revenues earned from the operation of the Mortgaged Property first to the payment of the reasonable and necessary operating expenses of the Mortgaged Property, and next to the payment of the sums currently due on account of the Loan, before applying the same to any other purpose.

§6. CERTAIN PROPERTY-RELATED COVENANTS.

(a) Maintenance. Until the Debt is paid in full, and the Loan Documents released and discharged, Borrower will keep the Mortgaged Property in good order and condition, and do all necessary Maintenance. All Maintenance shall be equal in quality and class to the original work. The standard for Maintenance required shall be that which is appropriate for facilities and buildings of similar construction and class, provided that Borrower shall in any event do all Maintenance necessary to avoid any structural damage or injury to the Improvements, to comply with all Legal Requirements and to keep each of the Improvements in a proper condition for

their respective Permitted Uses. Borrower will not permit any condition to exist on any of the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

(b) Inspection by Agent. Without notice to Borrower, but subject to the rights of tenants under their respective occupancy leases, Agent and Agent's representatives may enter the Mortgaged Property at reasonable times to inspect the same; provided, however, Agent shall have no obligation to make any such inspections nor any responsibility to Borrower or any Person, for any deficiency in construction or other problems which may be revealed by any such inspection, whether or not discovered by Agent. If any Event of Default occurs, Agent may, at its option, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Agent shall not be liable for any such entry upon the Mortgaged Property except in the event of intentional misconduct by its agents or employees. Agent shall use reasonable efforts to assure that such inspections and entry do not unreasonably interfere with any tenant's use of the Mortgaged Property.

(c) Compliance Required. Borrower shall promptly comply with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting any of the Mortgaged Property. Borrower will not make any application to any Governmental Authority for a change in zoning affecting any of the Mortgaged Property, nor will Borrower consent to any such change, without the prior written consent of Agent.

(d) Conditions to Permitted Changes. Borrower shall not make any changes or alterations in or to the Improvements without the prior written consent of Agent in each instance.

§7. EVENTS OF DEFAULT. An "Event of Default" shall exist if any one or more of the following events shall occur and be continuing:

(a) any sum of money coming due under the Note, whether principal, interest, late charges, or otherwise, is not paid when due;

(b) any sum of money coming due under this Loan Agreement or under any of the other Loan Documents (other than the Note) is not paid when due and such default continues for a period of five (5) days after written notice thereof from Agent to Borrower;

(c) there shall at any time exist a default or an "Event of Default" under the Mortgage or any other Loan Document (other than this Loan Agreement), and such default shall continue beyond the applicable period of notice and opportunity to cure, if any;

(d) any representation or warranty made by or on behalf of Borrower or in the Mortgage or any other Loan Document or in any certificate, financial statement or other document furnished to Agent pursuant to the provisions hereof or of any other Loan Document, shall prove to have been false or misleading in any material respect when made or when deemed to have been made hereunder;

(e) Borrower shall assign or attempt to assign this Loan Agreement or its right to receive any Loan proceeds hereunder;

(f) the entry of any lien or encumbrance against any of the Mortgaged Property, except for Permitted Encumbrances, subject to Borrower's right to contest Liens as provided in §10(q) hereof;

(g) a default shall occur under any Lien upon any of the Mortgaged Property, if the effect of such default is to cause, or (immediately or upon the giving of notice or passage of time, or both) to permit the holder or holders (or a trustee on behalf of such holder or holders) of the indebtedness secured by such Lien to cause, the indebtedness secured by such Lien to become due prior to its stated maturity or to cause any of the Mortgaged Property to be subject to sale to foreclose or enforce such Lien;

(h) the occurrence of any Transfer without Agent's written consent;

(i) a "Casualty" (as defined in the Mortgage) shall occur which causes damages in excess of \$4,500,000 to the Improvements.

(j) insurance on any of the Mortgaged Property is not provided or maintained, or evidence of such insurance is not delivered by Borrower to Agent, as required by the Mortgage;

(k) the legal existence of the City or WEDA shall terminate for any reason;

(l) if (x) Borrower shall default in the performance or observance of or compliance with any covenant, agreement, condition or provision contained in (a) this Loan Agreement and not otherwise specified in this §7, or (b) contained in the Settlement Agreement of even date herewith among Borrower, MD Westminster 1st Tract, LLC, MD Westminster 2nd Tract, LLC, and MD Westminster Parcels LLC or (y) Borrower shall default under any of the other Loan Documents and such default is not specifically defined as an "Event of Default" under such other Loan Document, and such default shall not be cured within 15 days after notice thereof to Borrower; provided, that if such default is of such a nature that it can be cured but not by the mere payment of money, and not within such 15 day period, then Borrower shall have such additional time as may be required to cure the same (but in no event extending more than 30 days after such notice of default is given to Borrower), if Borrower commences to cure it within said 15 day period (and gives notice to Agent of Borrower's intention to cure it), and prosecutes such cure with diligence and continuity to completion;

(m) if any default by Borrower shall occur under any Lease or under the Reciprocal Easement Agreement and not be cured within any applicable cure period provided in such Lease.

(n) REMEDIES UPON AN EVENT OF DEFAULT. Upon the occurrence of an Event of Default, in addition to any banker's lien rights, rights and remedies available to Agent under law,

equity, the Note and/or any other Loan Document including the right to declare all the outstanding principal balance under the Note, together with all accrued interest and other sums due under the Note and Loan Documents, immediately due and payable.

§8. MISCELLANEOUS.

(a) No Broker. Borrower represents that no broker was involved in procuring the Loan or in connection with the transactions contemplated hereby and shall indemnify and save Agent and Lenders harmless from and against any and all claims for any brokerage commission arising out of the making of the Loan or the transactions contemplated hereby. Borrower's obligations under this §8(a) shall survive the payment of the Note.

(b) Estoppel Certificate. Borrower, within three days upon request in person or within seven (7) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Agent setting forth the unpaid amount of the Loan (including principal, interest, and otherwise), and stating either that no offsets or defenses exist against the obligation to pay such unpaid amount of the Loan, or if such offsets or defenses are alleged to exist, the nature and extent thereof, and containing such other matters as Agent shall reasonably request.

(c) Lost Note. If either of the two notes constituting the "Note" shall be mutilated, destroyed, lost or stolen, Borrower will deliver to Higbee or MD Lender, as applicable, in substitution therefor a new promissory note containing the same terms and conditions as the lost note with a notation thereon of the unpaid principal and accrued but unpaid interest. Borrower shall be furnished with reasonably satisfactory evidence of the mutilation, destruction, loss or theft of such note, and also such security or indemnity as may be reasonably requested by Borrower.

§9. AGREEMENTS CONCERNING AGENT.

(a) Appointment and Authorization. MD Lender and Higbee each hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any such other Loan Document, together with such powers as are reasonably incidental thereto. Lenders (i) authorize Agent to execute, deliver and perform each of the Loan Documents to which such Agent is or is intended to be a party and (ii) agree to be bound by all of the agreements of Agent contained in the Loan Documents.

(b) No Implied Fiduciary Duties. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities except those expressly set forth herein and in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

Without limiting the generality of the foregoing sentence, the use of the term “Agent” in this Agreement is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such terms are used merely as a matter of market custom, and are intended to create or reflect only a relationship between independent contracting parties.

(c) Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel, accountants, appraisers or other experts or advisors concerning all matters pertaining to such duties. Agents shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

(d) Limitation of Liability. Neither Agent nor any Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any Lender or any other Person for any recital, statement, representation or warranty made by the Borrower or any affiliate of the Borrower contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by any Agent under or in connection with, this Agreement or any other Loan Document, or for the value of or title to any collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. Neither Agents nor any Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document.

(e) Credit Decision. MD Lender and Higbee each acknowledge and agree that each of them has made an independent credit decision to make its portion of the Loan and has not relied on the other for underwriting, documentation or other advice or support in connection with this Agreement or the transactions arising in connection herewith.

(f) Receipt of Payments. MD Lender and Higbee each hold a separate Note made by Borrower for one-half of the Loan. MD Lender and Higbee shall each receive direct payments from the Borrower. Although the Borrower is obligated to make equal payments to MD Lender and Higbee Lender, should Borrower fail to do so or should either MD Lender or Higbee ever receive more than 50% of all payments made by Borrower and all proceeds from the collateral for the Loan, then the Lender receiving the excess proceeds shall immediately make payment to the other Lender of the amount required to restore each Lender to a 50% share of all payments and proceeds.

(g) Indemnity. The Lenders shall indemnify upon demand Agent and the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), *pro rata* in accordance with the aggregate principal amount of the Loans held by such Lender, from and against any and all Indemnified Liabilities; provided,

however, that no Lender shall be liable for the payment to any Agent or the Agent-Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct.

(h) Cooperation of Lenders. Lenders hereby acknowledge and agree that although each of them holds its own separate note (collectively constituting the Note) the Loan is a unified loan to be enforced by the actions of the Agent and that neither Lender has any priority or preference to receipt of payment or proceeds of collateral. In the event of a foreclosure of the Mortgage and the acquisition of the Mortgaged Property, the Lenders shall cooperate to form an entity to own the foreclosed collateral in equal shares.

(i) Successor Agent. Upon the Agreement of MD Lender and Higbee, a successor Agent may be designated at any time. Such successor Agent shall have all of the rights and duties of Agent under this Agreement and the Loan Documents as if it were the original Agent hereunder.

(j) Taking of Action after Event of Default. Agent shall not take any action to institute a foreclosure upon collateral or exercise any other right or remedy under the Loan Documents unless it receives joint written instructions from MD Lender and Higbee to do so.

§10. PROVISIONS APPLICABLE TO ALL LOAN DOCUMENTS. The provisions of this §10 shall be applicable to this Loan Agreement, and shall also be applicable to and deemed incorporated into each of the Loan Documents which incorporate this §10 by reference.

(a) Notices. All notices, demands, requests and consents required under this Loan Agreement or any of the other Loan Documents, unless telephonic notice or notice by facsimile is expressly provided for, shall be in writing, and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other nationally recognized overnight delivery service; or (d) if sent by facsimile transmission, confirmed by certified or Registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender, and addressed to the appropriate party or parties at their respective addresses, or at such other address or addresses as any party hereto may hereafter designate for itself by written notice to each other party to the Loan Documents. Notices, demands and requests hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three (3) days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission, with confirmation by certified or registered mail, on the date such facsimile transmission is sent if electronic confirmation of receipt is received by the sender.

(b) Revival of Liability. If any payments or proceeds received by a Lender hereunder, or under any other Loan Document, are subsequently invalidated, declared to be

fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Agent.

(c) Proceedings, Etc. All proceedings taken in connection with the transactions provided for herein, including without limitation the appraisals and documents required or contemplated by this Loan Agreement or any of the Loan Documents, the persons responsible for the execution and preparation thereof, all insurers and policies of insurance required hereby or by any of the Loan Documents, shall be satisfactory in form, scope and content and all other respects to Agent.

(d) No Third Party Rights. Nothing in this Loan Agreement or in any of the Loan Documents, whether express or implied, shall be construed to give to any person other than the parties hereto or the parties to the Loan Documents any legal or equitable right, remedy or claim under or in respect of this Loan Agreement or any other Loan Document, which is intended for the sole and exclusive benefit of the parties hereto.

(e) Amendments. No provision of this Loan Agreement or of any of the other Loan Documents shall be changed, altered, modified, waived, discharged, terminated or released, except by an instrument in writing signed by the party against whom enforcement of the change, alteration, modification, waiver, discharge, termination or release is sought.

(f) No Waiver, Etc. No failure on the part of Agent to exercise, and no delay in exercising, any right, power or remedy hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein and in any other Loan Documents shall be cumulative and not exclusive of any remedies provided by law, or of any other remedies provided herein or in any of the other Loan Documents.

(g) Expenses. Borrower shall promptly pay upon request all actual and reasonable costs and expenses incurred by Agent, including actual and reasonable attorney's fees, together with interest thereon at the Default Rate from the tenth (10th) day after demand by Agent for the payment thereof, in connection with:

(1) all costs of collection (including to the extent not prohibited by law, reasonable attorney's fees) if default is made in the payment of the Loan or any other sums payable to Agent under the Loan Documents or if any Event of Default shall occur;

(2) any action, proceeding, litigation or claim instituted or asserted by or against Agent, or in which Agent becomes engaged, wherein it becomes necessary in the opinion of Agent to protect Agent's interests in the Mortgaged Property or the security afforded by any of the Loan Documents, or to defend or uphold the Lien of the Mortgage, or the validity or

effectiveness of any assignment of any leases, rents, claims, awards, payments, insurance policies or any other right or property conveyed, encumbered or assigned by Borrower to Agent under any of the Loan Documents, or the priority of any of the same;

(3) the collection and/or enforcement of any of the Debt and/or Obligations, including realization upon any of the Mortgaged Property or other security for any of the Debt or Obligations; and

(4) the collection and application of any insurance proceeds and Condemnation Awards.

All of Borrower's obligations under this §10(g) shall survive the payment of the Note, the termination of this Loan Agreement and any release of the Mortgage. All such expenses and costs, with interest thereon at the Default Rate, shall be added to and become part of the indebtedness and shall be secured by each of the Loan Documents, including the Mortgage.

(h) Application of Moneys. Whenever in the Note, this Loan Agreement, or any of the other Loan Documents Agent is to apply, or shall elect to apply, any sum of money to payment of any of the Debt, or to performance of any of the Obligations, Agent and the Lenders may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Agent and the Lenders may elect, unless a different order of priority is required by non-waivable applicable law.

(i) Governing Law. This Loan Agreement shall be construed in accordance with and governed by the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other state) of the State of Colorado.

(j) Successors and Assigns. Each of the Loan Documents, including this Loan Agreement, shall be binding upon and inure to the benefit of the parties to such Loan Document and their respective heirs, personal representatives and successors, any assigns of Lenders, and any assigns of Borrower permitted under the Loan Documents.

(k) Multiple Counterparts. Each of the Loan Documents, including this Loan Agreement, may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which when taken together shall constitute a single counterpart instrument. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

(l) Provisions Severable. If any provision of the Loan Documents, including this Loan Agreement, or application thereof to any person or circumstances shall, to any extent, or for any reason, be held invalid or unenforceable, the remainder of such Loan Document or the application of

such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Loan Document shall be valid and be enforced to the fullest extent permitted by law.

(m) Agent Approvals and Consents. Except as otherwise expressly stated in any of the Loan Documents, with respect to any matters which Agent shall have the right to approve, consent to, be satisfied with respect to, exercise its judgment with regard to determine or calculate, under any of the Loan Documents, including this Loan Agreement, the decisions of Agent with respect to such matters shall be made in the sole discretion of Agent exercised in a commercially reasonable manner and subject to such conditions as Agent may reasonably require. The immediately preceding sentence shall not apply to the Agent's decision to take actions following an Event of Default, which shall be made in the Agent's sole discretion, but subject to the rights of the Lenders to direct the Agent as provided in this Agreement.

(n) Time of Essence. Time is of the essence with respect to all obligations of Borrower under this Loan Agreement and under any of the Loan Documents.

(o) Other Interpretive Provisions. As used herein, and as used in each of the other Loan Documents, the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein"; and (iv) "any of" shall mean all or any part of or interest in that with respect to which such phrase is used. The headings and captions in this Loan Agreement and in the other Loan Documents are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Loan Agreement or such other Loan Documents. Each of the parties have participated in the negotiation and preparation of this Loan Agreement and the other Loan Documents, with the advice of counsel, and this Loan Agreement and the other Loan Documents shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Loan Agreement or such other Loan Documents.

(p) Miscellaneous Provisions. Whenever used in this Loan Agreement or in any of the other Loan Documents, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Loan Agreement or of any of the other Loan Documents shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of the Agent in the Mortgaged Property, afford the Agent greater financial security in the Mortgaged Property and/or tend to assure payment of the Debt and performance of the Obligations in full, shall control. The granting of consent by Agent to any matter as to which such consent is required by the provisions of this Loan Agreement or of any of the other Loan Documents shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Borrower and Agent that such property be treated for all purposes

under this Loan Agreement and each of the other Loan Documents as real estate. If Borrower is ever more than one person (or entity), the obligations of Borrower hereunder and under the other Loan Documents are joint and several.

(q) Right to Contest. After prior written notice to Agent, Borrower may contest, in good faith and by appropriate legal proceedings timely commenced and diligently prosecuted with continuity to completion, the validity or amount of any mechanic's or materialmen's Lien, provided that:

(1) no Event of Default, nor any event or circumstance which, with the giving of notice or passage of time or both would constitute an Event of Default shall exist;

(2) Borrower or such owner shall provide to Agent such cash or other security assuring payment of the Lien contested, with interest and penalties in amounts satisfactory to Agent, as Agent may request;

(3) Such contest operates as a stay of or prevents enforcement of any Lien (or any judgment based thereon) against the Mortgaged Property;

(4) Borrower shall pay all fees and expenses of Agent reasonably incurred in connection with any such contest or proceeding, including without limitation reasonable attorney's fees and expenses;

(5) Agent shall have the right to pay or require payment of any such Lien at any time when Agent reasonably believes that continuation of such contest or failure to pay such Lien could jeopardize or impair the value or safety of Agent's security; and any amount so paid by Agent shall be added to the Debt, shall bear interest at the Default Rate until paid, and shall be secured by the Mortgage; and

(6) If such contest is terminated adversely to the Borrower or discontinued, Borrower shall immediately pay such Lien.

IN WITNESS WHEREOF, Borrower, Agent and Lenders have duly executed this Loan Agreement as of the day and year first above written.

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

"BORROWER"

[Add signature blocks appropriate to the following:]

"MD LENDER"

"AGENT"

"HIGBEE"

This instrument prepared by:
John C. Hickey, Esq.
Lewis, Rice & Fingersh
One Petticoat Lane, Suite 500
1010 Walnut
Kansas City, Missouri 64106
(816) 421-2500

PURCHASE MONEY DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS PURCHASE MONEY DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING (as the same may be amended or supple-
mented at any time, the "Deed of Trust") is made as of _____, 2011, by and among:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal
authority, having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, as
grantor; AND

THE PUBLIC TRUSTEE OF JEFFERSON COUNTY, COLORADO, as trustee;

FOR THE BENEFIT OF:

_____, as Agent for MD Lender and Higbee, with Agent having an address
at _____, as beneficiary.

RECITALS

A. Certain capitalized terms used in these Recitals and elsewhere herein are defined
in §19.7 of this Deed of Trust. Other terms are defined throughout the text of this Deed of Trust
or, if not defined herein, are used herein as defined in the Loan Agreement.

B. Borrower has requested that Lenders make the Loan to Borrower, as purchase
money financing for Borrower's acquisition of the Mortgaged Property.

C. Lenders will not make the Loan unless Borrower grants this Deed of Trust to
Trustee for the benefit of Agent as security for payment of the Debt and performance of the
Obligations, and Borrower is willing to do so.

GRANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of Lender's agreement to make the Loan secured hereby upon and subject to the terms of the Loan Documents, and of the payment of ten dollars (\$10.00) and other good and valuable consideration given by Lenders to Borrower, the receipt and sufficiency of which are hereby acknowledged by Borrower, at all times until the Debt is fully paid and the Obligations fully performed, Borrower hereby acts, and covenants, promises and agrees with Trustee, Agent and Lenders, as follows:

1. GRANTING CLAUSES

1.1. Grant of the Real Estate Security. Borrower, to secure the payment of the Debt and payment and performance of the Obligations, hereby grants, bargains, sells, mortgages, warrants, assigns, conveys and transfers to the Trustee, in trust with power of sale, all of the following described property:

(a) The Land, together with all of Borrower's right, title and interest, if any, in and to: the Improvements; the easements, rights of way, privileges, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances belonging or appertaining to the Land; the streets and ways adjacent to the Land; all reversions and remainders pertaining to the Land; and all air rights, development rights, water rights (including but not limited to, conditional water rights, ditch rights, ditch stock, pipeline well, spring and reservoir rights whether or not adjudicated or evidenced by stock or shares, or evidenced by any well or other permit; all rights with respect to noncontributory ground water underlying the Land; any permit to construct any water well; all water and sewer taps; and all of Borrower's right, title and interest under any decreed or pending plan of augmentation or water exchange plan) and mineral rights appurtenant or belonging to the Land or relating to the Land; and

(b) The Fixtures, and

(c) All of the Borrower's right title and interest to its leasehold estates under the Ground Leases and any and all other benefits thereof; and

(d) All of Leases and the Rents and all the other benefits of any of the Land, Improvements and Fixtures; and

(e) All proceeds of the conversion, voluntarily or involuntarily, of any of the property described in this §1.1 into cash or liquidated claims, including proceeds of insurance and Condemnation Awards.

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, his/her/its successors and assigns, forever.

UNDER AND SUBJECT to Permitted Encumbrances.

IN TRUST HOWEVER, for the purpose of securing in such order of priority as Agent shall elect, the payment of the Debt and the performance of the Obligations, in accordance with their respective terms.

1.2. Grant of Security Interest and Assignment. Borrower, to secure payment of the Debt and payment and performance of the Obligations, hereby transfers and assigns to the Trustee and to Agent, and grants to the Trustee and the Agent a security interest under the Code in and to, the following described property, whether now owned or hereafter acquired by Borrower:

(a) All of the Fixtures and all other property described in §1.1 thereof which, under any applicable law, may be deemed to be personal property or fixtures, the creation and perfection of a lien on which is governed by the Code;

(b) All of the Intangibles;

(c) All of the Collateral; and

(d) All the proceeds of any of the property described in this §1.2.

This Deed of Trust creates a security interest in the Personal Property Security, and shall constitute a Security Agreement under the Code.

1.3. Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns, transfers, pledges, grants a lien upon and encumbers in favor of Agent all of the Leases and Rents, as security for the prompt and timely payment of the Debt and performance of the Obligations. This assignment is in addition to any absolute assignment made pursuant to any separate lease assignment. Agent shall apply any amounts received pursuant to this assignment to the payment of the Debt, the performance of the Obligations, and/or to the operation and Maintenance of the Mortgaged Property, in such order as Agent may elect, without regard to the adequacy of the security or the solvency of the Borrower. Notwithstanding such assignment, Agent hereby grants to Borrower a revocable license to collect and retain the Rents for Borrower's own account, until an Event of Default shall occur; but upon occurrence of any Event of Default, the right herein granted to Borrower to collect the Rents shall at Agent's option, terminate. Borrower shall apply any Rents collected in accordance with the terms of the Loan Agreement. This assignment of Rents to Agent is intended to be an absolute assignment from Borrower to Agent and not merely the passing of a security interest. The Rents are hereby assigned absolutely by Borrower to Agent subject only to Borrower's license to collect such amounts prior to the occurrence of any Event of Default.

Notwithstanding anything seemingly to the contrary contained herein or in any of the other Loan Documents, Borrower may enter into or execute any Lease of any of the Mortgaged Property without the prior written approval of such Lease by Agent provided that such Lease shall be subordinate in all respects to this Deed of Trust.

Borrower hereby represents and warrants to Agent: (A) That Borrower has full right and power to assign the Leases and Rents to Agent, and has not executed any prior and now existing assignment of any of its rights under any Lease or to any portion of the Rents to any person other than Agent; and (B) That Borrower has not done any act or thing which might prevent Agent from enjoying the benefits of the Leases and Rents assigned hereby.

Borrower hereby covenants, promises and agrees that Borrower will: (i) Observe, fulfill and perform each and every condition, covenant and provision of the Leases to be fulfilled or performed by Borrower; (ii) Enforce at the sole cost and expense of Borrower the performance or observance of each and every material covenant and condition of each of the Leases; (iii) At the sole cost and expense of Borrower, appear in and defend any action growing out of or in any manner connected with any of the Leases, Rents or the obligations or liabilities of Borrower or any party thereunder; (iv) From time to time, upon request by Agent, execute and deliver to Agent, acknowledge when appropriate and record or file in the public records when appropriate, any and all writings, including without limitation further assignments of any Lease or Leases, financing statements and other writings that Agent may deem necessary or desirable to carry out the purpose and intent of this assignment, or to enable Agent to enforce any right or rights hereunder; and (v) From time to time, upon request by Agent, furnish to Agent a true copy of any Lease.

Borrower will not, without the prior written consent of Agent in each instance: (A) Modify or alter any of the terms or provisions of any of the Leases; (B) Anticipate Rents for more than one calendar month prior to the accrual thereof under the terms of the Leases; (C) Waive, or release any party under any of the Leases; (D) Pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents; (D) In any other manner impair the value of the Leases or Rents or the security of the assignment thereof as provided herein; or (E) Execute any Lease except for actual occupancy by the lessee thereunder. Notwithstanding the foregoing, Borrower may terminate any of the Leases or Ground Leases without the prior written consent of Agent, but Borrower shall provide notice to Agent of such termination in each instance.

1.4. Fixture Filing. From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all the Fixtures. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a
Colorado urban renewal agency.

Address: as set forth above.

(b) Name and Address of Secured Party:

Address: as set forth above.

(c) Borrower's organizational identification number is _____.

(d) This document covers goods which are or are to become, or may be or become, fixtures. This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit A. Borrower is the record owner of the real estate.

2. COVENANTS AS TO PAYMENT, PERFORMANCE AND TITLE; WARRANTIES

2.1. Payment of Note. Borrower and/or the City shall pay to Higbee and MD Lender the entire Debt, punctually as and when the same shall become due, without offset, counterclaim or defense. Borrower will fully and faithfully observe and perform all of the provisions of the Loan Documents. The Loan Documents are incorporated herein by this reference.

2.2. Defeasance. If all the Debt shall be paid and the Obligations shall be performed, all at the times and in the manner provided in the Loan Documents, then the Trustee shall release or reconvey to Borrower all of the Mortgaged Property and shall release this Deed of Trust of record.

2.3. Warranty of Title. Borrower warrants that: Borrower has taken no action to impair the title conveyed to Borrower concurrently with the execution of this Deed of Trust. Borrower shall not, without the prior written consent of Agent, install in or locate on the Mortgaged Property any equipment or fixtures which are subject to any Lien other than Permitted Encumbrances. None of the Rents will be assigned except to Agent as security for any of the Debt and/or Obligations.

2.4. Agreement to Defend. Borrower shall preserve Borrower's title and interest in the Mortgaged Property as described in §2.3, subject only to Permitted Encumbrances.

2.5. Additions to the Mortgaged Property. All right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, Borrower, or constructed, assembled or placed by Borrower on the Land, immediately upon such acquisition, release, construction, assembling or placement, and in each such case, without any further act by Borrower, shall become subject to the lien and security interest of this Deed of

Trust as though they were now owned by Borrower and specifically described in the granting clauses hereof.

2.6. Easements Outside the Land. In the event any easements or rights in common or otherwise (other than revocable rights) in any lands not covered by the lien of this Deed of Trust are granted as an appurtenance to the use and operation of any of the Mortgaged Property, including without limitation the easements and rights created by the Reciprocal Easement Agreement, then this Deed of Trust shall attach to and be a lien on such easements and rights in such other lands, and the lien hereof spread to cover such easements and rights with the same force and effect as though specifically described in the granting clauses hereof. Borrower shall not amend or terminate the Reciprocal Easement Agreement without the prior written consent of Agent.

2.7. Further Assurances. Promptly upon request of Agent, Borrower shall do all acts and things, including but not limited to the execution and delivery of any further deeds, conveyances, mortgages, assignments, financing statements, continuation statements, and further assurances, deemed necessary or desirable by Agent to establish, confirm, maintain and continue the Lien and security interest created and intended to be conferred hereby and the priority thereof. Borrower hereby appoints Agent as attorney-in-fact for Borrower to execute, deliver and file any and all such documents, writings, and other instruments as Agent may require, in order to perfect and maintain the priority of such Lien and security interest.

3. COVENANTS AS TO IMPOSITIONS

3.1. Payment of Impositions. Prior to the date on which any interest or penalties shall commence to accrue thereon, Borrower will pay and discharge all Impositions.

3.2. Evidence of Payment. Within thirty (30) days after the date when any Impositions which are or could become a Lien on any part of the Mortgaged Property would become delinquent, Borrower will furnish to Agent official receipts of the appropriate Governmental Authorities to which the Impositions are payable, or other evidence reasonably satisfactory to Agent evidencing the payment thereof. The certificate, advice or bill of the appropriate official designated by law to receive payment of any Imposition indicating non-payment of such Imposition shall be conclusive evidence (as between Agent and Borrower) that such Imposition is due and unpaid, and Agent may rely thereon.

4. INSURANCE

4.1. INSURANCE REQUIRED. Borrower will obtain, keep in force and maintain the following insurance coverages at all times until this Deed of Trust is satisfied of record:

(a) Property Insurance. At all times until this Deed of Trust has been satisfied of record, Borrower shall maintain coverage for property claims ("Commercial Property

Insurance”) on the Improvements and Fixtures through the Colorado Intergovernmental Risk Sharing Agency and/or through a commercial insurance company having a rating of A-, VII or better by the A.M. Best Company in an amount not less than the full replacement cost of the Improvements and Fixtures.

(b) Liability Insurance. At all times until this Deed of Trust has been satisfied of record, Borrower shall maintain through the Colorado Intergovernmental Risk Sharing Agency and/or a commercial insurance company having a rating of A-, VII or better by A.M. Best Company a CGL Policy, with coverage on an "occurrence" basis, with a "per occurrence" limit of not less than \$5,000,000. Agent shall be named as an additional insured with Borrower on all liability policies. All policies required by this §4.1(b) shall name Agent as an additional insured under an endorsement satisfactory to Agent.

4.2. REQUIREMENTS RE: INSURING COMPANIES, POLICIES, MORTGAGEE CLAUSE, COVERAGE INCREASES, DEDUCTIBLES, ETC. All policies of insurance required herein: (a) shall be issued by and maintained with Colorado Intergovernmental Risk Sharing Agency and/or a commercial insurance company having a rating of A-, VII or better by A.M. Best Company; (b) include a provision naming Agent, its successors and assigns as their interests may appear: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee on all property insurance policies under a standard non-contributory mortgagee clause (or Agent's loss payable clause), and (3) as the Agent's loss payee on all loss of rents or loss of business income insurance policies. Each insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Agent prior to any policy reduction or cancellation for any reason other than non-payment of a premium and at least ten (10) days' prior written notice to Agent prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Agent in accordance with the terms of such policy notwithstanding any act, omission or negligence of Borrower which might otherwise result in forfeiture of such insurance; and (iii) shall waive all rights of subrogation against Agent. Such policies shall be evidenced by ACORD certificates so identifying the Agent, in form and substance satisfactory to Agent.

4.3. AGENT NOT RESPONSIBLE FOR INSURANCE. Agent, by approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, shall not incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment of lawsuits and expenses, and Borrower hereby expressly assumes full responsibility therefor and for any liability, if any, thereunder.

4.4. PROCEEDS ON FORECLOSURE. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property in extinguishment of the Debt, all right, title and interest of the Borrower in and to all proceeds of any insurance policies required hereby then in force shall pass to the purchaser or grantee.

4.5. PROOF OF LOSS; ADJUSTMENT OF CLAIMS. If any Casualty shall occur, Borrower shall promptly make proof of loss to the insurers; but Agent may itself make proof of loss if Agent gives written notice to Borrower electing to make such proof of loss. Borrower shall not adjust or compromise any claim under any insurance required hereby without the written consent of Agent.

4.6. DELIVERY OF POLICIES; RENEWALS. Borrower, as of the date hereof, shall deliver to Agent evidence that the insurance policies required hereby have been prepaid as required above and either duplicate originals of such policies, if required by Agent, or certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, and satisfactory to Agent. Borrower shall renew all such insurance and deliver to Agent certificates and policies evidencing such renewals at least thirty (30) days before any such insurance shall expire.

4.7. BLANKET POLICIES. Any insurance policies required hereby may be in the form of a blanket policy provided that the blanket policy must properly identify and fully protect the Mortgaged Property as if a separate policy were issued for full replacement cost (insurable value) thereof, without reduction for depreciation, at the time of loss and otherwise meet all of Agent's insurance requirements set forth in this §4. Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Mortgaged Property or by any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Mortgaged Property to be insured by a separate, single-property policy.

4.8. MAINTENANCE OF OTHER INSURANCE. Borrower shall not obtain insurance for the Mortgaged Property in addition to that required by Agent and contributing, in the event of loss, with any insurance required hereby, without the prior written consent of Agent, which consent will not be unreasonably withheld provided that: (a) Agent is a named insured on such insurance, (b) Agent receives complete copies of all policies evidencing such insurance, and (c) such insurance complies with all of the requirements set forth herein.

4.9. AGENT'S RIGHT TO INSURE. If Borrower fails at all required times to maintain the insurance coverages required hereby, or fails to deliver to Agent the policies and evidences of insurance and renewals thereof required hereby, or if Agent receives notice that any insurance required hereby will be cancelled, Agent shall have the right to obtain such insurance and any sums expended by Agent in obtaining such insurance shall be due and payable to Agent on demand, shall be a part of the Obligations, and shall be secured hereby.

5. MAINTENANCE AND REMOVAL; PERMITTED USES

5.1. Permitted Removal; Waste. Except as permitted by Section 9, Borrower will not cause or permit any Improvement to be removed or demolished. No Fixture shall be removed, severed or destroyed, without the prior written consent of Agent, unless simultaneously with, or

prior to, any such permitted removal such Fixture has been replaced with another Fixture of at least equal value. By such removal and replacement Borrower shall be deemed to have subjected such Fixtures to the Lien of this Deed of Trust. Borrower will not abandon, or cause or permit any waste to, the Mortgaged Property.

5.2. Maintenance. Throughout the term of this Deed of Trust, Borrower will do all necessary Maintenance required to keep the Mortgaged Property in the same condition as existed when the Mortgaged Property was conveyed to Borrower , and Borrower shall in any event do all Maintenance necessary to comply with all Legal Requirements. Borrower will not permit any condition to exist on the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

5.3. Inspection of Agent. Without notice to Borrower, Agent and Agent's representatives may enter the Mortgaged Property at reasonable times to inspect the same. If any Event of Default occurs, Agent may, at its option, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Agent shall not be liable for any such entry upon the Mortgaged Property.

5.4. Permitted Uses. Borrower will use the Mortgaged Property solely for Permitted Uses.

6. COMPLIANCE WITH LAWS, ORDINANCES, ETC.

Borrower shall promptly comply with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting the Mortgaged Property. Borrower will not make any application to any federal, state or local Governmental Authority for a change in zoning affecting the Mortgaged Property, nor will Borrower consent to any such change, without the prior written consent of Agent.

7. CHANGES AND ALTERATIONS BY BORROWER

Borrower shall not have the right to make changes and alterations in or to the Improvements without the prior written consent of Agent except as provided in Section 9 pertaining to restoration or demolition after a Casualty.

8. MECHANICS' AND OTHER LIENS

Borrower will pay, from time to time when the same shall become due, all claims and demands of contractors, subcontractors, architects, mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a Lien on any of the Mortgaged Property. Borrower will not create or permit to accrue or suffer to exist any Lien, except Permitted Encumbrances, upon any of the Mortgaged Property, including the Leases and Rents, and shall promptly cause any other Lien whatsoever to be paid and discharged. Borrower shall pay all Liens included in Permitted Encumbrances in accordance with their terms, when and as the same become due.

9. DAMAGE OR DESTRUCTION

9.1. Notice of Casualty; Covenant to Rebuild. If any Casualty shall occur, Borrower shall promptly give written notice thereof to Agent, describing the damage and the Casualty. Regardless of the damage resulting from any Casualty, and whether or not the Net Insurance Proceeds shall be sufficient or made available for the purpose, Borrower shall promptly either (i) commence the Restoration, and prosecute it with diligence and continuity to completion or (ii) demolish the damaged portion of the Improvements so that such damaged Improvements shall comply with all laws and regulations of all governmental authorities in effect as of the date of this Deed of Trust.

9.2. Application of Proceeds. Insurance proceeds not to exceed the outstanding balance of the Debt shall be paid to Agent and applied by Agent first to payment of the actual costs, fees and expenses, if any, incurred by Agent in connection with proof of and adjustment of the loss and settlement with the insurance company. The Net Insurance Proceeds held by the Agent shall be applied by Agent: (a) to the payment of the Debt and/or performance of the Obligations; or (b) at Agent's option, to the payment of any of the cost of the Restoration.

9.3. Disbursement of Proceeds. If Net Insurance Proceeds are to be applied to the Restoration, Agent shall hold such Net Insurance Proceeds and advance the same for costs of the Restoration from time to time as the Restoration progresses. Such funds will be advanced upon written request of Borrower, and upon Borrower's compliance with such requirements as to the disbursement thereof as Agent shall impose.

10. CONDEMNATION

10.1. Notice of Condemnation; Participation. Borrower shall give Trustee and Agent immediate notice of any actual or threatened Condemnation. In the event that any of the Mortgaged Property shall be taken in Condemnation proceedings, Agent may participate in such Condemnation proceedings. Borrower shall not adjust, contest, accept, reject or compromise any proposed Condemnation Award without approval of Agent. Agent may collect the Condemnation Award and endorse any drafts therefor. All Condemnation Awards shall be deposited with Agent. Borrower will execute any and all further documents that may be required in order to facilitate collection of any Condemnation Award and the payment of any Condemnation Award to Agent.

10.2. Condemnation. If a Condemnation shall occur, the Net Condemnation Award received by Agent shall, at the option of Agent, (i) be applied to the payment of the Debt and/or performance of the Obligations, or (ii) be held by Agent and applied and paid over toward the cost of Restoration, substantially in the same manner and subject to the same conditions as those provided in §9 hereof with respect to Net Insurance Proceeds and other monies.

10.3. Expenses of Collection. Trustee and Agent shall be entitled as a first priority to reimbursement out of any Condemnation Award for all reasonable costs and fees of, expenses

incurred by, and reimbursements to, the Trustee and Agent with respect to the determination and collection of any Condemnation Award.

11. EVENTS OF DEFAULT AND REMEDIES

11.1. Events of Default Defined. The occurrence of any "Event of Default" as defined in the Loan Agreement shall constitute an Event of Default under this Deed of Trust.

11.2. Remedies Upon an Event of Default.

(a) Acceleration of Debt. Upon the occurrence of an Automatic Acceleration Event of Default, the entire unpaid Debt (principal, interest and otherwise), shall automatically become immediately due and payable without notice or demand. Upon the occurrence of any other Event of Default, at Agent's option, the entire unpaid Debt (principal, interest and otherwise), shall become immediately due and payable without notice or demand.

(b) Other Remedies. Upon the occurrence of any Event of Default, Agent and/or Trustee may immediately undertake any one or more of the following:

(1) Foreclosure. Institute an action to foreclose this Deed of Trust, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the Mortgaged Property, and proceed thereon to final judgment and judicial sale or execution thereon for the entire unpaid balance of the Debt, including interest at the rates and pursuant to the methods of calculation specified in the Note, together with all costs of suit, interest at the Default Rate on any judgment obtained by Agent from and after the date of any judicial sale of the Mortgaged Property until actual payment is made to Agent of the full amount due Agent, and an attorneys' reasonable fee for collection, any usage or custom to the contrary notwithstanding.

(2) Entry. Agent personally, or by its agents or attorneys, to the extent permitted by applicable law, may enter into and upon any of the Mortgaged Property and may exclude Borrower and its agents wholly therefrom without liability for trespass, damages or otherwise and Borrower agrees to surrender possession to Agent on demand after the happening of any Event of Default. Upon such an entry, Agent may: (i) use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its agents or receivers and exercise all rights and powers of Borrower with respect thereto either in the name of Borrower or otherwise as Agent shall deem best; (ii) restore the Mortgaged Property; (iii) complete the construction of any Improvements under construction or renovation and in the course of such completion may make such changes in the contemplated or completed Improvements as Agent may deem desirable and may insure the same; and (iv) do all such Maintenance as to Agent may reasonably deem advisable. Agent shall be entitled to collect and receive all Rents, and after deducting the expenses of conducting the business thereof and of all necessary Maintenance and amounts necessary to pay for Impositions, premiums for insurance and other proper charges upon any of the Mortgaged Property, as well as just and reasonable compensation for the services of Agent and for all attorneys and agents properly engaged and employed by Agent, Agent shall apply the remaining Rents in such order as Agent may elect, to

the payment of the Debt and/or performance of the Obligations, and the payment of any other sums required to be paid by Borrower under any of the Loan Documents. Agent shall be liable to account only for Rents actually received by Agent.

(3) Receivership. If an Event of Default occurs and be continuing, Agent, as a matter of right upon *ex parte* application and without notice to Borrower or anyone claiming under Borrower and without regard to the then value of the Mortgaged Property or the solvency of Borrower or any other Person who may be liable to pay any of the Debt and/or perform any of the Obligations shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Borrower and each such Person shall be deemed to have waived such proof and Borrower and each such Person hereby irrevocably consents to such appointment and waives notice of any application therefor. Should Agent or any receiver collect Rents, the moneys so collected shall not be substituted for payment of the Debt nor can they be used to cure the Event of Default, without the prior written consent of Agent. Borrower hereby expressly consents to the appointment of a receiver for the Mortgaged Property upon the occurrence of any Event of Default, and waives any requirement for the posting of any bond or other security in connection with such appointment and such receiver, and for any hearing in connection with such appointment.

(4) Sale of personal property. Agent shall also have such rights and remedies in respect of any of the Personal Property Security and Fixtures as are provided by the Code and such other rights and remedies in respect thereof which Agent may have at law or in equity or under any of the Loan Documents, including the right to take possession of the Mortgaged Property wherever located and to sell all or any portion thereof at public or private sale, without prior notice to Borrower, except as otherwise required by law (and if notice is required by law, after 10 days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Agent in its sole discretion may determine. Agent shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by Agent in connection with such sale or collection, including reasonable attorney's fees and legal expenses, and second to the payment of the Debt and performance of the Obligations, and then to pay the balance, if any, as required by law. Upon the occurrence of any Event of Default Borrower, upon demand by Agent, shall promptly assemble any personal property and Fixtures included in the Mortgaged Property and make it available to Agent at a place to be designated by Agent which shall be reasonably convenient to Agent and Borrower. Both Borrower and Agent shall be eligible to purchase any part or all of such property at any such disposition.

(5) Power of Sale for the Mortgaged Property. Agent may elect to cause any of the Mortgaged Property to be sold as follows:

(A) Agent may proceed as if all of the Mortgaged Property were real property in accordance with §11.2(b)(5) hereof, or Agent may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land and Improvements without causing structural damage thereto as if the same were personal property

and dispose of the same in accordance with §11.2(b)(4), separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(B) Upon the occurrence of an Event of Default, Agent may file notice with Trustee declaring such default, violation, or breach and making its election and demand for sale in writing as provided by law and requesting that the Mortgaged Property be advertised for sale and sold in accordance with the laws of the State of Colorado. Upon receipt of such notice of election and demand for sale, Trustee shall cause a copy of the same to be recorded in the clerk and recorder's office of the county in which the Mortgaged Property is located, and thereupon Trustee shall sell and dispose of the Mortgaged Property at public auction, public notice having been previously given of the time and place of such sale at such place authorized by law and specified in such notice in accordance with the laws of the State of Colorado in a newspaper of general circulation at the time published in said county, together with such other notice, if any, as may then be required by law and shall issue, execute, and deliver a certificate of purchase, public trustee's deed, or certificate of redemption in the manner provided by law to the party entitled thereto. The public trustee's deed may be in the ordinary form of conveyance. Trustee shall, out of the proceeds of such sale, after first paying and retaining all fees, charges, and costs of making such sale, pay to Agent the then existing amount of indebtedness, including a reasonable sum for attorney's fees secured hereby and pay the surplus, if any, to Borrower, its successors and assigns or to such other party as may be entitled thereto by law, provided that it shall not be the obligation of Agent to see to the application of such funds. Agent may bid for and purchase the Mortgaged Property at the sale, and may credit the amount of any indebtedness secured hereby against the amount of Agent's bid. If a release of deed of trust is required, Borrower shall pay the costs and expense thereof. The purchaser at any foreclosure sale shall not be obligated to look to the application of the proceeds thereof. If the Agent should become the purchaser, it shall be entitled to credit any of the unpaid balance of the Debt against the amount of the purchase price. The purchaser at any sale or foreclosure sale hereunder may disaffirm any easement granted or Lease made in violation of any provision of this Deed of Trust, and may take the Mortgaged Property free from, and despite the terms of, such grant of easement or Lease. Borrower hereby expressly waives any right which Borrower may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto. In the event of a sale or other disposition of any of the Mortgaged Property, and the execution of a deed or other conveyance pursuant thereto, the recitals in such deed or conveyance of facts, such as default, the giving of notice of default and notice of sale, terms of sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. In case of any sale under this Deed of Trust by virtue of judicial proceedings, or under the power of sale, the Mortgaged Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Agent in its sole discretion may elect. Notwithstanding anything to the contrary contained herein, Trustee shall (to the extent permitted by applicable law) allocate or apply the proceeds of sale (including the amount of any credit bid) in such manner and in such priority as Agent may elect in its sole and absolute discretion.

(C) Agent may cause any such sale or other disposition to be conducted as soon as permitted under applicable law, or Agent may delay any such sale or other disposition for such period of time as Agent deems to be in its best interest. Should Agent desire that more than one such sale or other disposition be conducted, Agent may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Agent may deem to be in its best interest.

(D) Agent, at its option, may set aside any declared acceleration of maturity of the Note, whereupon the terms and provisions therein stated and the covenants, terms and conditions in this Deed of Trust shall revive and continue with the same force and effect as if such acceleration had not occurred.

(E) Upon the occurrence of an Event of Default hereunder, Agent in pursuance of the foregoing remedies, or in addition thereto, shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as Agent may think fit without impairing Agent's lien in, or rights to, any of such securities and without affecting the liability of any Person for the Debt.

11.3. Waivers and Releases.

(a) Consent to Jurisdiction, Venue, etc. Borrower hereby consents to the jurisdiction of the courts of the State in and for the county in which the Mortgaged Property is located with respect to any action, suit or other legal proceeding commenced by Agent pursuant to any of the Loan Documents, and hereby waives any right to transfer any such action to any other court.

(b) Waiver of Marshalling, etc. Borrower, for itself and its successors in title, hereby waives all rights at law or in equity to have the Mortgaged Property marshaled in the event of the foreclosure of this Deed of Trust. Borrower will not at any time insist upon, plead, or in any manner whatsoever claim or take any benefit or advantage of any present or future laws pertaining to the administration of the estates of decedents, exempting any of the Mortgaged Property from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, or providing for the valuation or appraisal of any of the Mortgaged Property prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court. Borrower hereby covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Agent, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

(c) Waiver of Notices. Borrower hereby waives all notices not herein elsewhere specifically required, of Borrower's default or of Agent's exercise, or election to exercise, any option or election under this Deed of Trust.

(d) Waiver of Personal Service. Borrower hereby waives personal service of process in any action or proceeding at any time commenced to enforce this Deed of Trust, and agrees that such process shall be deemed properly and adequately served if sent to Borrower at the address

provided in or pursuant to §12 hereof for the giving of notices to Borrower, by certified or registered mail, return receipt requested, in the manner provided in §12 hereof for the giving of notices to Borrower.

(e) Foreclosure Subject to Leases. In the event that Agent shall have the right to foreclose this Deed of Trust, Borrower authorizes Agent at its option to foreclose subject to the rights of any tenants, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be asserted by Borrower as a defense to any proceeding instituted by Agent to collect any of the Debt or any deficiency after foreclosure.

12. NOTICES

12.1. Addresses. All notices, demands, requests and consents required under this Deed of Trust shall be in writing, and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other overnight delivery service; or (d) if sent by facsimile transmission, confirmed by certified or registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender, and addressed if to Borrower at the Borrower's address hereinabove set forth, or if to the Trustee, at the Trustee's address hereinabove set forth, or if to the Agent, at the Agent's address hereinabove set forth, or at such other address or addresses as any party hereto may hereafter designate for itself by written notice to each other party hereto.

12.2. Manner of Delivery. Notices, demands and requests hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission, with confirmation by certified or registered mail, on the date such facsimile transmission is received by the Person to whom it is sent.

13. CERTAIN SECURITY AGREEMENT PROVISIONS

13.1. Status of Borrower. Borrower's exact legal name is correctly set forth at the end of this Deed of Trust. Borrower is an organization of the type specified in the first paragraph of this Deed of Trust. Borrower is incorporated in or organized under the laws of the Formation State. Borrower will not cause or permit any change to be made in its name, identity or corporate, limited liability company or partnership structure unless the Borrower shall have first notified the Agent in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by the Agent for the purpose of perfecting or protecting the lien and security interest of the Agent. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the

entire period of the existence of the Borrower) and will continue to be the address of the Borrower set forth at the end of the Deed of Trust (unless Borrower notifies the Agent in writing at least 30 days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in §1.4(c) of this Deed of Trust. Borrower shall promptly notify the Agent of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, the Borrower promptly shall notify the Agent of such organizational identification number.

13.2. Authorization to File Financing Statements; Power of Attorney. Borrower hereby authorizes the Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of the Borrower as authorized by applicable law, as applicable to all or part of the Mortgaged Property. For purposes of such filings, the Borrower agrees to furnish any information requested by the Agent promptly upon request by the Agent. Borrower also ratifies its authorization for the Agent to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this security instrument. Borrower hereby irrevocably constitutes and appoints the Agent and any officer or agent of the Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Borrower or in the Borrower's own name to execute in the Borrower's name any documents and otherwise to carry out the purposes of this §13.1, to the extent that the Borrower's authorization above is not sufficient. To the extent not prohibited by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

14. NON WAIVER, ETC.

14.1. Waiver Not Affecting Deed of Trust. No failure by Agent to insist upon the strict performance by Borrower of any of the provisions hereof shall be deemed to be a waiver of any of the provisions hereof, and Trustee and Agent, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Borrower of all of the provisions of this Deed of Trust. Neither Borrower nor any Person liable for the payment of any of the Debt or the performance of any of the Obligations, nor any Person giving security for any of the Debt or for the performance of any of the Obligations, shall be relieved of any of such respective obligations, nor shall any security given by any of them be released, nor the position of any subordinate lienholder be improved, by reason of: (a) any failure by Agent to comply with any request by Borrower or of any other Person so obligated to foreclose or otherwise enforce this Deed of Trust; (b) the release, regardless of consideration, of any of the security held for payment of any of the Debt and/or the performance of any of the Obligations; (c) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Agent extending the time of payment or modifying the terms of the Note or any of the Loan Documents; (d) any grant of forbearance or extension of time for the payment of any of the Debt or the performance of the Obligations; (e) Agent's acceptance of any other or additional security for the payment of any of the Debt or the performance of any of the Obligations; (f) Agent's

waiver of or failure to exercise any right granted herein or in any of the Loan Documents; (g) any changes hereafter made in any of the terms, covenants, conditions or agreements of this Deed of Trust or in any other Loan Document; (h) Agent's giving of consent to the filing of any map, plat, replat or condominium declaration affecting any of the Mortgaged Property; (i) Agent's giving of consent to the granting of any easement or other right affecting the Mortgaged Property; or (j) Agent's making or consenting to any agreement subordinating the lien hereof.

14.2. Right to Cure Defaults. If Borrower shall fail to fully and timely perform any of the Obligations, Agent shall be under no obligation to take action to correct such failures. However, at its option, Agent may take such action and expend such sums as Agent deems necessary to correct such failures and/or any consequences thereof. Such action or payment by Agent shall not constitute a waiver by Agent of the performance of said act, and Agent may treat Borrower's failure to perform such act as a default (and, upon expiration of any applicable grace period, an Event of Default) notwithstanding Agent's having undertaken (or completed) the performance of the act. Borrower will repay to Agent upon demand any amounts expended by Agent to correct each such failure and/or any consequences thereof, and all expenses of Agent in taking such action, with interest at the Default Rate from the incurring of such expense or the making of such payment, as the case may be. The payment of such amounts to Agent shall be secured by this Deed of Trust.

15. GENERAL COVENANTS

15.1. Estoppel Certificate. Borrower, within three (3) days upon request in person or within ten (10) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Agent setting forth the amount of the Debt then secured by this Deed of Trust, and stating either that no offsets or defenses exist against the Debt, or if such offsets or defenses are alleged to exist, the nature and extent thereof, and containing such other matters as Agent shall reasonably request.

15.2. Agent and Trustee Expenses. Borrower shall promptly pay upon request all expenses and costs incurred by Agent or Trustee, including reasonable attorney's fees, together with interest thereon at the Default Rate from the date of the payment by Agent or Trustee, in connection with:

(a) any action, proceeding, litigation or claim instituted or asserted by or against Agent and/or Trustee or in which Agent and/or Trustee becomes engaged, wherein it becomes necessary in the opinion of Agent and/or Trustee to protect Agent's or Trustee's interests in the Mortgaged Property or the security afforded hereby, or by any of the Loan Documents, or to defend or uphold the Lien of this Deed of Trust, or the validity or effectiveness of any assignment of any claim, award, payment, insurance policy or any other right or property conveyed, encumbered or assigned by Borrower to Trustee or Agent under this Deed of Trust, or the priority of any of the same;

(b) any further assurances requested by Agent under §2.7, or any other provision hereof, including all filing and recording costs and costs of searches;

(c) all taxes, fees and other assessments, including stamp taxes, if any, upon any documents or transactions contemplated by this Deed of Trust or in connection with the recording and filing of any Loan Document;

(d) the collection and/or enforcement of any Debt and/or Obligations, including the realization upon any of the Mortgaged Property or other security for any of the Debt or Obligations; and

(e) the collection and application of any insurance proceeds and Condemnation Awards.

All such expenses and costs, with interest thereon at the Default Rate as provided above, shall be added to and become part of the Debt and be secured by this Deed of Trust; provided, however, that in any action to foreclose this Deed of Trust or to recover or collect the sums due hereunder, the provisions of law and of this Deed of Trust relative to the recovery of costs, disbursements, commissions, allowances and attorneys' fees, shall prevail over any conflicting requirements of this §15.2. The provisions of this §15.2 shall survive payment of the Debt and performance of the Obligations and any release of, or reconveyance under, this Deed of Trust.

15.3. Amendments. No provision of this Deed of Trust shall be changed, altered, modified or released except by an agreement in writing signed by Borrower and Agent. No compliance with or failure to comply with any provision of this Deed of Trust shall be waived or excused except by a written instrument executed by Agent.

15.4. Subrogation. Agent shall be subrogated, notwithstanding their release of record, to any Liens, superior titles, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Property to the extent that the same are paid or discharged from the proceeds of the Loan or are otherwise paid by Agent.

15.5. Application of Moneys. Whenever in this Deed of Trust Agent is to apply, or shall elect to apply, any sum of money to payment of any of the Debt, or to performance of any of the Obligations, Agent may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Agent may elect, unless a different order of priority is required by applicable law.

15.6. Agent Not Liable; Indemnity. Neither Trustee, Lender nor Agent shall be responsible or liable in any way for any condition in or upon any of the Mortgaged Property (whether or not discovered by Agent or Lender), including any condition relating to the presence on the Mortgaged Property of any Hazardous Substance or any defects in any of the Mortgaged Property or any personal injury, death, damage to property, loss, cost, liability, damage or expense in any way arising out of or connected with the condition or maintenance of any of the Mortgaged Property or any construction or other work thereon, or Borrower's use and occupancy of the Mortgaged Property. For any such condition in or upon any of the Mortgaged Property which first arises after the date of this instrument, Borrower will indemnify, defend and hold

Agent, Lender and the Trustee harmless from and against all such liability and responsibility. The provisions of this Section 15.6. shall survive the payment of the Debt, performance of the Obligations, release of this Deed of Trust and the reconveyance of the Mortgaged Property for a period of three years from the date of such reconveyance of the Mortgaged Property.

15.7. Lease Priority. Each Lease hereafter made shall: (a) require the tenant to enter into an agreement with Agent, if Agent so requests, which will provide that, in the event of the sale of any of the Mortgaged Property under the power of sale herein contained, or under any judicial foreclosure hereof, or of a deed in lieu of foreclosure, such tenant will, upon the written request of any Person succeeding to the interest of Borrower as the result of said sale or deed, automatically become the tenant of any such successor in interest, without any change in the terms or other provisions of the Lease, and that said successor in interest shall not be bound by (i) any payment of rent for more than one (1) month in advance, (ii) any provision requiring the return of any security deposit or prepayment in the nature of security for the performance by said Tenant of its obligations under said Lease, or any provision entitling the Tenant to credit any such amounts to its obligations under its Lease, or (iii) any amendment or modification in the Lease made without the consent of Agent or any such successor in interest; and (b) require the tenant, upon Agent's request, to enter into an agreement in recordable form with Agent to provide, at the option of Agent, that this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to any Condemnation Awards or insurance proceeds), to such tenant's Lease. Borrower shall join in any of such agreements if Agent so requests. On request of Agent, Borrower shall obtain from the tenants and furnish to Agent the agreements required by this §15.7, all of which agreements shall be in form and substance satisfactory to Agent. Nothing set forth in this Section shall constitute an agreement of Agent to enter into any agreement for subordination, nondisturbance or attornment with any tenant.

16. TRANSFER OF MORTGAGED PROPERTY

16.1. Restrictions Upon Transfer. Lenders have made the Loan in reliance in part upon the identity of Borrower. Accordingly, without the prior written approval of Agent, Borrower, except as may be permitted by §16.2 hereof, shall not: (a) allow a Transfer of any of Borrower's interest in the Mortgaged Property to occur; or (b) permit any Transfer of any ownership interest (whether stock, general partnership interest or otherwise) in Borrower; or (c) permit or suffer to occur any Transfer of any ownership interest (direct or indirect) in any non-publicly traded Person which is a shareholder, partner, member or other owner of an interest in Borrower; and any such prohibited act shall be an Event of Default.

16.2. Permitted Transfers. Agent shall have the right to condition its consent to any Transfer prohibited by §16.1 hereof upon the payment of a fee or charge and/or upon an increase in the rate of interest and/or changes in the other provisions of any of the Loan Documents. References in this Deed of Trust to proceeds of any of the Mortgaged Property are not intended as a consent to, and do not authorize, any Transfer of any of the Mortgaged Property.

17. FUTURE ADVANCES

In addition to the indebtedness evidenced by the Note and all other Debt, this Deed of Trust, to the fullest extent permitted by the law of the State, shall secure also and constitute a Lien on the Mortgaged Property for all future advances made by Lenders or Agent to Borrower and future obligations incurred by Borrower to Lenders or Agent in connection with the Mortgaged Property or the Loan to the same extent as if such future advances were made or such future obligations incurred on the date of the execution of this Deed of Trust.

18. ENVIRONMENTAL MATTERS

18.1. Environmental Covenants. Borrower hereby covenants and agrees with Agent as follows:

(a) At all times until this Deed of Trust has been satisfied of record, the Mortgaged Property and the use and operation of the Mortgaged Property shall comply with all Environmental Requirements, all governmental permits, approvals and licenses required with respect to the Mortgaged Property by any Environmental Requirements shall be and remain in effect, and Borrower shall comply therewith. Any Hazardous Substance at any time present, handled or generated on the Mortgaged Property will be disposed of in strict compliance with all Environmental Requirements. Without limiting the foregoing, Borrower shall not allow or permit any Hazardous Substance to exist or be stored, located, discharged, manufactured, possessed, managed, processed or otherwise handled on the Mortgaged Property at any time, except in strict compliance with all applicable Environmental Requirements.

(b) Borrower will not place or allow any underground storage tanks or above-ground storage tanks to be placed on the Mortgaged Property while this Deed of Trust remains in effect.

(c) Borrower shall immediately notify Agent should Borrower become aware of any Hazardous Substance on, in, or under the Mortgaged Property, and any other environmental problem or liability with respect to the Mortgaged Property. Borrower shall immediately notify Agent and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Mortgaged Property or its compliance with Environmental Requirements.

(d) Borrower shall not do or take any action or omit or fail to take any action which will result in the unauthorized release of any Hazardous Substance or the existence of any environmental contamination in, on, under or with respect to, any of the Mortgaged Property.

(e) Failure of Borrower to comply with all Environmental Requirements and governmental safety requirements shall be a default under this Deed of Trust.

(f) Borrower shall promptly after obtaining knowledge thereof advise Agent in writing of (i) any governmental or regulatory actions instituted or threatened in writing under any Environmental Requirements affecting the Mortgaged Property or any Indemnity hereunder

including, without limitation, any notice of inspection, abatement or noncompliance, (ii) all claims made or threatened in writing by any third party against Borrower or the Mortgaged Property relating to any Hazardous Substance or to any alleged violation of an Environmental Requirement, and (iii) Borrower's discovery of any occurrence or condition on the Mortgaged Property or any real property adjoining or in the vicinity of the Mortgaged Property which could subject Borrower or the Mortgaged Property to a claim under any Environmental Requirement or to any restrictions on ownership, occupancy, transferability or use of the Mortgaged Property under any Environment Requirement. Borrower shall deliver to Agent all such documentation and records relating to any matter, notice of which is required by this §18.1, as Agent may reasonably request.

18.2. Right to Inspect, etc. Agent, in person or by agent, shall have the right, but not the obligation, at any time and from time to time to enter upon the Mortgaged Property, take samples, review Borrower's books and records, interview Borrower's employees and officers, and conduct similar activities to ascertain the status of Borrower's compliance with this §18. Borrower shall cooperate in the conduct of such an audit. Such entry may be made at any time or times upon not less than 24 hours notice (which may be oral notice) to Borrower. In addition, Agent may have tests (which may include drilling and sampling, among other things) and audits of the Mortgaged Property done for the purpose of testing for evidence of noncompliance.

19. DEFINITIONS, CONSTRUCTION AND INTERPRETATION.

19.1. Governing Law. This Deed of Trust shall be construed and enforced in accordance with the internal laws (without regard to the conflict of laws rules) of the State. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other document described herein, Borrower expressly consents to jurisdiction in the courts and laws of the State, and consents to the applicability of the laws of the State, with respect to any personal liability and any action for a deficiency judgment, whether before or after any exercise of a power of sale or any judicial foreclosure.

19.2. Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the Land, and shall apply to, bind and inure to the benefit of, the successors of Borrower and any subsequent owner of the Land or the Improvements, and the successors of Agent and any subsequent holders of the Note.

19.3. Provisions Severable. If any term or provision of this Deed of Trust or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

19.4. Multiple Counterparts. This Deed of Trust may be executed in any number of counterparts and by the parties hereto on different counterparts. Each such counterpart shall for all purposes be deemed to be an original and all such counterparts shall together constitute but

one and the same Deed of Trust. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

19.5. Other Interpretive Provisions. As used herein, the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "any of" shall mean all or any part of or interest in that with respect to which such phrase is used.

19.6. Miscellaneous Provisions. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Deed of Trust shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of the Agent in the Mortgaged Property, afford the Agent greater financial security in the Mortgaged Property and/or assure payment of the Debt and performance of the Obligations in full, shall control. Except as otherwise expressly stated herein, with respect to any matters which, under this Deed of Trust, Agent shall have the right to approve, consent to, be satisfied with, exercise its judgment with regard to or calculate, the decisions of Agent with respect to such matters shall be made in the sole discretion of Agent, may be given or withheld without regard to reasonableness, and shall be final and conclusive. The headings and captions in this Deed of Trust are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Deed of Trust. The granting of consent by Agent to any matter as to which such consent is required by the provisions hereof shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Borrower and Agent that such property be treated for all purposes hereunder as real estate. Each of the parties have participated in the negotiation and preparation of this Deed of Trust, with the advice of counsel, and this Deed of Trust shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Deed of Trust.

19.7. Definitions. As used herein, each of the following terms shall have the meaning indicated below, unless the context clearly requires otherwise:

"Agent's Address" shall mean c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205, or such other address as Agent, by written notice to the other parties, shall designate as "Agent's Address" for purposes of the Loan Documents.

"Agent-Related Persons" shall mean Agent, and any successor Agent appointed pursuant to the Loan Agreement, together with their respective officers, directors, employees, representatives, attorneys, agents and affiliates.

“Automatic Acceleration Event of Default” shall mean an “Automatic Acceleration Event of Default” as defined under the Loan Agreement.

“Borrower” shall mean **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal authority, their successors and assigns permitted under the Loan Documents.

"Borrower's Address" shall mean 4800 West 92nd Avenue, Westminster, Colorado 80031, or such other address as Borrower, by written notice to Lenders and Agent, shall designate as "Borrower's Address" for purposes of the Loan Documents.

"Casualty" shall mean any damage, destruction, or loss to or of any of the Mortgaged Property resulting from fire, any peril insured against, or any other cause except a Condemnation.

"Certified" shall mean certified: (a) if the Person providing the financial statement to be certified is a general or limited partnership, by the general partner or managing general partner(s) of such Person, and if such general partner is a corporation, the chief financial officer of such corporate general partner of such Person; (b) if such Person is a corporation, by the chief financial officer of the corporation; (c) if such Person is a trust, by the trustee; (d) if such Person is a limited liability company, by the manager or managing member, or if none, by all members; or (e) if such Person is one or more individuals, by each such individual.

“CERCLA” shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as now and hereafter amended.

“CGL Policy” shall mean a Commercial General Liability insurance policy meeting the requirements of §4.1(b) hereof.

“City” shall mean the **CITY OF WESTMINSTER**, a Colorado home rule city.

“Closing” shall mean the execution and delivery of the Loan Documents and their acceptance by Agent, satisfaction of all conditions of the Loan Agreement to the making of the Loan, and recording of the Mortgage.

“Closing Date” shall mean the date upon which the Closing is completed.

“Code” shall mean the Uniform Commercial Code as adopted and in effect in the State on the date hereof and as amended or supplemented at any time hereafter.

"Collateral" shall mean collectively the “Accounts”, “Chattel Paper”, “Deposit Accounts”, “Documents”, “Equipment”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, as such terms are defined in the Code, and all Personal Property, Records, Intellectual Property, and other assets, tangible or intangible, now owned or hereafter acquired by Borrower, and the Proceeds of each thereof.

"Condemnation" shall mean any condemnation or taking of any of the Mortgaged Property or the use thereof by any Governmental Authority or other Person pursuant to the power of eminent domain or condemnation, and any conveyance of any of the Mortgaged Property in lieu of condemnation.

"Condemnation Award" shall mean any and all awards, damages and other sums of money at any time owed or becoming payable, or paid, with respect to any Condemnation, including any payments for any conveyance in lieu of Condemnation, and awards for changes of grade of any streets.

"Debt" shall mean (i) all indebtedness of Borrower evidenced by the Notes, including principal, interest at the rate set forth in the Notes, additional interest if any, late charges, and interest after default at the rate set forth in the Note, (ii) any and all extensions, renewals, refinancings or refundings thereof in whole or in part, whether or not now provided for in the Loan Documents, (iii) all costs and expenses incurred by Agent in the collection of any of such indebtedness, including attorneys' fees and legal expenses, (iv) all future advances made by Agent for the protection or preservation of any of the Mortgaged Property, and (v) all other amounts coming due to Agent under any provision of any of the Loan Document.

"Default Rate" shall mean the "Default Rate" as defined in the Notes.

"Environmental Activity" (whether one or more), shall mean any one or more of the following: (1) any present or future storage, holding, existence, release, emission, discharge, generation, abatement, disposition, handling or transportation of any Hazardous Substance from, on, under or otherwise relating to the Mortgaged Property or any Migration Tract, or the use, operation or occupancy thereof, or any threat of any such activity, including but not limited to any failure of all "hazardous waste" (as defined in RCRA) generated or removed from the Mortgaged Property to be removed and disposed of at sites and transported by carriers which maintain valid permits under RCRA and any other applicable Environmental Requirements; (2) any failure of any Person, including without limitation the Borrower, to comply with any of the Environmental Requirements relating to the Mortgaged Property or the ownership, use, operation or occupancy thereof, or any Migration Tract, including but not limited to any failure by any Person to properly obtain or file any notices, permits, licenses or similar authorizations, if any, required under any Environmental Requirements in connection with the Mortgaged Property or the ownership, use, operation or occupancy thereof; (3) any investigation, inquiry, order or proceeding by any Governmental Authority, and/or any remedial obligations of the Borrower or any Person under any Environmental Requirements relating to the Mortgaged Property or any Migration Tract; (4) any failure of any representation or warranty set forth in §18 of this Deed of Trust to be true and correct in all respects when made; and (5) any failure of the Borrower to perform, or cause to be performed, any covenant in §18 of this Deed of Trust.

"Environmental Requirements" shall mean, collectively: CERCLA; RCRA; the Hazardous Materials Transportation Act (49 U.S.C. §1802 et seq.); the Federal Water Pollution Prevention and Control Act (33 U.S.C. §1251 et seq.); the Safe Drinking Water Act (42 U.S.C. §300f et

seq.); the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Clean Water Act, 33 U.S.C. §7401 et seq.; all international treaties, compacts, conventions and agreements having the force of law in the United States of America and all federal, state or local statutes, ordinances, codes, rules, regulations, orders and decrees, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect, each as now or hereafter amended; and any and all judgments, orders, decrees, permits, licenses, authorizations, concessions, grants, franchises, agreements or other governmental restrictions or requirements relating to the environment or to any Hazardous Substance or to any Environmental Activity.

"Event of Default" shall mean an Event of Default as defined in §11.1 hereof, and any event, omission or circumstance otherwise specifically stated in this Deed of Trust to be an Event of Default.

"FEMA" shall mean the Federal Emergency Management Agency, and its successors.

"Fixtures" shall mean all fixtures, equipment, apparatus, machinery, fittings and appliances, chattels, building materials and tangible personal property of every kind and character, now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy, operation and/or maintenance of the Improvements or the Land, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the removal of dust, refuse or garbage, and all renewals, replacements and substitutions thereof, additions and accessions thereto, and all spare parts for any of the same.

"Formation State" shall mean the State of Colorado, under the laws of which the Borrower is organized or formed.

"Governmental Authority" shall mean the United States of America, the State, any political subdivision of either of them, and any court, agency, department, commission, board, bureau, officer or instrumentality of any of them.

"Ground Leases" shall mean collectively (i) Lease dated June 21, 1976 between Mersco Realty Co., Inc. and Westminster Mall Company, as amended and assigned and (ii) Lease dated January 14, 1986 between Frank S. Morgan, et al and Westminster Mall Company, as amended and assigned.

"Hazardous Substance" shall mean: (a) any "hazardous substance" as such term is presently defined in CERCLA; (b) any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substance" for the purposes of CERCLA; (c) any element, substance, compound or mixture, including disease-causing agents, now or hereafter designated as, or containing components designated as, hazardous, dangerous, toxic, harmful, and/or subject to regulation by any Environmental Requirement, including asbestos in any form

and any substance containing asbestos, mold, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid or polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials, lead and any waste, substance or material now or hereafter regulated by any Environmental Requirement; (d) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2014, as now or hereafter amended; (e) any lead-based paint; and (f) mold, fungus, microbacterial contamination or pathogenic organisms.

“Higbee” shall mean **THE HIGBEE COMPANY**, a Delaware corporation, and the holder of one of the Notes.

"Higbee's Address" shall mean 1600 Cantrell Road, Little Rock, Arkansas 72205, Attn: Vice President, Real Estate, or such other address as Higbee, by written notice to the other parties, shall designate as "Higbee's Address" for purposes of the Loan Documents.

“Impositions” shall mean all taxes and assessments of every kind and nature now or hereafter assessed against or levied upon any of the Mortgaged Property or the revenues, rents, issues or profits thereof by any Governmental Authority, including real and personal property taxes, general and special assessments, inspection and license fees, water and sewer rents and charges

“Improvements” shall mean the buildings, structures and other improvements now or hereafter located on the Land.

“Indemnified Liabilities” shall mean all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, charges, expenses or disbursements (including attorney's fees and expenses) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loan or the termination, resignation or replacement of any Agent or any Lender) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Agreement or any other Loan Document and any other document or instrument contemplated by or referred to herein or therein, or the transactions contemplated hereby and thereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to the exercise by Agent of any of its rights or remedies under any of the Loan Documents, and any investigation, litigation or proceeding (including any bankruptcy, insolvency, reorganization or other similar proceeding or appellate proceeding) related to this Agreement or any other Loan Document or the Loan, or the use of the proceeds thereof.

“Intangibles” shall mean all goodwill, trademarks, trade names, option rights, purchase contracts, computer records and software, books and Records and general intangibles of the Borrower relating to any of the Mortgaged Property, all Intellectual Property, all rights of the Borrower under or with respect to all accounts, contract rights, instruments, chattel paper and other rights of the Borrower for payment of money for property sold or lent, for services

rendered, for money lent, or for advances or deposits made, all rights of the Borrower to plans and specifications, designs, drawings, models and other matters prepared for any construction or renovation on the Land, all rights of the Borrower under any contracts executed by the Borrower as owner with any provider of goods or services in connection with any construction or renovation undertaken on, or services performed or to be performed in connection with, any part of the Mortgaged Property, and all other intangible property of the Borrower related to or used in connection with any of the Mortgaged Property, and shall specifically include, without limiting the foregoing, all trade insignia and logos (including goodwill related thereto), if any, used in connection with the operation of the Mortgaged Property.

"Intellectual Property" shall mean all patents, trademarks, trade names, and service marks, and related goodwill, now or hereafter acquired by Borrower.

"ISO" shall mean the Insurance Services Office.

"Land" shall mean all of the real property and interests in real property described on Exhibit A attached to and incorporated into this Deed of Trust.

"Lease" shall mean any of the Leases.

"Leases" shall mean all agreements for use and occupancy of any part of the Mortgaged Property, now existing or hereafter entered into, including all present and future leases (including subleases), licenses, concessions, rights in respect of tenants holding over and tenancies following attornment, and all extensions, modifications, renewals or supplements to any lease, license or concession, and all cash or securities deposited with the Borrower to secure performance of the tenant's obligations under such Lease.

"Legal Requirements" shall mean collectively (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, including those with respect to zoning, subdivision, building, safety, fire protection, wetlands protection, historical preservation, access for the handicapped or disabled, ecological or environmental matters; and (ii) all covenants, restrictions and conditions now or hereafter of record which may apply to any of the Mortgaged Property or the use, occupancy, possession, Maintenance, Restoration or enjoyment thereof.

"Lender or Lenders" shall mean MD Lender and Higbee, the holders of the Notes.

"Lien" shall mean any mortgage, deed of trust, security agreement, financing statement, security interest, judgment lien, mechanic's or materialman's lien, any other lien, encumbrance, charge, retention or reservation of title as security, pledge, hypothecation or assignment as security, of any of, or upon, the Mortgaged Property, whether now existing or hereafter created, suffered or incurred.

"Loan" shall mean the loan in the Loan Amount made by Lenders to Borrower and the City pursuant to the Loan Agreement.

"Loan Agreement" shall mean that certain Loan Agreement dated the date hereof among Borrower, City, Agent, MD Lender and Higbee, and any amendments, extensions and supplements thereto made at any time.

"Loan Amount" shall mean the maximum aggregate principal amount of the Loan, which is THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS (U.S. \$3,500,000.00).

"Loan Documents" shall mean collectively the Loan Agreement, the Notes, this Deed of Trust, financing statements to evidence security interests securing the Loan, and all other instruments, documents and agreements now or hereafter evidencing, securing or supporting any of the Debt or the Obligations, and any amendments, extensions and supplements to any of them made at any time.

"Maintenance" shall mean all repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property (whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen), that are necessary to keep the Mortgaged Property in good order, condition and repair, consistent with the standard described in §5.2 and suitable for the Permitted Uses.

"Maturity Date" shall mean the Maturity Date as set forth in the Note.

"MD Lender" shall mean collectively, **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, the holders of one of the Notes.

"MD Lender's Address" shall mean c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205, or such other address as MD Lender, by written notice to the other parties, shall designate as "MD Lender's Address" for purposes of the Loan Documents.

"Member" shall mean any member of Borrower, if applicable.

"Migration Tract" shall mean any property other than the Land, from which any Hazardous Substance may move or migrate onto, into or under the Land (including the groundwater thereunder), and any property other than the Land into, onto or under which any Hazardous Substance may move or migrate from the Land (including the groundwater thereunder).

"Mortgaged Property" shall mean collectively all the property and interests, tangible and intangible, described or referred to in §§1.1, 1.2 and 1.3 hereof, whether now owned or hereafter acquired by Borrower.

"Net Condemnation Award" shall mean a Condemnation Award, less the costs and expenses, including reasonable attorney's fees, incurred by Agent and/or Trustee in connection with such Condemnation Award and the Condemnation to which it relates.

"Net Insurance Proceeds" shall mean all of the proceeds and sums of money owed or becoming due or paid under any policy of insurance upon any of the Mortgaged Property, including any sums paid in settlement of any claim under any such insurance policy, less the costs and expenses, including reasonable attorney's fees, incurred by Agent and/or Trustee in connection with such insurance proceeds and the Casualty to which they relate.

"Note" shall mean the two Notes, collectively or one of the two Notes as the context requires.

"Notes" shall mean the two certain Promissory Note of even date herewith each in one-half of the Loan Amount from Borrower and the City to the order of MD Lender and Higbee, as amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

"Obligations" shall mean the obligation to pay the Debt and all obligations of Borrower and the City to Lenders and Agent arising from or out of any of the Loan Documents.

"Permitted Encumbrances" shall mean only those matters listed as exceptions to coverage on Schedule B to the Agent's policy of title insurance insuring the lien of this Deed of Trust; except that those matters which are listed in said policy as matters which are subordinate to the lien of this Deed of Trust shall be included as "Permitted Encumbrances" only as matters which are so subordinate, and notwithstanding any provision of any of the Loan Documents seemingly to the contrary, none of the Loan Documents shall be subject to such items so listed as subordinate.

"Permitted Uses" shall mean use solely as a retail shopping center and activities incidental thereto.

"Person" shall mean an individual, corporation, general partnership, limited partnership, limited liability company, unincorporated association, trust or any other legal entity.

"Personal Property" shall mean all tangible personal property now owned or hereafter acquired by Borrower.

"Personal Property Security" shall mean, collectively, all the Fixtures, Intangibles, and all other property described in §1.2 hereof, whether now owned or hereafter acquired by Borrower.

"Proceeds" shall mean all "Proceeds" as defined in the Code, with respect to the Collateral or Mortgaged Property, and includes without limitation proceeds of insurance payable by reason of loss or damage to Collateral or Mortgaged Property.

"RCRA" shall mean the Resources Conservation and Recovery Act of 1976, as now or hereafter amended (42 U.S.C. §6901 et seq.) and any regulations promulgated thereunder.

"Reciprocal Easement Agreement" shall mean Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986 and recorded February 18, 1986 under Reception No. 86016389 , as amended, assigned, and supplemented.

"Records" shall mean all "Records" as defined in the Code, now owned or hereafter acquired by Borrower, and includes without limitation all books, records, computer records and software relating to any part of the Mortgaged Property.

"Rents" shall mean: all rentals, security deposits, reimbursements and other sums of money now or hereafter due to Borrower under any Lease; all of the rents, issues, profits, royalties, income, receipts, revenues and earnings now or hereafter due Borrower under any Lease or arising from the use and enjoyment of any of the Mortgaged Property; all damages for default by any party under any Lease; all proceeds of any policy of insurance covering loss of rents or business interruption resulting from any Casualty; all rights of Borrower to collect and recover any of such amounts; and the proceeds of all such Rents.

"Restoration" shall mean the restoration, repair, rebuilding, alteration and/or replacement of any of the Mortgaged Property made necessary by any Casualty or Condemnation, to a condition as nearly as possible to its condition prior to such Casualty or Condemnation (but with such changes as Borrower may make pursuant to §7 hereof), and includes demolition, temporary repairs and the protection of the Mortgaged Property pending the completion of Restoration.

"State" shall mean the State of Colorado.

"Transfer" shall mean: (a) with respect to Borrower's interest in the Mortgaged Property, any sale, assignment, lease, transfer or conveyance (whether voluntarily, involuntarily, by operation of law or otherwise) of any of Borrower's interest in the Mortgaged Property, or any agreement by Borrower to do any of the same; and (b) with respect to any ownership interest (whether stock, partnership interest, membership interest or otherwise) of any Person in Borrower, or any ownership interest (direct or indirect) in any Person which is a shareholder, partner, member or other owner of an interest in Borrower, any sale, assignment, conveyance, transfer, grant of a security interest in or encumbrance of any of such interest, or any agreement by any such Person to do so.

"Trustee" shall mean the Public Trustee of Jefferson County, Colorado.

"Usury Law" shall mean any law or regulation of any Governmental Authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money and applicable to the Debt and/or any of the Obligations.

"WEDA" shall mean WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal agency.

20. WAIVER OF TRIAL BY JURY

20.1. Waiver of Trial By Jury. AGENT, BORROWER AND THE TRUSTEE IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY COURT IN ANY ACTION: (A) AGENT OR THE TRUSTEE BRINGS TO COLLECT AMOUNTS OWED UNDER OR SECURED BY THIS DEED OF TRUST; (B) ALLEGING THAT (I) AGENT OR THE TRUSTEE OR BORROWER HAS BREACHED THIS AGREEMENT OR ANY AGREEMENT SECURED BY THIS AGREEMENT, (II) AGENT, THE TRUSTEE OR BORROWER HAS BREACHED ANY OTHER AGREEMENT, EXPRESS OR IMPLIED, (III) AGENT OR THE TRUSTEE OR ANY OF AGENT'S OR THE TRUSTEE'S OFFICERS, EMPLOYEES OR AGENTS HAVE ACTED WRONGFULLY, NEGLIGENTLY OR OTHERWISE TORTIOUSLY WITH RESPECT TO BORROWER; OR (C) TO WHICH BORROWER, AGENT AND/OR THE TRUSTEE ARE PARTIES. THIS WAIVER OF TRIAL BY JURY DOES NOT WAIVE EITHER BORROWER'S, THE TRUSTEE'S OR AGENT'S RIGHT TO BRING A LAWSUIT THAT A JUDGE, WITHOUT A JURY, WOULD DECIDE.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the day and year first above written.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

"BORROWER":

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director of Westminster Economic Development Authority, a Colorado urban renewal agency, and attested by Linda Yeager, Authority Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A
Legal Description

EXHIBIT G

[INTENTIONALLY DELETED]

EXHIBIT H

Form of Deed

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

BARGAIN AND SALE DEED

WESTMINSTER MALL COMPANY, a Colorado general partnership, THE HIGBEE COMPANY, a Delaware corporation, successor by merger to Mersco Realty Co., Inc., an Ohio corporation, MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company, and MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company (“Grantor”) for the consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in hand paid, hereby sells and conveys to WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Grantee”), whose address is c/o Finance Department, City of Westminster, Colorado, 4800 W. 92nd Avenue, Westminster, CO 80031, all the right, title, interest, claim and demand which the Grantor has, if any, in and to the following real property, situate, lying and being in the County of Jefferson and State of Colorado, to wit:

SEE EXHIBIT A ATTACHED HERETO (the “Property”).

This instrument does not convey, and shall not be construed to convey, any interest of Grantor under the purchase money deed of trust or other conveyance made by Grantee to Grantor and/or other parties in connection with the Grantee’s acquisition of the Property. Grantor hereby states and confirms that the conveyance of the Property to the Grantee is made under threat of condemnation.

IN WITNESS WHEREOF, the Grantor has executed this Bargain and Sale Deed as of the ____ day of _____, 2011.

GRANTOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

THE HIGBEE COMPANY, a Delaware corporation,
successor by merger to Mersco Realty Co., Inc., an Ohio
corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 1ST TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

MD WESTMINSTER 2ND TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation, successor by merger to Mersco Realty Co., Inc., an Ohio corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 1ST TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 2ND TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A
THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT I

Form of Bill of Sale

BILL OF SALE

THIS BILL OF SALE ("**Bill of Sale**") is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership ("**Assignor**") and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority ("**Assignee**").

RECITALS:

A. Concurrently with the execution and delivery of this Bill of Sale, Assignee has purchased from Assignor and from The Higbee Company, MD Westminster 1st Tract, LLC, and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the "**Real Property**").

B. The parties have agreed that Assignor will assign to Assignee all of Assignor's right, title and interest in and to the "FF&E" (hereinafter defined) relating to the Real Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby GIVE, GRANT, BARGAIN, SELL, ASSIGN, CONVEY and DELIVER unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to all furniture, furnishings, fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, supplies and other tangible personal property of every kind and description and all replacements thereof now owned by Assignor and located in or on, attached to or used in operating the Real Property ("**FF&E**") EXCEPT that property listed on **Exhibit B** attached hereto; and

2. The sale and assignment hereunder is made "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**." Assignor makes no representations or warranties whatsoever, express or implied or otherwise, as to the merchantability, condition, workmanship, quality, fitness or suitability for any purpose of the FF&E, and Assignor expressly disclaims any and all warranties.

3. This Bill of Sale shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. This Bill of Sale may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

The remainder of this page is intentionally blank.
The parties' signatures are on the next page.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Bill of Sale effective as of the date first above written.

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

EXCLUDED PERSONALTY

Office computers of bookkeeper, manager, management assistant and security

Front End loader

Truck

EXHIBIT J

Form of Assignments of Ground Leases

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

(First Ground Leasehold)

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between THE HIGBEE COMPANY, a Delaware corporation and MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company (collectively, “**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, MD Westminster 2nd Tract, LLC and Westminster Mall Co., the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Lease” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the lease described on **Exhibit B** attached hereto and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Lease**”) together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor or the landlord under the Ground Lease accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Lease accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Lease occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out a breach by Assignor of its obligations under the Ground Lease occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment First Ground Lease 042711.doc

ASSIGNOR:

THE HIGBEE COMPANY, a Delaware corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 1ST TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____

J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 1ST TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

GROUND LEASE

Lease dated 6/21/76 between Mersco Realty Co., Inc., an Ohio Corporation, Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded July 21, 1976, in Book 2879 at Page 852

Agreement Amending Lease dated 6/28/76

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

(Second Ground Leasehold)

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this “Assignment”), is made as of the _____ day of _____, 2011, by and between THE HIGBEE COMPANY, a Delaware corporation and MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company (collectively, “Assignor”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Assignee”) and the CITY OF WESTMINSTER, a Colorado home rule city (“City”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, MD Westminster 1st Tract, LLC and Westminster Mall Co., the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “Property”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Lease” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the lease described on **Exhibit B** attached hereto and any and all amendments, extensions, modifications and supplements thereto (the “Ground Lease”) together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor or the landlord under the Ground Lease accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Lease accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“Assignor Parties”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Lease occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Ground Lease occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment of Second Ground Lease 042711.doc

ASSIGNOR:

THE HIGBEE COMPANY, a Delaware corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 2ND TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____

J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 2ND TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

GROUND LEASE

Lease dated 1/14/86 between Frank S. Morgan, et al., Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded February 18, 1986, under Reception No. 86016387

EXHIBIT K

Form of Assignment of Penney Lease

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF PENNEY LEASE

THIS ASSIGNMENT AND ASSUMPTION OF PENNEY LEASE (this “**Agreement**”), is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Agreement, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminister, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in and to the Penney Lease (as defined herein) and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest in, to and under the lease described on **Exhibit B** attached hereto and made a part hereof and any and all amendments, extensions, modifications and supplements thereto (the “**Penney Lease**”), together with any guaranties relating thereto.

2. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, provisions, covenants and conditions of the Penney Lease on the part of Landlord to be performed and agrees not to use or occupy the Property in any manner which would constitute a violation of the terms of the Penney Lease. The provisions hereof are directly enforceable by J.C. Penney Properties, Inc.

3. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Agreement shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

4. This Agreement may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Agreement effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment of Penney Lease 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____

J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

PENNEY LEASE

Lease dated 2/13/86 between Westminster Mall Co and J.C. Penney Properties, Inc. (a partial copy of which was recorded 2/18/86 at Reception No. 86016388)

Memorandum of Lease between Westminster Mall Co and J.C. Penney Properties, Inc.

Letter Guaranty from J.C. Penney Company to Westminster Mall Co. dated 2/13/86

Letter from Westminster Mall Co to J.C. Penney Properties, Inc. dated 2/13/86 (regarding Tenant's Parcel)

Letter from Westminster Mall Co to J.C. Penney Properties, Inc. dated 2/13/86 (regarding leases)

Term Agreement between Westminster Mall Co and J.C. Penney Properties, Inc. dated 6/18/93

EXHIBIT L

Form of Assignment of Tenant Leases

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF LEASES

(WESTMINSTER MALL COMPANY)

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Leases” (hereinafter defined) and the “Leases” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under (i) the leases described on **Exhibit B** attached hereto and made a part hereof and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Leases**”) and (ii) all leases, subleases and occupancy agreements for premises in the Property, amendments, extensions, modifications and supplements thereto, including without limitation those with tenants or occupants described on **Exhibit C** attached hereto and made a part hereof (the “**Leases**”), together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor, the tenant under the Ground Leases, or the landlord under the Leases accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Leases or the Leases accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Leases or Leases occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Ground Leases or Leases occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\ALRF\MMM\md\westminster\City\Deed and Assignments\Assignment and Assumption of Tenant Leases 042711 comp.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

**WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority**

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

**CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city**

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B
GROUND LEASES

First Ground Lease

Lease dated 6/21/76 between Mersco Realty Co., Inc., an Ohio Corporation, Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded July 21, 1976, in Book 2879 at Page 852

Agreement Amending Lease dated 6/28/76

Second Ground Lease

Lease dated 1/14/86 between Frank S. Morgan, et al., Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded February 18, 1986, under Reception No. 86016387

EXHIBIT C

1. Space 12: Things Remembered
2. Space 16: Footlocker Store Number #7512
3. Space 18: Spencer's Gifts
4. Space 20: Rivera Clothing
5. Space 22: GNC
6. Space 23: Bath and Body
7. Space 35: Dillard's Juniors
8. Space 43: Infinite Design Jewelry
9. Space 44: Footlocker (Owned by Footlocker)
10. Space 45: Doctor's Vision World
11. Space 49: Journey's
12. Space 50A: Claires Boutiques
13. Space 58: Victoria's Secret
14. Space 72: Pet City
15. [intentionally deleted]
16. Space 139: Champs (Owned by Footlocker)
17. Space K12: Compass Bank ATM
18. Space K15: Compass Bank ATM
19. Space Main 3: Dillard's Department Store
20. Space Main 4: JC Penney Department Store
21. Space Pad 2: US Bank
22. Space Pad 5: Olive Garden
23. Space Pad 6: Sears TBA
24. Temporary Tenant: Corn LTD
25. Temporary Tenant: Extreme Mini Golf

EXHIBIT M

Form of Assignment of Contracts

ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS (this “Assignment”) is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“Assignor”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Assignee”), and the CITY OF WESTMINSTER, a Colorado home rule city (“City”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor and from The Higbee Company, MD Westminster 1st Tract, LLC, and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “Property”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in the “Contracts” (hereinafter defined) relating to the Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby SELL, TRANSFER, ASSIGN and SET OVER unto Assignee, all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the contracts relating to the Property described in **Exhibit B** attached hereto (the “Contracts”), and Assignee hereby accepts such assignment and hereby assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor under the Contracts from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Contracts accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“Assignor Parties”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Contracts occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Contracts occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and the City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

4. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Contracts effective as of the date first above written.

F:\LRF\MMM\nd\westminster\City\Deed and Assignments\CMP Assignment of Contracts 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

CONTRACTS

1. Service Agreement dated January, 2011 and Renewal Mechanical Service Agreement dated December 8, 2010 with Long Mechanical Solutions.
2. Service Agreement Non-Hazardous Waste dated January 25, 1989 with Waste Management.
3. Maintenance and Guarantee Agreement dated April 17, 2007 with Plantek Distinctive Interiorscaping, Inc.

EXHIBIT N

Form of Assignment of RCOEA and Other Agreements

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF RCOEA AND ADDITIONAL AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF RCOEA AND ADDITIONAL AGREEMENTS (this “Assignment”) is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“Assignor”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Assignee”) and the CITY OF WESTMINSTER, a Colorado home rule city (“City”).

RECITALS:

A. Assignor is a party to that certain Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986 and recorded February 18, 1986 under Reception No. 86016389, as the same may have been amended, supplemented, assigned or modified (collectively, “RCOEA”).

B. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd, LLC, the real property legally described in Exhibit A attached hereto in the City of Westminister, Jefferson County, Colorado (the “Property”), and the parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in the RCOEA and the “Additional Agreements” (hereinafter defined).

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby SELL, TRANSFER, ASSIGN and SET OVER unto Assignee, all of Assignor’s right, title and interest in, to and under the RCOEA, all agreements relating to the RCOEA which are identified in Exhibit B attached hereto as “supplemental agreements”, and all recorded easements and other recorded documents affecting the Property (collectively, the “Additional Agreements”) and Assignee hereby accepts such assignment and hereby assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor thereunder accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the RCOEA or Additional Agreements accruing prior to the date of this Assignment excepting and excluding, however any and all obligations under the “May Supplemental Agreement” or “Mervyn’s Supplemental Agreement” identified in Exhibit B, or under the RCOEA or any other Additional Agreements with respect to either the May Site or the Mervyn’s Site (as defined in the RCOEA) or as to which the City of Westminister is a party.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“Assignor Parties”), from any and all

losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the RCOEA or Additional Agreements occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the RCOEA or Additional Agreements occurring before the date of this Assignment, excepting and excluding any and all matters with respect to the May Supplemental Agreement or Mervyn's Supplemental Agreement, or under the RCOEA or other Additional Agreements with respect to either the May Site or the Mervyn's Site or as to which the City of Westminster is a party.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and City and their respective successors and assigns.

4. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment effective as of the date first above written.

F:\ALRF\MM\nd\westminster\City\Deed and Assignments\Assignment of RCOEA 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

SCHEDULE OF ADDITIONAL AGREEMENTS

The following documents (“**Supplemental Agreements**”):

1. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and The May Department Stores Company (“**May Supplemental Agreement**”)
2. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and Mervyn’s (“**Mervyn’s Supplemental Agreement**”)
3. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and Carter Hawley Hale Stores, Inc.
4. Assignment and Assumption of Agreements recorded February 8, 1990 under Reception No. 90011510.
5. REA Assignment and Assumption Agreement recorded February 22, 1996 under Reception No. F0189712.
6. Assignment and Assumption of Operating Agreements recorded September 27, 2004 under Reception No. F2102228.
7. Assignment and Assumption Agreement recorded January 11, 2006 under Reception No. 2006004250.
8. Assignment and Assumption of Operating Agreement recorded May 18, 2009 under Reception No. 2009045088.

and the following additional documents:

1. THE RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES THEREBY GRANTED AND RIGHTS OF WAY FOR DITCHES AND CANALS AS RESERVED IN UNITED STATES PATENT RECORDED IN BOOK 32, PAGE 107.
2. THE RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES THEREBY GRANTED AND RIGHTS OF WAY FOR DITCHES AND CANALS AS RESERVED IN UNITED STATES PATENT RECORDED IN BOOK 119, PAGE 54.
3. TERMS, CONDITIONS, PROVISIONS, BURDENS, AND OBLIGATIONS SET FORTH IN WESTMINSTER MALL SUBDIVISION AGREEMENT RECORDED JANUARY 14, 1976 IN BOOK 2809 AT PAGE 337.

4. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL RECORDED JANUARY 14, 1976 UNDER RECEPTION NO. 758563.

5. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL AMENDED RECORDED APRIL 16, 1976 UNDER RECEPTION NO. 779637.

6. EASEMENT GRANTED TO THE ALLEN DITCH COMPANY BY THE INSTRUMENT RECORDED OCTOBER 5, 1976 IN BOOK 2911, PAGE 261.

7. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION AGREEMENT RECORDED OCTOBER 15, 1976 IN BOOK 2915 AT PAGE 453.

8. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 25, 1976, IN BOOK 2919 AT PAGE 34.

9. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR UTILITIES AND INCIDENTAL PURPOSES BY THE INSTRUMENT RECORDED JANUARY 31, 1977 IN BOOK 2956, PAGE 777.

10. AN EASEMENT FOR STORM AND SANITARY SEWER LINES, WATER LINES AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED SEPTEMBER 1, 1977 IN BOOK 3063, PAGE 242.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

11. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED AUGUST 18, 1978 AT RECEPTION NO. 78076109.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF BRUNSWICK CENTER RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076112.

NOTE: PLAT RATIFICATION RECORDED SEPTEMBER 28, 1978 UNDER RECEPTION NO. 78089787.

13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BRUNSWICK CENTER SUBDIVISION AGREEMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076110.

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN OFFICIAL DEVELOPMENT PLAN FOR BRUNSWICK SUBDIVISION

PLANNED UNIT DEVELOPMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076111.

15. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED SEPTEMBER 8, 1978 AT RECEPTION NO. 78082939.

16. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY BY THE INSTRUMENT RECORDED APRIL 3, 1979 AT RECEPTION NO. 79028820.

17. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1979, UNDER RECEPTION NO. 79113496.

18. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE OFFICIAL DEVELOPMENT PLAN FOR WESTMINSTER MALL, RECORDED AUGUST 25, 1980 AT RECEPTION NO. 80062536 AND AS AMENDED BY ODP MAP RECORDED MARCH 5, 1981 AT RECEPTION NO. 81014999, AND AMENDMENT THERETO RECORDED JUNE 6, 1983, UNDER RECEPTION NO. 83051906 AND AMENDMENT THERETO RECORDED JUNE 14, 1993 UNDER RECEPTION NO. 93084172 AND AMENDMENT THERETO RECORDED FEBRUARY 8, 1985 UNDER RECEPTION NO. 85012857.

19. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED DECEMBER 18, 1980 AT RECEPTION NO. 80098451.

20. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED DECEMBER 18, 1980 AT RECEPTION NO. 80098452.

21. EASEMENT FOR PUBLIC WALKWAY AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED JANUARY 20, 1981 AT RECEPTION NO. 81004595.

22. EASEMENT FOR STORM DRAINAGE AND INCIDENTAL PURPOSES GRANTED TO THE CITY OF WESTMINSTER BY THE INSTRUMENT RECORDED SEPTEMBER 3, 1982 AT RECEPTION NO. 82061813.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

23. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 16, 1984 AT RECEPTION NO. 84005094.

24. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 16, 1984 AT RECEPTION NO. 84005095.

25. AN EASEMENT FOR UTILITY PURPOSES AS RESERVED IN ORDINANCE NO. 1488 SERIES OF 1985 VACATING A PORTION OF WEST 91ST AVENUE, RECORDED MAY 10, 1985 AT RECEPTION NO. 85044026.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

26. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED MAY 16, 1985 AT RECEPTION NO. 85045599.

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE PRELIMINARY DEVELOPMENT PLAN AND OFFICIAL DEVELOPMENT PLAN RECORDED SEPTEMBER 5, 1985 AT RECEPTION NO. 85084672, AND AS AMENDED BY MAPS RECORDED NOVEMBER 25, 1985 AT RECEPTION NO. 85113479 AND RECORDED OCTOBER 25, 1991 AT RECEPTION NO. 91098710, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710 AND AMENDMENT THERETO RECORDED APRIL 28, 1993 UNDER RECEPTION NO. 93056877 AND AMENDMENT THERETO RECORDED MAY 11, 1994 UNDER RECEPTION NO. 94086564 AND AMENDMENT THERETO RECORDED JULY 12, 1996 UNDER RECEPTION NO. F0267601.

NOTE: RELEASE OF CERTAIN PROPERTY RECORDED DECEMBER 18, 1985 UNDER RECEPTION NO. 85122760.

28. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, ET AL AND BRUNSWICK CORPORATION RECORDED DECEMBER 16, 1985 AT RECEPTION NO. 85121733.

29. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL 2ND AMENDED RECORDED FEBRUARY 14, 1986 UNDER RECEPTION NO. 86016236.

30. EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND INCIDENTAL PURPOSES GRANTED TO MERVYNS, A CALIFORNIA CORPORATION BY THE INSTRUMENT RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016383.

31. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS SPECIFIED UNDER THE EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN ET AL AND CARTER HAWLEY HALE STORES, INC. RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016386.

32. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR SIDEWALKS, CURBS AND INCIDENTAL PURPOSES GRANTED TO THE MAY DEPARTMENT STORES COMPANY BY THE INSTRUMENT RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016384.

33. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED APRIL 2, 1986 AT RECEPTION NO. 86033564.

34. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 19, 1986, UNDER RECEPTION NO. 86096170.
35. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED SEPTEMBER 3, 1986 AT RECEPTION NO. 86103237.
36. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 5, 1987 AT RECEPTION NO. 87001381.
37. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE AGREEMENT AND WAIVER BY AND BETWEEN THE CITY OF WESTMINSTER AND WESTMINSTER MALL COMPANY RECORDED FEBRUARY 12, 1987 AT RECEPTION NO. 87019125.
38. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004112.
39. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004113.
40. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004114.
41. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004115.
42. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004116.
43. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED NOVEMBER 9, 1992 AT RECEPTION NO. 92144664.
44. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 30, 1992, UNDER RECEPTION NO. 92169138.
45. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 27, 1993, UNDER RECEPTION NO. 93012257.

46. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CITY OF WESTMINSTER AGREEMENT FOR POSSESSION AND USE OF RIGHT-OF-WAY RECORDED AUGUST 14, 1997 UNDER RECEPTION NO. F0460650.

47. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FIRST AMENDED OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL SUBDIVISION FOR SEARS AUTO CENTER RECORDED MARCH 29, 2001 UNDER RECEPTION NO. F1208340.

EXHIBIT O
Commitment



Land Title Guarantee Company

CUSTOMER DISTRIBUTION

Date: 04-28-2011

Our Order Number: ABD70297803-10

Property Address:
WESTMINSTER MALL

If you have any inquiries or require further assistance, please contact one of the numbers below:

For Closing Assistance:

Leigh Renfro
3033 E 1ST AVE #600
DENVER, CO 80206
Phone: 303-331-6231
Fax: 303-331-6374
EMail: lrenfro@ltgc.com

Closer's Assistant:

Laurie McKee
Phone: 303-331-6238
Fax: 303-331-6373
EMail: lmckee@ltgc.com

For Title Assistance:

Commercial Title "ABD" Unit
David Knapp
5975 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111
Phone: 303-850-4174
Fax: 303-393-4947
EMail: dknapp@ltgc.com

LAND TITLE GUARANTEE COMPANY
3033 E 1ST AVE #600
DENVER, CO 80206
Attn: Leigh Renfro
Phone: 303-331-6231
Fax: 303-331-6374
Copies: 1
EMail: lrenfro@ltgc.com

LEWIS RICE & FINGERSON
ONE PETICOAT LANE
1010 WALNUT #500
KANSAS CITY, MO 64106
Attn: MICHELE MCCUE
Phone: 816-472-2536
Fax: 816-472-2500
Copies: 1
EMail: mmmccue@lrf-kc.com
Linked Commitment Delivery

MURRAY DAHL KUECHENMEISTER & RENAUD
1530 16TH STREET
SECOND FLOOR
DENVER, CO 80202
Attn: MALCOLM M. MURRAY
Phone: 303-493-6677
Copies: 1
EMail: mmurray@mdkrlaw.com
Linked Commitment Delivery

LEWIS RICE & FINGERSON
ONE PETICOAT LANE
1010 WALNUT #500
KANSAS CITY, MO 64106
Attn: BRAD MADDOCK
Phone: 816-472-2561
Copies: 1
EMail: bjmaddock@lrf-kc.com
Linked Commitment Delivery

BANKS & IMATANI, PC
225 UNION BLVD. #310
LAKEWOOD, CO 80228
Attn: BARBARA BANKS
Phone: 303-984-5605
Copies: 1
EMail: bsbei@earthlink.net
Linked Commitment Delivery

CITY OF WESTMINSTER
CITY ATTORNEY'S OFFICE
4800 W. 92ND AVENUE
WESTMINSTER, CO 80031
Attn: TAMI CANNON
Phone: 303-658-2235
Copies: 1
EMail: tcannon@cityofwestminster.us
Linked Commitment Delivery



Land Title Guarantee Company

Date: 04-28-2011

Our Order Number: ABD70297803-10

Property Address:
WESTMINSTER MALL

Buyer/Borrower:
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

Seller/Owner:
WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

Wire Information:

Bank: FIRSTBANK OF COLORADO
10403 W COLFAX AVENUE
LAKEWOOD, CO 80215
Phone: 303-237-5000
Credit: LAND TITLE GUARANTEE COMPANY
ABA No.: 107005047
Account: 2160521825
Attention: Leigh Renfro

Note: Once an original commitment has been issued, any subsequent modifications will be emphasized by underlining.

Need a map or directions for your upcoming closing? Check out Land Title's web site at www.ltgc.com for directions to any of our 54 office locations.

ESTIMATE OF TITLE FEES

ALTA Owners Policy 06-17-06	\$15,253.00
ALTA Loan Policy 06-17-06	\$150.00
Deletion of General Exception 4 (Owner)	\$25.00
Endorsement 103.1 #9 & #10 (Owner)	\$1,000.00
Tax Report (x29)	\$725.00

If Land Title Guarantee Company will be closing this transaction, above fees will be collected at that time.

TOTAL **\$17,153.00**

First American Title Insurance Company

ALTA COMMITMENT

Our Order No. ABD70297803-10

Schedule A

Cust. Ref.:

Property Address:
WESTMINSTER MALL

1. **Effective Date:** April 25, 2011 at 5:00 P.M.

2. **Policy to be Issued, and Proposed Insured:**

"ALTA" Owner's Policy 06-17-06 \$22,000,000.00

Proposed Insured:
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

"ALTA" Loan Policy 06-17-06 \$3,500,000.00

Proposed Insured:
WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; THE HIGBEE COMPANY, A DELAWARE CORPORATION; MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY; AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

3. **The estate or interest in the land described or referred to in this Commitment and covered herein is:**

A Fee Simple

4. **Title to the estate or interest covered herein is at the effective date hereof vested in:**

WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

5. **The Land referred to in this Commitment is described as follows:**

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018.
AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

Item (c) Payment of all taxes, charges or assessments levied and assessed against the subject premises which are due and payable.

Item (d) Additional requirements, if any disclosed below:

1. (ITEM INTENTIONALLY DELETED)
2. (ITEM INTENTIONALLY DELETED)
3. (ITEM INTENTIONALLY DELETED)
4. BARGAIN AND SALE DEED FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY TO WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY CONVEYING SUBJECT PROPERTY.

NOTE: PURSUANT TO RESOLUTION OF THE MEMBERS AND MANAGERS OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE MANAGERS (MD MANAGEMENT, INC., A MISSOURI CORPORATION AND DILLARD STORE SERVICES, INC., AN ARIZONA CORPORATION) MAY EXECUTE SAID DEED ON BEHALF OF SAID PARTNERSHIP.

NOTE: PURSUANT TO RESOLUTION OF THE MEMBERS AND MANAGERS OF WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY, THOMAS S. MORGAN MAY EXECUTE SAID DEED AS MANAGER OF EACH LIMITED LIABILITY COMPANY.

5. CERTIFIED COPY OF RESOLUTION OF THE GOVERNING BOARD OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AUTHORIZING THE ACQUISITION OF THE LAND AND THE BORROWING OF MONEY AND EXECUTION OF NECESSARY DOCUMENTS AND RECITING THAT THE BOARD HAS BEEN DULY AUTHORIZED IN THE PREMISES. SAID RESOLUTION

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

MUST BE PROPERLY CERTIFIED. SAID RESOLUTION MUST BE SUBMITTED TO AND APPROVED BY LAND TITLE GUARANTEE COMPANY BUT NEED NOT BE RECORDED.

6. DEED OF TRUST FROM WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; THE HIGBEE COMPANY, A DELAWARE CORPORATION; MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY; AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY TO SECURE THE SUM OF \$3,500,000.00.

7. RELEASE OF DEED OF TRUST DATED DECEMBER 31, 2002 FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; MERSCO REALTY CO., INC., AN OHIO CORPORATION; SHERMAN W. DREISESZUN, TRUSTEE UNDER A SELF-DECLARATION OF TRUST DATED FEBRUARY 29, 1988; THOMAS S. MORGAN AND MARILYN J. MORGAN, CO-TRUSTEES OF FRANK W. MORGAN CHARITABLE LEAD UNITRUST U.T.A. DATED OCTOBER 23, 1993; ROBERT J. O'HALLORAN, AS SUCCESSOR TRUSTEE OF MARILYN J. FEINGOLD TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF MICHAEL B. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF MARK A. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF THOMAS S. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF TODD D. MORGAN TRUST #2 DATED APRIL 1, 1976; AND ROBERT J. O'HALLORAN, AS TRUSTEE OF THE DREISESZUN GRANDCHILDREN TRUST DATED OCTOBER 28, 1976 TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF GOLD BANK, A KANSAS BANKING ASSOCIATION TO SECURE THE SUM OF \$40,000,000.00 RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642585.

SAID DEED OF TRUST WAS FURTHER SECURED BY ASSIGNMENT OF LEASES AND RENTS RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642586.

8. TERMINATION OF FINANCING STATEMENT BY GOLD BANK, THE SECURED PARTY, RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642587, F1642588, F1642589, F1642590, F1642591, F1642592, F1642593, F1642594, F1642594, F1642596.

9. RECORDATION OF THAT CERTAIN ASSIGNMENT OF DEED OF TRUST FROM M&I MARSHALL & ILSLEY BANK, SUCCESSOR TO GOLD BANK TO WESTMINSTER MALL COMPANY REGARDING DEED OF TRUST RECORDED DECEMBER 31, 2002 UNDER RECEPTION NO. F1642585.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

10. WRITTEN APPROVAL OF THIS TRANSACTION BY THE PARTNERS OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THAT OWN AT LEAST 51% OF THE "DISTRIBUTION PERCENTAGE INTERESTS" OF SAID PARTNERSHIP AS REQUIRED UNDER ARTICLE II OF THE PARTNERSHIP AGREEMENT.

NOTE: SAID APPROVAL MUST ALSO NAME THE "MANAGERS" WHO ARE AUTHORIZED TO EXECUTE DOCUMENTS ON BEHALF OF THE PARTNERSHIP.

11. WRITTEN APPROVAL OF THIS TRANSACTION BY THE MEMBERS OF MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY OWNING AT LEAST 55% OF THE "DISTRIBUTION PERCENTAGES" OF SAID LIMITED LIABILITY COMPANY, AS REQUIRED UNDER ARTICLE 6.3 OF THE OPERATING AGREEMENT FOR SAID LIMITED LIABILITY COMPANY.
12. WRITTEN APPROVAL OF THIS TRANSACTION BY THE MEMBERS OF MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY OWNING AT LEAST 55% OF THE "DISTRIBUTION PERCENTAGES" OF SAID LIMITED LIABILITY COMPANY, AS REQUIRED UNDER ARTICLE 6.3 OF THE OPERATING AGREEMENT FOR SAID LIMITED LIABILITY COMPANY.
13. NOTICE AND AFFIDAVIT OF LEASE TERMINATION EXECUTED BY WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP CONFIRMING THE TERMINATION OF THOSE CERTAIN LEASES RECORDED SEPTEMBER 15, 1977 IN BOOK 3070 AT PAGE 142, JUNE 6, 1978 UNDER RECEPTION NO. 78050335, JULY 26, 1988 UNDER RECEPTION NO. 88072446, DECEMBER 7, 1992 UNDER RECEPTION NO. 92158098 AND AUGUST 23, 1993 UNDER RECEPTION NO. 93128826 AND ALSO CONFIRMING THE RENT ROLL ATTACHED THERETO.

NOTE: (OWNER'S POLICY ONLY) UPON THE APPROVAL OF THE COMPANY AND THE RECEIPT OF A NOTARIZED FINAL LIEN AFFIDAVIT, ITEM NO. 4 OF THE GENERAL EXCEPTIONS WILL BE AMENDED AS FOLLOWS:

ITEM NO. 4 OF THE GENERAL EXCEPTIONS IS DELETED AS TO ANY LIENS OR FUTURE LIENS RESULTING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY ONLY.
FIRST AMERICAN TITLE INSURANCE COMPANY SHALL HAVE NO LIABILITY FOR ANY LIENS ARISING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF ANY OTHER

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

PARTY, INCLUDING, BUT NOT LIMITED TO WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY.

NOTE: ITEM 5 OF THE GENERAL EXCEPTIONS WILL BE DELETED IF LAND TITLE
GUARANTEE COMPANY CONDUCTS THE CLOSING OF THE CONTEMPLATED TRANSACTION(S)
AND RECORDS THE DOCUMENTS IN CONNECTION THEREWITH.

NOTE: UPON PROOF OF PAYMENT OF 2010 TAXES, ITEM 6 OF THE GENERAL EXCEPTIONS
WILL BE AMENDED TO READ:

TAXES AND ASSESSMENTS FOR THE YEAR 2011 AND SUBSEQUENT YEARS, A LIEN, NOT
YET DUE AND PAYABLE.

NOTE: ITEM 7 OF THE GENERAL EXCEPTIONS IS HEREBY DELETED.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
8. TERMS, CONDITIONS AND PROVISIONS OF EXISTING LEASES AS SET FORTH IN THE RENT ROLL.
9. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 10, 1885, IN BOOK 32 AT PAGE 107.

(AFFECTS LOTS 1, 3 THROUGH 7, 9, 10, 12, 14, 15, 16 AND 18)

10. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 22, 1905, IN BOOK 119 AT PAGE 54.

(AFFECTS LOTS 1, 2 AND 12)

11. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

WESTMINSTER MALL SUBDIVISION AGREEMENT RECORDED JANUARY 14, 1976 IN BOOK 2809 AT PAGE 337.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL RECORDED JANUARY 14, 1976 UNDER RECEPTION NO. 758563.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

13. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL AMENDED RECORDED APRIL 16, 1976 UNDER RECEPTION NO. 779637.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

14. LEASE BETWEEN MERSCO REALTY CO., INC., AN OHIO CORPORATION, LESSOR, AND WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED JULY 21, 1976, IN BOOK 2879 AT PAGE 852.

(AFFECTS PORTIONS OF LOTS 1 AND 10, AND ALL OF LOTS 9, 17, 18 AND 19)

15. EASEMENT GRANTED TO THE ALLEN DITCH COMPANY, FOR IRRIGATION CONDUIT, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 05, 1976, IN BOOK 2911 AT PAGE 261.

(AFFECTS LOT 15)

16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION AGREEMENT RECORDED OCTOBER 15, 1976 IN BOOK 2915 AT PAGE 453.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

17. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 25, 1976, IN BOOK 2919 AT PAGE 34.

(AFFECTS LOTS 1, 10, 17 AND 19)

18. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 31, 1977, IN BOOK 2956 AT PAGE 777.

(AFFECTS LOT 16)

19. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN LEASE AND DECLARATION OF RESTRICTIONS RECORDED APRIL 07, 1977 IN BOOK 2985 AT PAGE 672, AND FIRST AMENDMENT THERETO RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016381.

(AFFECTS ALL LOTS)

20. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT BY AND BETWEEN MERSCO REALTY CO., INC., AN OHIO CORPORATION, DAVID HAHN, TRUSTEE, AND THE JOSLIN DRY GOODS COMPANY, A COLORADO CORPORATION RECORDED APRIL 07, 1977 IN BOOK 2985 AT PAGE 685, AND AMENDMENT THERETO RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016380.

(AFFECTS A PORTION OF LOTS 1, 10 AND 17)

21. EASEMENT GRANTED TO THE PUBLIC, FOR STORM AND SANITARY SEWER LINES, WATER LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 01, 1977, IN BOOK 3063 AT PAGE 242.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 10, 12 AND 14 THROUGH 19)

22. (ITEM INTENTIONALLY DELETED)

23. (ITEM INTENTIONALLY DELETED)

24. EASEMENT GRANTED TO THE PUBLIC , FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 18, 1978, UNDER RECEPTION NO. 78076109.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 10)

25. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF BRUNSWICK CENTER RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076112.

NOTE: PLAT RATIFICATION RECORDED SEPTEMBER 28, 1978 UNDER RECEPTION NO. 78089787.

(AFFECTS LOT 1)

26. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BRUNSWICK CENTER SUBDIVISION AGREEMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076110.

(AFFECTS LOT 1)

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN OFFICIAL DEVELOPMENT PLAN FOR BRUNSWICK SUBDIVISION PLANNED UNIT DEVELOPMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076111,.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOT 1)

28. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 08, 1978, UNDER RECEPTION NO. 78082939.

(AFFECTS LOT 7)

29. EASEMENT GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED APRIL 03, 1979, UNDER RECEPTION NO. 79028820.

(AFFECTS LOTS 1, 15, 16, 18 AND 19)

30. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1979, UNDER RECEPTION NO. 79113496.

(AFFECTS LOT 12)

31. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN WESTMINSTER MALL OFFICIAL DEVELOPMENT PLAN RECORDED AUGUST 25, 1980 UNDER RECEPTION NO. 80062536, AND AMENDMENT THERETO RECORDED MARCH 5, 1981 UNDER RECEPTION NO. 81014999, AND AMENDMENT THERETO RECORDED JUNE 6, 1983, UNDER RECEPTION NO. 83051906 AND AMENDMENT THERETO RECORDED JUNE 14, 1993 UNDER RECEPTION NO. 93084172 AND AMENDMENT THERETO RECORDED FEBRUARY 8, 1985 UNDER RECEPTION NO. 85012857.

(AFFECTS LOTS 1, 9, 10, 12, 14, 15 AND 16)

32. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1980, UNDER RECEPTION NO. 80098451.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 18 AND 19)

33. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1980, UNDER RECEPTION NO. 80098452.

(AFFECTS LOTS 1, 15 AND 16)

34. EASEMENT GRANTED TO THE PUBLIC, FOR PUBLIC WALKWAY, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 20, 1981, UNDER RECEPTION NO. 81004595.

(AFFECTS LOTS 1, 15, 16, 18 AND 19)

35. EASEMENT GRANTED TO THE CITY OF WESTMINSTER, FOR STORM DRAINAGE, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 03, 1982, UNDER RECEPTION NO. 82061813.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 5)

36. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 16, 1984, UNDER RECEPTION NO. 84005094.

(AFFECTS LOTS 1, 18 AND 19)

37. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 16, 1984, UNDER RECEPTION NO. 84005095.

(AFFECTS LOTS 1 AND 16)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

38. LEASE BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSOR, AND CENTRAL BANCORPORATION, INC., A COLORADO CORPORATION, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED MARCH 27, 1985, UNDER RECEPTION NO. 85028159.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

39. AN EASEMENT FOR UTILITY PURPOSES AS RESERVED IN ORDINANCE #1488, SERIES OF 1985, VACATING A PORTION OF WEST 91ST AVENUE, RECORDED MAY 10, 1985 UNDER RECEPTION NO. 85044026.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 10)

40. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED MAY 16, 1985, UNDER RECEPTION NO. 85045599.

(AFFECTS LOTS 15 AND 16)

41. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN PRELIMINARY DEVELOPMENT PLAN AND OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL RECORDED SEPTEMBER 05, 1985 UNDER RECEPTION NO. 85084672, AND FIRST AMENDMENT THERETO RECORDED NOVEMBER 22, 1985 UNDER RECEPTION NO. 85113479, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710 AND AMENDMENT THERETO RECORDED APRIL 28, 1993 UNDER RECEPTION NO. 93056877 AND AMENDMENT THERETO RECORDED MAY 11, 1994 UNDER RECEPTION NO. 94086564 AND AMENDMENT THERETO RECORDED JULY 12, 1996 UNDER RECEPTION NO. F0267601.

NOTE: RELEASE OF CERTAIN PROPERTY RECORDED DECEMBER 18, 1985 UNDER RECEPTION NO. 85122760.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS ALL LOTS)

42. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, ET AL., AND BRUNSWICK CORPORATION RECORDED DECEMBER 16, 1985 UNDER RECEPTION NO. 85121733.

(AFFECTS LOT 1)

43. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL 2ND AMENDED RECORDED FEBRUARY 14, 1986 UNDER RECEPTION NO. 86016236.

(AFFECTS ALL LOTS)

44. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AS GRANTED AND RESERVED IN SPECIAL WARRANTY DEED FROM FRANK S. MORGAN, ET AL., TO MERVYN'S, A CALIFORNIA CORPORATION, RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016383.

(AFFECTS LOTS 1 THROUGH 7 AND 10)

45. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, ET AL., AND CARTER HAWLEY HALE STORES, INC., A DELAWARE CORPORATION RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016386.

(AFFECTS LOT 1)

46. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR SIDEWALK AND CURB AS GRANTED AND RESERVED IN SPECIAL WARRANTY DEED FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, TO THE MAY DEPARTMENT STORES COMPANY, A NEW YORK CORPORATION RECORDED FEBRUARY 18,

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1986 UNDER RECEPTION NO. 86016384.

(AFFECTS LOT 1)

47. (ITEM INTENTIONALLY DELETED)

48. LEASE BETWEEN FRANK S. MORGAN, ET AL., LESSOR, AND WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED FEBRUARY 18, 1986, UNDER RECEPTION NO. 86016387.

(AFFECTS LOTS 1 THROUGH 7 AND 10)

49. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN INDENTURE OF LEASE BY AND BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, AND JC PENNEY PROPERTIES, INC., A DELAWARE CORPORATION RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016388.

NOTE: TERM AGREEMENT RECORDED JULY 12, 1993 UNDER RECEPTION NO. 93101704 AND RECORDED JANUARY 10, 1994 UNDER RECEPTION NO. 94005874.

(AFFECTS ALL LOTS)

50. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN WESTMINSTER MALL RECIPROCAL CONSTRUCTION, OPERATION AND EASEMENT AGREEMENT RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016389.

NOTE: ASSIGNMENT AND ASSUMPTION OF AGREEMENTS RECORDED FEBRUARY 8, 1990 UNDER RECEPTION NO. 90011510.

REA ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED FEBRUARY 22, 1996 UNDER RECEPTION NO. F0189712.

NOTE: ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS RECORDED SEPTEMBER

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

27, 2004 UNDER RECEPTION NO. F2102228.

NOTE: ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED JANUARY 11, 2006 UNDER RECEPTION NO. 2006004250.

NOTE: ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT RECORDED MAY 18, 2009 UNDER RECEPTION NO. 2009045088.

(AFFECTS ALL LOTS)

51. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED APRIL 02, 1986, UNDER RECEPTION NO. 86033564.

(AFFECTS LOTS 3 THROUGH 7)

52. (ITEM INTENTIONALLY DELETED)

53. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 19, 1986, UNDER RECEPTION NO. 86096170.

(AFFECTS LOTS 1, 5, 6 AND 10)

54. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 03, 1986, UNDER RECEPTION NO. 86103237.

(AFFECTS LOT 16)

55. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 05, 1987, UNDER RECEPTION NO. 87001381.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1 AND 10)

56. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT AND WAIVER BY AND BETWEEN THE CITY OF WESTMINSTER AND WESTMINSTER MALL COMPANY RECORDED FEBRUARY 12, 1987 UNDER RECEPTION NO. 87019125.

(AFFECTS LOT 1)

57. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE SHAW HEIGHTS BASIN SPECIAL IMPROVEMENT DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED AUGUST 07, 1987, UNDER RECEPTION NO. 87101964.

(AFFECTS LOT 1)

58. (ITEM INTENTIONALLY DELETED)

59. (ITEM INTENTIONALLY DELETED)

60. (ITEM INTENTIONALLY DELETED)

61. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004112.

(AFFECTS LOT 1)

62. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004113.

(AFFECTS LOT 1)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

63. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004114.

(AFFECTS LOT 12)

64. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004115.

(AFFECTS LOT 1)

65. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004116.

(AFFECTS LOTS 1, 3, 4 AND 5)

66. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED NOVEMBER 09, 1992, UNDER RECEPTION NO. 92144664.

(AFFECTS LOTS 1, 15 AND 16)

67. (ITEM INTENTIONALLY DELETED)

68. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 30, 1992, UNDER RECEPTION NO. 92169138.

(AFFECTS LOT 12)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

69. LAND SURVEY PLAT RECORDED JANUARY 25, 1993 UNDER RECEPTION NO. 93011161.

(AFFECTS LOTS 1 AND 3 THROUGH 7)

70. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 27, 1993, UNDER RECEPTION NO. 93012257.

(AFFECTS LOT 16)

71. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN MEMORANDUM OF SUBLEASE WITH CONSENT OF LENDER AND GROUND LESSOR BY AND BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSOR, AND GENERAL MILLS RESTAURANTS, INC., A FLORIDA CORPORATION, LESSEE, RECORDED MAY 14, 1993 UNDER RECEPTION NO. 93067818 AND RECORDED OCTOBER 19, 1993 UNDER RECEPTION NO. 93167959.

NOTE: NON-DISTURBANCE AND ATTORNMENT AGREEMENT OF GROUND LEASE RECORDED MAY 14, 1993 UNDER RECEPTION NO. 93067819.

(AFFECTS ALL LOTS)

72. (ITEM INTENTIONALLY DELETED)

73. (ITEM INTENTIONALLY DELETED)

74. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CITY OF WESTMINSTER AGREEMENT FOR POSSESSION AND USE OF RIGHT-OF-WAY RECORDED AUGUST 14, 1997 UNDER RECEPTION NO. F0460650.

(AFFECTS LOTS 1, 6, 7, 15, 16, 18 AND 19)

75. ALTA/ACSM LAND TITLE SURVEY RECORDED DECEMBER 31, 1998 UNDER RECEPTION NO. F0769556.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 3, 4 AND 5)

76. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FIRST AMENDED OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL SUBDIVISION FOR SEARS AUTO CENTER RECORDED MARCH 29, 2001 UNDER RECEPTION NO. F1208340.

(AFFECTS LOTS 1, 4 AND 5)

77. LAND SURVEY PLAT RECORDED JULY 26, 2002 UNDER RECEPTION NO. F1531073.

(AFFECTS LOTS 1, 4 AND 5)

78. (THIS ITEM MOVED TO SCHEDULE B, SECTION 1.)

79. (THIS ITEM MOVED TO SCHEDULE B, SECTION 1.)

80. (ITEM INTENTIONALLY DELETED)

LAND TITLE GUARANTEE COMPANY and LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION
DISCLOSURE STATEMENTS

Note: Pursuant to CRS 10-11-122, notice is hereby given that:

- A) The subject real property may be located in a special taxing district.
- B) A Certificate of Taxes Due listing each taxing jurisdiction may be obtained from the County Treasurer's authorized agent.
- C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- D) The Company must receive payment of the appropriate premium.
- E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments containing a mineral severance instrument exception, or exceptions, in Schedule B, Section 2.

- A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, information to an insurance company for the purpose of defrauding or incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

First American Title Insurance Company

PRIVACY POLICY

We are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, the First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- * Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- * Information about your transactions with us, our affiliated companies, or others; and
- * Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested to us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information values. We currently maintain physical, electronic, and procedural safeguards that comply with referral regulations to guard your nonpublic personal information.

WEBSITE

Information on the calculation of premiums and other title related charges are listed at First American's website: www.firstam.com

NOTICE OF PRIVACY POLICY OF
LAND TITLE GUARANTEE COMPANY, INC., A COLORADO CORPORATION
AND
MERIDIAN LAND TITLE, L.L.C., A COLORADO LIMITED LIABILITY COMPANY, D/B/A
LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION

This Statement is provided to you as a customer of Land Title Guarantee Company, a Colorado corporation and Meridian Land Title, LLC, d/b/a Land Title Guarantee Company - Grand Junction.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- * applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
- * your transactions with, or from the services being performed by, us, our affiliates, or others;
- * a consumer reporting agency, if such information is provided to us in connection with your transaction; and
- * the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- * We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- * We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- * Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- * We regularly access security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows. Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured names in Schedule A, as owner or mortgage of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of the Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issued one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules as www.alta.org

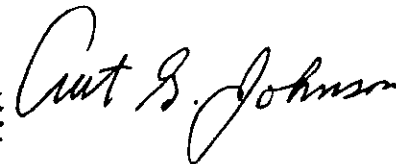
Issued by:

LAND TITLE GUARANTEE COMPANY
3033 EAST FIRST AVENUE
SUITE 600
PO BOX 5440 (80217)
DENVER, CO 80217


Authorized Officer or Agent

FIRST AMERICAN TITLE INSURANCE COMPANY







AMERICAN
LAND TITLE
ASSOCIATION



EXHIBIT P

Form of Dillard Modification Agreement

**FIRST AMENDMENT TO AMENDED AND RESTATED LEASE
AND DECLARATION OF RESTRICTIONS**

This FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AND DECLARATION OF RESTRICTIONS (this "Amendment") is dated _____ and made between the Westminster Economic Development Authority ("Lessor"), and HIGBEE LANCOMS, LP, a Delaware limited partnership ("Lessee").

RECITALS

In accordance with a Lease and Declaration of Restrictions (the "Original Lease") effective September 9, 1976 and made between Westminster Mall Company ("WMC"), as landlord, and The Joslin Dry Goods Company ("Joslin"), as tenant, Joslin leased from WMC certain property (the "Demised Premises") at Westminster Mall in Westminster, Jefferson County, Colorado. The legal description of the Demised Premises is attached to this Agreement as Exhibit A. A memorandum of the Original Lease was recorded in Deed Book 2985 at Page 672 among the records of Jefferson County, Colorado.

The Original Lease has been amended by First Lease Modification Agreement dated July 1, 1977; by Amendment No. 1 to Lease and Declaration of Restrictions dated February 1, 1979; by Amendment and Modification No. 2 to Lease and Declaration of Restrictions dated October 10, 1985; by First Amendment to Lease and Declaration of Restrictions dated February 13, 1986; and by Second Lease Modification Agreement dated February 13, 1986.

On December 6, 1987, the parties amended and restated the Original Lease by Amended and Restated Lease and Declaration of Restrictions. The Original Lease, as amended and restated to date, is referred to as the "Lease".

By merger effective January 28, 2006, Mercantile Operations, Inc. acquired Joslin's interest in the Lease. By merger dated February 4, 2007, The Higbee Company acquired Mercantile Operations, Inc.'s interest in the Lease. By Assignment of Assumption of Lease dated December 31, 2011, Lessee acquired The Higbee Company's interest in the Lease.

As part of the settlement of ongoing litigation between WMC and Lessor, WMC and Lessor entered a Settlement Agreement dated _____ (the "Settlement Agreement"). As a part of the Settlement Agreement, on _____ Lessor acquired the Demised Premises by Deed dated _____ and recorded at Rec. No. _____, and also acquired WMC's interest in the Lease by Assignment of Lease dated _____ and recorded at Rec. No. _____, both among the records of Jefferson County, Colorado.

As part of the Settlement Agreement and Lessor's acquisition of the Demised Premises, Lessor agreed to terminate the Lease. As such, Lessor and Lessee enter this Amendment to confirm their respective rights and obligations under the Lease after this Amendment takes effect.

AGREEMENT

NOW, THEREFORE, in consideration of \$10.00, the mutual promises and covenants contained in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Definitions. All capitalized terms not defined by this Amendment have the meaning provided by the Lease.

2. Article IV. Article IV of the Lease is hereby amended by adding the following as Section 4.5:

4.5 TERMINATION. (a) *Notwithstanding anything to the contrary contained in this LEASE, this LEASE will be cancelled and terminated on a date (the "TERMINATION DATE") no more than 90 days after the date (the "ACQUISITION DATE") on which LESSOR acquires the lessor's interest in the LEASE.*

(b) *The period of time from the ACQUISITION DATE through the TERMINATION DATE is referred to as the "WINDING DOWN PERIOD."*

(c) *LESSEE shall notify LESSOR of the exact TERMINATION DATE no fewer than ten days before the TERMINATION DATE. This notice will be effective as of the date sent by LESSEE, and will be sent by overnight courier, to LESSOR'S attention, using the notice address provided in Section 15.12.*

(d) *If the ACQUISITION DATE is not the final day of a month, then LESSOR and LESSEE shall prorate as of the ACQUISITION DATE the final charges due under the Lease. All prorated amounts must be paid no more than 30 days after the Termination Date.*

3. Article V. Article V of the Lease is hereby modified by adding the following as Section 5.6:

5.6 PAYMENTS DURING WINDING-DOWN PERIOD. *During the WINDING DOWN PERIOD, LESSEE shall not be required to make any payments under Article V of this LEASE.*

4. Article XII. Article XII of the Lease is hereby modified by adding the following as Section 12.4:

12.4 PAYMENTS DURING WINDING-DOWN PERIOD. *During the WINDING-DOWN PERIOD, LESSEE shall not be required to make any payments under Article XII of this LEASE.*

5. Article XIV Article XIV of the Lease is hereby modified by adding the following as Section 14.7:

14.7 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING-DOWN PERIOD, LESSEE shall not be required to make any payments under Article XIV of this LEASE.

6. Article XV. Article XV of the Lease is hereby modified as follows:

(a) Section 15.3 is hereby modified by adding the following:

Notwithstanding any terms contained in the LEASE, LESSOR shall as of the TERMINATION DATE accept LESSEE'S surrender of the DEMISED PREMISES in its AS IS, WHERE IS, and WITH ALL FAULTS condition.

(b) Section 15.12 of the Lease is hereby deleted in its entirety and replaced with the following:

15.12 NOTICE. All notices, demands, or other communications given under this LEASE must be in writing and are to be deemed duly received:

(a) *When delivered personally to the addresses set forth below, or upon confirmed receipt by facsimile, provided if such confirmed receipt is after 5:00 p.m. EST., delivery shall be deemed to occur the next business day;*

(b) *one Business Day after deposit (for overnight delivery) with a national, overnight courier service; or*

(c) *upon delivery (or refused deliver) by U.S. Postal Service as certified mail, return receipt requested, postage prepaid.*

Notices must be sent to the following addresses:

*If to LESSOR: Westminster Economic Development Authority
Attn: Brent McFall, Executive Director
4800 West 92nd Avenue
Westminster, CO 80003*

*If to LESSEE: Higbee LANCOMS, LP
1600 Cantrell Road
Little Rock, AR 72201
Attn: James W. Cherry, Jr., Vice President
Facsimile: 501-399-7502*

or to such other address or to such other person as any party shall designate to the others for such purpose in the manner set forth above.

(c) Section 15.16 of the Lease is hereby modified by adding the following sentence:

During the WINDING-DOWN PERIOD, LESSEE shall not be required to make payments under this Section 15.16.

MISCELLANEOUS PROVISIONS

7. (a) Lessor represents that it is the owner of the lessor's interest in the Lease, and that Lessor has the authority to amend, terminate, and cancel the Lease without the consent of any person or entity other than Lessee and persons and entities from which consent has been obtained.

(b) Lessee represents that it is the owner of the lessee's interest in the Lease, and that Lessee has the authority to amend, terminate, and cancel the Lease without the consent of any person or entity other than Lessor and persons and entities from which consent has been obtained.

8. (a) Effective as of the Termination Date, Lessor shall release and discharge Lessee from any and all agreements, covenants, representations, obligations, and liability under or in connection with the Lease that first arise after the Termination Date.

(b) Effective as of the Termination Date, Lessee shall release and discharge Lessor from any and all agreements, covenants, representations, obligations, and liability under or in connection with the Lease that first arise after the Termination Date.

9. At Lessor's option, it may file in the appropriate records of Jefferson County, Colorado, a notice of termination of the Lease. Lessor shall pay all costs associated with this recordation and shall forward a duly recorded copy to Lessee.

10. Lessor hereby acknowledges that all amounts due under the Lease for periods prior to the Acquisition Date have been paid in full by Lessee. Lessor shall not seek reimbursement for any amounts due for periods before the Acquisition Date. The payments to be made in accordance with this Agreement are a complete and final settlement of all monetary obligations between Lessor and Lessee under the Lease.

11. This Agreement, in conjunction with the Settlement Agreement, contains the entire agreement of Lessor and Lessee with respect to the terms contained in this Amendment, and supersedes all prior agreements, understandings, or representations, whether written or oral.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be signed on the dates shown below.

LESSOR:

Westminster Economic Development Authority

By: _____
J. Brent McFall
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

LESSEE:

HIGBEE LANCOMS, LP,
a Delaware limited partnership

By: LANCOMS GP, LLC,
a Delaware limited liability company
its general partner

By: The Higbee Company,
a Delaware corporation
its sole member

By: _____
Name:
Title:

STATE OF ARKANSAS §
 §
COUNTY OF _____ §

This _____, 2011, personally came before me, _____, a Notary Public in and for the said County and State, _____, who being by me duly sworn, says that he/she is the _____ of The Higbee Company, a Delaware corporation and ultimate signatory for HIGBEE LANCOMS, LP, a Delaware limited partnership, and that this writing was signed and sealed by him, on behalf of that entity, by its authority duly given, and he/she, acknowledged this writing to be the act and deed of that entity.

WITNESS my hand and seal on _____, 2011.

Notary Public

(Notarial Seal)

My Commission Expires

ATTACHMENTS OF SCHEDULES TO PSA

Schedule 7(x)

All percentage or other rents payable by any tenant listed on Exhibit C in respect of such tenant's sales for March and April 2011

Schedule 10(b)(iv)

Unsettled Insurance Claims

None

Schedule 10(b)(v)

Service Contract and Lease Defaults

As set forth in that certain letter dated March 11, 2011 from Sears Holdings to WMC, a copy of which has been provided to Purchaser and which Purchaser acknowledges having received.



Agenda Memorandum

City Council Meeting
May 2, 2011



SUBJECT: Resolution No. 15 re Reimbursement Resolution for Westminster Center Urban Reinvestment Project Bond Financing

Prepared By: Marty McCullough, City Attorney
Tammy Hitchens, Finance Director

Recommended City Council Action

Adopt Resolution No. 15 setting forth the City's intent to make certain capital expenditures associated with the acquisition of property in connection with the Westminster Center Urban Reinvestment Project, to issue bonds for financing the Project, and to use a portion of the proceeds of such bond financing for reimbursement of the City for those expenditures incurred prior to issuing the bonds, to the extent authorized by the Internal Revenue Code of 1986 and applicable Treasury Department Regulations.

Summary Statement

- The City may issue bonds to finance portions of the Westminster Center Urban Reinvestment Project ("Project"). Prior to issuing the bonds, the City will be incurring expenses related to the Project that are anticipated to be funded by bond proceeds.
- Federal law permits a municipal government to approve a resolution that allows it to finance capital projects from existing financial resources and reimburse itself from the proceeds of bonds issued in the future. The resolution will permit reimbursement of Project costs incurred by the City within 60 days prior to the approval of the reimbursement resolution and allocated thereto in writing. Additionally qualified preliminary expenditures (in amounts that do not exceed 20% of the issue price of the bond issue) with respect to a specific project can be reimbursed outside of the 60-day requirement. Qualified preliminary expenditures are defined as architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of the acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.
- The adoption of this resolution will give the City the option to be reimbursed for the purchase of the property needed for this redevelopment from revenues that are expected to be generated through the construction and build-out of this Project.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Should the City Council pass the reimbursement resolution to allow the City the option to reimburse itself for costs incurred prior to the debt proceeds being received?

Alternative

Do not pass the reimbursement resolution. This action is not recommended. Without the reimbursement resolution, the City would not be able to recover costs paid prior to the bonds being sold. Federal law requires that a reimbursement resolution be adopted in order for a municipality to pre-pay construction and other capital related costs and subsequently reimburse itself from financing proceeds once the debt is issued.

Background Information

The redevelopment of the Westminster Mall site is the City Council's top strategic plan priority, as outlined in the City's five-year Strategic Plan. An urban renewal area designation that provides the ability to exercise the powers allowed for under urban renewal law was approved on April 13, 2009. A plan for the new urban renewal area, Westminster Center Urban Reinvestment Plan Area (WURP) was also approved shortly thereafter. Land assemblage and the installation of certain public infrastructure are key components of the redevelopment plans for this Project.

The goal of the Westminster Center Urban Reinvestment Project is to develop a high-density urban center of regional scope on the approximately 105-acre parcel currently occupied by the Westminster Mall. The property's central location between Denver and Boulder, along with easy access to U.S. 36, rail and bus service, makes it an ideal candidate for redevelopment. The Project will facilitate both a vertical and horizontal mixture of uses, including entertainment, office, residential and cultural, along with a strong retail component. The new development is intended to be a sustainable place, one that mixes uses, reuses existing anchor stores where appropriate, capitalizes on and encourages alternate modes of transportation, creates a strong pedestrian-friendly block layout, and will stand the test of time.

WEDA and the City have invested significant funds in furtherance of the WURP Project. These include planning, consulting, land assembly and other predevelopment costs. WEDA previously acquired the Mervyn's, Macy's and Trail Dust properties from their respective owners with the assistance of the City. WEDA and the City will likely incur further expenses related to this Project in advance of a bond issue.

Adopting the proposed reimbursement resolution will facilitate the future financing of the Project and provide the City and WEDA greater flexibility in structuring what is sure to be a relatively complex financing package for this Project.

City Council action on this item assists the City in meeting the following Strategic Plan Goals: Financially Sustainable City Government Providing Exceptional Services, Vibrant Neighborhoods in One Livable Community, Strong Balanced Local Economy and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. **15**

INTRODUCED BY COUNCILLORS

SERIES OF 2011

**A RESOLUTION EXPRESSING THE INTENT OF THE CITY TO
BE REIMBURSED FOR CERTAIN EXPENSES RELATING TO
CERTAIN CAPITAL EXPENDITURES ASSOCIATED WITH
THE ACQUISITION OF PROPERTY IN CONNECTION WITH
THE WESTMINSTER CENTER URBAN REINVESTMENT
PROJECT**

WHEREAS, the City of Westminster, Colorado (the “City”) is a legal and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the Charter; and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected and qualified; and

WHEREAS, it is the current intent of the City to make certain capital expenditures associated with the acquisition of property in the vicinity of 88th Avenue and Sheridan Boulevard to redevelop the Westminster Mall (the “Project”); and

WHEREAS, the Council has determined that it is in the best interest of the City to finance the Project through the issuance of bonds (the “Bonds”); and

WHEREAS, the Council has determined that it is necessary to make capital expenditures in connection with the Project prior to the time that the City arranges for the specific financing of the Project; and

WHEREAS, it is the Council’s reasonable expectation that when such financing occurs, the capital expenditures will be reimbursed with the proceeds of the financing; and

WHEREAS, in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), it is the Council’s desire that this resolution shall constitute the “official intent” of the Council to reimburse such capital expenditures within the meaning of Treasury Regulation §1.150-2.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO:

Section 1. All action (not inconsistent with the provisions of this resolution) heretofore taken by the Council and the officers, employees and agents of the City directed toward the issuance of the Bonds is hereby ratified, approved and confirmed.

Section 2. The City intends to finance approximately \$35 million dollars to pay the costs of the Project, including the reimbursement of certain costs incurred by the City prior to the receipt of any proceeds of a financing, upon terms acceptable to the City, as authorized in an ordinance to be hereafter adopted and to take all further action which is necessary or desirable in connection therewith.

Section 3. The officers, employees and agents of the City shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the Project and to otherwise carry out the transactions contemplated by the resolution.

Section 4. The City shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h).

Section 5. This resolution is intended to be a declaration of “official intent” to reimburse expenditures within the meaning of Treasury Regulation §1.150-2.

Section 6. If any section, paragraph, clause or provision of this resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 7. All acts, orders and resolutions of the Council, and parts thereof, inconsistent with this resolution be, and the same hereby are, repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

Section 8. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED this 2nd day of May, 2011.

CITY OF WESTMINSTER, COLORADO

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)
) SS.
 CITY OF WESTMINSTER)

I, Linda Yeager, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the City Council (the "Council") at a regular meeting held on May 2, 2011.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of May 2, 2011, by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Council were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

6. Notice of the meeting of May 2, 2011, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed _____, 2011.

 City Clerk

(SEAL)

EXHIBIT A

(Attach Form of Notice of Meeting)

AGENDA
SPECIAL
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MEETING

MONDAY, MAY 2, 2011

AT 6:30 P.M.

1. Roll Call

2. Purpose of Special WEDA Meeting is to

- A. Consider Acquisition of the Property Owned by the Westminster Mall Company and Related Entities within the 105-Acre Westminster Center Urban Reinvestment Project Area
- B. Consider Adopting Resolution No. 131 a Reimbursement Resolution for Westminster Center Urban Reinvestment Project Bond Financing

3. Adjournment



WESTMINSTER

April 25, 2011

Linda Yeager, WEDA Secretary
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2006
FAX 303-706-3921

Nancy McNally
Mayor

Chris Dittman
Mayor Pro Tem

Bob Briggs
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Faith Winter
Councillor

Dear Linda:

I wish to call a special meeting of the Westminster Economic Development Authority (WEDA) on Monday, May 2, 2011, to begin at 6:30 p.m. and to be held in the Council Chambers of City Hall, 4800 West 92nd Avenue, for the purpose of considering: 1) acquisition of the property owned by the Westminster Mall Company and related entities within the 105-acre Westminster Center Reinvestment Project Area; and 2) the Reimbursement Resolution for Westminster Urban Reinvestment Project Bond Financing.

Sincerely,

Nancy McNally
Chair

cc: WEDA Board Members
J. Brent McFall, Executive Director



WEDA Agenda Item 2 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
May 2, 2011



SUBJECT: Acquisition of the Property Owned by the Westminster Mall Company and Related Entities within the 105-Acre Westminster Center Urban Reinvestment Project Area

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

Recommended Board Action

Authorize the Executive Director to execute a purchase and sale agreement in substantially the same form as attached and all necessary closing documents for the acquisition of the majority of the remaining privately owned property within the Westminster Center Urban Reinvestment Project area, and authorize the funding as needed for this acquisition.

Summary Statement

- Staff has negotiated the purchase of the Westminster Mall for a purchase price of \$22,000,000.
- WEDA will acquire the property with a combination of existing funds and a promissory note backed by a deed of trust and assignment of rents.
- With this acquisition, WEDA will own approximately 90% of the approximately 105-acre Project site.
- The acquisition of this property is an integral part of the Mall redevelopment efforts.

Expenditure Required: \$22,000,000 plus closing costs

Source of Funds: \$18,500,000 from WURP CIP account
\$3,500,000 promissory note backed by deed of trust, assignment of rents,
and pledged City cash reserves



Policy Issue

Should WEDA acquire the majority of the remaining privately owned property within the approximately 105-acre Westminster Center Urban Reinvestment Project area?

Alternatives

1. Direct Staff to renegotiate the agreement.
2. Direct Staff to file an eminent domain action to acquire the property.

These alternatives are not recommended. The acquisition of this parcel is key to the Mall redevelopment and Staff and the City's commercial real estate consultants believe the proposed price and other terms of the agreement are fair and reasonable, and its approval will terminate the pending litigation between WEDA and the Mall ownership concerning this Project.

Background Information

Staff has been working to implement the Westminster Center Urban Reinvestment Project (WURP), as part of the Westminster Center Urban Reinvestment Plan, approved on April 13, 2009, to redevelop the property within the vicinity of 88th Avenue and Sheridan Boulevard (historically known as the Westminster Mall). The redevelopment of the Westminster Mall site is the City Council's top strategic plan priority, as outlined in the City's five-year Strategic Plan. Land assemblage and the installation of public infrastructure are key components of the redevelopment plans for this Project.

WEDA and the City have invested significant funds in furtherance of the WURP Project. These include planning, consulting, land assembly and other predevelopment costs. WEDA previously acquired the Mervyn's, Macy's and Trail Dust properties from their respective owners with the assistance of the City.

This acquisition will result in WEDA owning approximately 90% (or nearly 94 acres) of the WURP site and will allow WEDA to avoid use of other methods of acquiring this property.

This Purchase and Sale Agreement anticipates a closing date for the acquisition of the property on or before May 11, 2011. WEDA's authorization to acquire the property at this time will facilitate redevelopment of the property by expediting City access to the Project area. WEDA is currently in the process of identifying a redeveloper for the WURP site. Control of the property will make this site much more attractive to quality developers, which should allow the redevelopment to move forward.

WEDA action on this item assists the City with all five of its Strategic Plan Goals: Financially Sustainable City Government Providing Exceptional Services, Safe and Secure Community, Strong Balanced Local Economy, Vibrant Neighborhoods in One Livable Community, and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment: Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is made as of this _____ day of _____, 2011 (the “**Effective Date**”), by and between **WESTMINSTER MALL COMPANY**, a Colorado general partnership (“**WMC**”), **THE HIGBEE COMPANY**, a Delaware corporation and successor by merger to Mersco Realty Co., Inc., an Ohio corporation (“**Higbee**”), **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company (“**MD1**”), and **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company (“**MD2**”) (WMC, Higbee, MD1 and MD2, collectively, “**Seller**”) and the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal authority (the “**Authority**”), and the **CITY OF WESTMINSTER**, a Colorado home rule city (“**City**”) (Authority and City, collectively, “**Purchaser**”). Seller and Purchaser are sometimes referred to herein as the “**Parties**”.

WHEREAS, the City of Westminster is a home rule municipality organized under the laws of the State of Colorado.

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to Part I of Article 25 of Title 31, C.R.S. On April 13, 2009, the City Council made a determination that the Westminster Center Urban Renewal Area (“**Plan Area**”) was a blighted area and appropriate for an urban renewal project pursuant to the Act.

WHEREAS, on April 13, 2009, the City Council approved the Westminster Center Urban Reinvestment Plan (“**Plan**”) covering the Plan Area as defined therein and authorizing the Authority to acquire property, by condemnation if necessary, and to redevelop property within the Plan Area.

WHEREAS, Seller owns certain interests in portions of the Plan Area described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Real Property**”) which constitute part of the development commonly known as the Westminster Mall (the “**Shopping Center**”).

WHEREAS, on July 15, 2010, Seller filed a Complaint in *Westminster Mall Company, et al v. City of Westminster, et al.*, Case Number 10-CV-3231, Jefferson County District Court (“**Litigation**”) challenging, among other things, the legality of the Purchaser’s right to condemn the Property, blight determination with respect to the Real Property and the Plan.

WHEREAS, on or about the date hereof, the Parties have entered into a settlement agreement (“**Settlement Agreement**”) and, in connection therewith, the Parties have agreed that Seller will convey to Authority, and Authority shall acquire from Seller, the Property (as defined herein) in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual obligations, covenants and representations set forth herein, and other good and valuable consideration, the Parties mutually agree as follows:

1. **Sale of Property.** Upon and subject to the terms and conditions contained in this Agreement, Seller agrees to sell and convey to Authority, and Purchaser agrees that Authority shall purchase, accept and assume from Seller, the following (collectively, the “**Property**”):

(a) all of Seller’s right, title and interest in the Real Property together with all of Seller’s right, title and interest in (i) the buildings and improvements thereon, (ii) water and sewer taps (specifically excluding any utility deposits) and all rights of Seller to have such buildings and improvements to be provided with water and sewer services (to the extent transferrable by Seller to Purchaser), and (iii) all other appurtenances thereto (“**Real Property and Improvements**”);

(b) all right, title and interest of Seller, if any, in and to (i) all equipment, appliances, trade fixtures, machinery, furniture, furnishings, supplies, and other tangible personal property that is owned by Seller and is located on and used in connection with the operation, ownership or management of the Shopping Center excluding those items listed on **Exhibit B** attached hereto and made a part hereof (“**Excluded Personality**”), and (ii) all plans, drawings, development rights, licenses or permits owned by Seller and used in connection with the operation, ownership or management of the Shopping Center, to the extent the same are in Seller’s possession and are transferable by Seller to Purchaser (“**Personality**”);

(c) all right, title and interest of Seller in and to (i) the leases described as the “**Ground Leases**” in the Assignment of First Ground Lease (as defined herein) (“**First Ground Lease**”) and in the Assignment of Second Ground Lease (as defined herein) (“**Second Ground Lease**”); (ii) the lease described as the “**Penney Lease**” on **Exhibit C** attached hereto and made a part hereof by this reference; and (iii) all other leases, subleases, licenses, concessions and other agreements and unapplied security deposits paid by tenants under such leases as identified in **Exhibit C** attached hereto and made a part hereof by this reference (other than the Penney Lease) to which Seller is a party relating to the occupancy of any portion of the Real Property and Improvements, as the same shall have been amended or modified (“**Tenant Leases**”) (the Ground Leases, the Penney Lease and the Tenant Leases are herein collectively called the “**Leases**”; a current list of the Penney Lease and the Tenant Leases is set forth on **Exhibit C**; and the tenants and occupants under the Tenant Leases and the tenant under the Penney Lease are herein collectively called “**Tenants**” and individually, “**Tenant**”); and

(d) all right, title and interest of Seller in and to the following (collectively, the “**Contracts**”): that certain Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986, as amended (the “**RCOEA**”), all agreements relating to the RCOEA which are identified as supplemental agreements in the “Assignment of RCOEA and Other Agreements” attached hereto as **Exhibit M** (“**Supplemental Agreements**”), all easements and other documents recorded in the real estate records which are identified on the Commitment (as defined herein) affecting the Real Property and Improvements (other than the “**Seller DT Liens**”, as defined herein, and the “**Terminated Leases**”, as defined herein), and those service, maintenance, repair and other contracts to which Seller is a party that are listed on **Exhibit D** attached hereto and made a part hereof (“**Service**”);

Contracts”), but only to the extent the same are assignable by Seller to Purchaser without third party consent unless such consent is obtained.

2. **Conveyance in Lieu of Condemnation.** The Parties hereby acknowledge, confirm and agree that this Agreement and the sale of the Property to the Authority is made under threat of condemnation.

3. **Purchase Price.** The Purchase Price for the Property shall be Twenty-Two Million and 00/100 Dollars (\$22,000,000.00) (“**Purchase Price**”). The Purchase Price for the interests of each Seller (including the “Deferred Amount” described below) are hereby allocated by the Parties as set forth in the attached **Exhibit E.** The Purchase Price, as adjusted under Section 7, shall be deposited by Purchaser on the Closing Date as follows: (i) Eighteen Million Five Hundred Thousand and 00/100 Dollars (\$18,500,000.00) in immediate same-day federal funds (which shall comply with the Colorado “good funds” law) wired for credit into the escrow account established by Escrow Agent for this transaction (“**Cash**”), all of which Cash shall be paid solely to WMC, and (ii) two promissory notes in the aggregate original principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (“**Deferred Amount**”), the form of which are attached hereto as **Exhibit F-1** and incorporated herein by this reference (“**Notes**”) (and WMC hereby directs that payment of its portion of the Deferred Amount be made to MD Westminster Holdings, LLC and TM Westminster Holdings, LLC as provided in the Notes). The Notes provide for monthly interest-only payments calculated at the rate of 6% per annum payable in advance on the first day of each calendar month, with no prepayment penalty, and the outstanding principal amount due and payable in full no later than one (1) year after the Closing Date. Pursuant to a loan agreement to be entered into at Closing, the form of which is attached hereto as **Exhibit F-2 (“Loan Agreement”)** and incorporated herein by this reference, the Notes shall be secured by a deed of trust (“**Deed of Trust**”) encumbering the Property, the form of which is attached hereto as **Exhibits F-3** and incorporated herein by this reference, and such other documents contemplated to secure the Notes as is provided in the Notes, Loan Agreement or Deed of Trust (all of the same being collectively called the “**Loan Documents**”).

4. **Closing.** The escrow closing (“**Closing**”) of the transactions contemplated hereby shall take place on May 10, 2011 or on such earlier date as Seller and Purchaser shall mutually agree upon in writing (“**Closing Date**”), at the office of the Escrow Agent whose business address is Land Title Guarantee Company, 5875 Greenwood Plaza Boulevard, Greenwood Village, CO 80111 (“**Title Company**”) or such other date or place as the parties shall agree; provided, however, that the prorations and adjustments set forth in Section 7 hereof may be made as of 11:59 P.M. on a date other than the Closing Date if Seller and Purchaser shall mutually agree upon such other date in writing (“**Proration Date**”); and if no such other date is agreed upon then the Closing Date shall be the Proration Date).

5. **Cooperation in Transition.** From the execution of this Agreement through the date of Closing, WMC will cooperate with Purchaser, at no expense to Seller, in providing an orderly transition of management responsibility from WMC to Authority. In such connection, during such period, WMC will make the current Shopping Center management team available to meet with Authority, its employees and contractors at times mutually acceptable to the parties for

the purpose of reasonably familiarizing Authority's employees and contractors with the maintenance, configuration and operation of the Shopping Center and location of the documents, records and agreements necessary for the operation and maintenance of the Shopping Center. For a period not to exceed five (5) business days from and after Closing, no more than three (3) employees of WMC shall have continued access to the Property to wind up WMC's business operations thereon.

6. **Operation of Property.** (a) After the Effective Date so long as this Agreement is in effect, Seller shall not enter into, amend, terminate except for default, or waive in writing any rights under any Leases without Authority's prior written consent. Seller shall not apply any tenant security deposits under the Leases, except in the event of a Tenant's default under a Lease.

(b) Seller shall continue to maintain in effect its current insurance coverages on the Property in existence on the date hereof. Purchaser shall secure its own insurance with respect to the Property and Purchaser shall have no rights under Seller's insurance policies including, without limitation, any proceeds, unearned premiums or any deposits all of which shall belong solely to the Seller.

(c) Seller shall have the right (but shall not be required) to remove all Excluded Personalty on or before the Closing Date, or at any time within thirty (30) days thereafter; provided, that Seller shall indemnify and hold harmless Authority from any loss, damage, claim or judgments incurred by Authority and caused by Seller or any of its employees in connection with the removal of Excluded Personalty. Any Excluded Personalty not so removed shall, notwithstanding anything to the contrary contained herein, be deemed abandoned by Seller and shall be deemed conveyed to Authority in its then AS IS WHERE IS condition with all faults without representation or warranty of any kind.

(d) **Seller's Loan Policy.** As a condition to Seller's obligation to close, the Escrow Agent shall be in a position to unconditionally and irrevocably issue an ALTA loan title insurance policy ("**Loan Policy**") in favor of Seller (or other persons designated as the mortgagee under the Deed of Trust), in the aggregate amount of the Notes, and in a form and substance satisfactory to Seller, insuring the lien of the Deed of Trust as a first priority lien on the Real Property subject only to such exceptions and containing such endorsements and affirmative coverages as Seller may reasonably require.

(e) **Owner's Title Policy.** As a condition to Purchaser's obligation to close, the Seller shall deliver the Seller DT Release (defined herein) to the Escrow Agent, and the Escrow Agent shall be in a position to unconditionally (other than payment of the policy premium) and irrevocably issue an ALTA owner's title insurance policy ("**Owner's Policy**") in favor of Authority, in an amount equal to the Purchase Price, subject to all exceptions to title and other matters set forth in Schedule B-2 of the Commitment with the following deletions: (i) the exceptions for the matters covered under the Seller DT Release and (ii) the mechanics' lien exception contemplated to be deleted by the affidavit of Seller described in clause (i) of Section 8(h) of this Agreement.

(f) Seller shall deliver to Authority, at the on-site mall office, not later than seven (7) days following the Closing Date, the following documents to the extent currently within Seller's possession or control and not delivered to Purchaser prior to the Closing: copies (or originals as determined by Seller) of all civil, architectural, structural, electrical, mechanical-plumbing, fire sprinkler and landscape working drawings, specifications, as-built construction plans, architectural renderings or models or any other plans developed or prepared for the Property, and all engineer's letters or certifications.

7. **Closing Adjustments.** The following items pertaining to the Property shall be prorated or credited as of the Proration Date, and appropriate adjustments made to the Cash portion of the Purchase Price or as otherwise set forth below. The Title Company, with the assistance of Seller and Authority shall prepare a proration statement in reasonable detail showing each item prorated, allocated or adjusted in accordance with this Section ("**Proration Statement**").

(a) Taxes. The following terms shall have the following meanings: (i) "**Taxes**" shall mean the real estate taxes and assessments, both general and special, imposed against or encumbering the Real Property and Improvements and personal property taxes imposed against or encumbering the Personalty; (ii) "**Excluded Taxes**" shall mean the Taxes payable by the tenants under the Leases with Sears, Roebuck and Co. ("**SR**") covering the Sears TBA ("**Sears TBA Lease**"), Penney, Olive Garden and U.S. Bank (collectively "**Excluded Taxes Leases**") (Sears TBA: 29-244-02-017 ("**Sears TBA Tax Parcel**"); Penney: 29-244-02-028; Olive Garden: 29-244-02-030 ("**Olive Garden Tax Parcel**"); U.S. Bank: 29-244-02-027 ("**Bank Tax Parcel**")) and (iii) the term "**Applicable Taxes**" shall mean the Taxes excluding the Excluded Taxes. The Applicable Taxes for years prior to the year of Closing, including the second installment of 2010 taxes, as well as the second installment of 2010 Taxes for the Sears TBA Tax Parcel, Olive Garden Tax Parcel and Bank Tax Parcel (collectively, "**Outparcel 2010 Installments**"), shall be paid by WMC at Closing. The Applicable Taxes for 2011 payable in 2012 shall be split between WMC and Authority as of the Proration Date, with WMC responsible for the 2011 Applicable Taxes due from January 1, 2011 to the Proration Date. Authority acknowledges that Authority is tax exempt and that the Property will be removed from the real estate tax rolls as of the Proration Date; therefore, the total 2011 Applicable Taxes billing from the county Treasurer may reflect only the amount payable by WMC. WMC's share of the 2011 Applicable Taxes shall be escrowed in an interest-bearing account with the Title Company for payment of 2011 Applicable Taxes on or before the last date on which the 2011 Applicable Taxes are due and payable without penalty. The escrowed amount shall be equal to the 2010 Applicable Taxes prorated for the number of days from January 1, 2011 to the Proration Date. Authority shall remit originals or copies of all 2011 tax bills to WMC and Title Company within ten (10) days after receipt thereof by Authority and in all events prior to the date such taxes are due. The Title Company shall pay WMC's 2011 Applicable Taxes prior to delinquency and promptly remit to WMC after such payment all funds escrowed in excess of the actual amount. The escrow fee of the Title Company shall be paid by Authority. Notwithstanding the foregoing, Seller retains and reserves any and all rights of protest, appeal and abatement related to the valuation, taxes and assessments for the Real Property and Improvements ("**Tax Appeals**"), both past and future, to the extent that such Tax Appeals apply to the year of Closing or any tax periods prior thereto. Authority agrees to reasonably cooperate in all such Tax Appeals with the local taxing authorities at no out of

pocket expense to the Authority. Any such refunds or reductions in such property taxes and assessments due to the Tax Appeals shall belong exclusively to Seller. All costs and expenses incurred in such Tax Appeals shall be borne by Seller. The parties recognize that the Excluded Taxes are payable by the tenants under the Excluded Taxes Leases and that Seller shall have no liability to Purchaser or otherwise for the payment of the Excluded Taxes other than the Outparcel 2010 Installments. WMC and Authority shall sign the Title Company's standard Tax Agreement at Closing provided the same is in a form acceptable to the Parties

(b) Ground Leases and Dillard's Lease. Seller shall be entitled to receive and retain all rent and other charges accrued under the Ground Leases and the Dillard Lease prior to Closing, none of which shall be prorated. The parties acknowledge that WMC, on the one hand, and the lessors under the Ground Leases and the tenant under the Dillard Lease, on the other hand, will adjust amounts payable under the Ground Leases and Dillard Lease outside of the Closing by separate agreement between such parties.

(c) Fixed and Percentage Rents. As to fixed and minimum rents payable under all other Leases, the same will be prorated as of the Proration Date. WMC shall be entitled to receive and retain all fixed, minimum and base rents, and all percentage rent, whether payable monthly (including monthly in arrears) or (subject to the last sentence of this subparagraph) annually, which are attributable to any period preceding the Proration Date, whether then due or past due or not yet due under any Leases. For example and without limitation, percentage rent payable monthly in arrears based on sales occurring prior to the month in which the Proration Date shall occur is attributable to such prior month, notwithstanding whether payment is due in a subsequent month. Within thirty (30) days after receipt of payment from a Tenant, Authority shall remit to WMC its allocable share of all rent and percentage rent attributable to periods prior to the Proration Date together with the applicable Tenant's gross sales statements. Percentage rents based on annual gross sales shall be separately prorated under each Lease on the basis of the fiscal year set forth in each Lease for which Percentage Rent is payable, and the parties shall adjust between themselves amounts owed for such fiscal year on account of percentage rents, and WMC's allocable share shall be determined by multiplying total percentage rents owed by the fraction whose numerator is the number of days in such fiscal year before the Proration Date, and whose denominator is the total number of days in such fiscal year which the Authority shall pay to WMC within thirty (30) day after receipt thereof from a tenant.

(d) Additional Charges. Subject to the provisions of paragraphs (b), (c) and (e) of this Section, WMC shall be entitled to receive and retain all other charges payable to WMC by a Tenant, including advertising and promotional fees, common area maintenance charges, charges for electricity or other utilities, real estate taxes and assessments, insurance premiums, administrative overhead, and other amounts so payable (but only to the extent denominated as a separate charge as opposed to being included in gross or base rent) ("**Additional Charges**") attributable to the period preceding the Proration Date. Additional Charges received by WMC and attributable to the month of Closing shall be prorated between WMC and Authority as of the Proration Date. In the event Authority shall receive from a Tenant any Additional Charges attributable to the period prior to the Proration Date, Authority shall promptly remit the same to WMC; likewise, should Seller receive any Additional Charges from a Tenant payable for any period after the Proration Date, Seller shall remit the same to Authority. Notwithstanding the

foregoing or anything else herein, from and after the Proration Date the parties release and discharge each other from any and all claims, demands or liability for Additional Charges or any other obligations under the “May Supplemental Agreement” or “Mervyn’s Supplemental Agreement” (as each are identified on Exhibit B to the Assignment of RCOEA and Other Agreements attached hereto) or under the RCOEA or any other agreements with respect to either the “**May Site**” or the “**Mervyn’s Site**”, as each are as defined in the RCOEA, which release and discharge shall survive the Closing and delivery of the Deed.

(e) Sears Charges. The term “**Sears Supplemental Agreement**” shall mean that certain Supplemental Agreement dated February 13, 1986 between WMC and Sears Development Co. (“**SDC**”), as successor in interest to Carter Hawley Hale Stores, Inc. The term “**Sears Common Area Charges**” shall mean the amount payable by (i) SR under the Sears TBA Lease for its share of “Operating Costs” (as therein defined) for each fiscal year applicable thereto under the Sears TBA Lease and (ii) SDC under the Sears Supplemental Agreement for its share of “Common Facilities Operating Expenses” (as therein defined) for the fiscal year applicable thereto under the Sears Supplemental Agreement. For the respective fiscal year(s) under the Sears TBA Lease and Sears Supplemental Agreement upon which the Sears Common Area Charges are computed, the Sears Common Area Charges shall be prorated between WMC and Authority as of the Proration Date with WMC being entitled all payments allocable to the period prior to the Proration Date, subject to adjustment as hereinafter provided. At the conclusion of the fiscal year(s) under the Sears TBA Lease applicable to the Sears Common Area Charges thereunder, WMC’s allocable share of the actual Sears Common Area Charges as of the Proration Date under the Sears TBA Lease shall be determined by multiplying (A) the amount of the Sears Common Area Charge payable thereunder for such fiscal year by (B) a fraction, the numerator of which is “Operating Costs” thereunder incurred by WMC prior to the Proration Date and the denominator of which is WMC’s and Authority’s total Operating Costs incurred for the entire fiscal year. At the conclusion of the fiscal year(s) under the Sears Supplemental Agreement applicable to the Sears Common Area Charges thereunder, WMC’s allocable share of the actual Sears Common Area Charges as of the Proration Date under the Sears Supplemental Agreement shall be determined by multiplying (y) the amount of the Sears Common Area Charge payable thereunder for such fiscal year by (z) a fraction, the numerator of which are WMC’s “Common Facilities Operating Expenses” under the Sears Supplemental Agreement incurred by WMC prior to the Proration Date and the denominator of which are WMC’s and Authority’s Common Facilities Operating Expenses incurred for the entire fiscal year. If, on the basis of amounts actually incurred and the estimated payments received by WMC from Sears prior to the Proration Date, WMC has retained amounts in excess of its allocable share, it shall remit such excess to Authority within 30 days, and if WMC has retained less than its allocable share from the total payments of Sears Additional Charges payable by Sears for such fiscal year, Authority shall remit such amount to WMC within 30 days after the Authority receives such amounts from Sears under the annual reconciliation process.

(f) Sears Letter. Further, the parties acknowledge that SR and SDC are disputing the Sears Common Area Charges for years prior to Closing as set forth in that certain letter dated March 11, 2011 from Sears Holdings to WMC (“**Sears Letter**”), a copy of which Seller has furnished Purchaser and of which Purchaser acknowledges receipt. Accordingly, (i) WMC reserves and retains any and all right and interest to any Sears Common Area Charges or other charges owed to WMC under the Sears TBA Lease or Sears Supplemental Agreement for any

period prior to the Proration Date (“**Reserved Sears Charges**”) (and Authority agrees to cooperate with Seller in connection therewith at no cost to Authority), and (ii) Seller shall indemnify and hold harmless Authority from any loss, damage, or judgments with respect to any overpayment by Sears of Sears Common Area Charges pursuant to the claims made by Sears in the Sears Letter (no admission being herein made by WMC that any such overpayment has ever occurred).

(g) Service Contracts. All amounts due and payable under the Service Contracts through the date of Proration Date shall be paid by WMC and payments due and payable from and after the date of Proration Date shall be paid by Authority. Prorations shall be determined by prorating the payment amount under the Service Contract over the period to which such payment applies. WMC shall be entitled to a credit to the extent that sums have been paid by WMC under any Service Contracts for services to be performed or goods to be delivered after the Proration Date. Authority shall be entitled to a credit to the extent that sums are paid by Authority for services performed or goods delivered on or prior to the Proration Date.

(h) Utility Charges; Other Expenses. Utility charges for the Real Property and Improvements and not otherwise payable directly by a Tenant to the applicable utility company shall be prorated as of the Proration Date. WMC shall pay such charges assessed through the Proration Date and shall receive a credit for any prepaid amounts attributable thereafter. If final billing statements are not available at Closing, then such charges shall be estimated on the basis of the most recent billing statement for each respective utility service. In the case of the water and sewer service, the Title Company shall order a final reading as of the Proration Date and shall escrow from Seller’s closing proceeds an amount reasonably estimated by the Title Company for the payment of the final water and sewer bill to the Proration Date. The Title Company shall pay (from the amount escrowed) the final water and sewer billing statement and shall promptly remit to WMC after such payment all funds escrowed in excess of such water and sewer final billing statement. WMC and the Authority shall sign the Title Company’s standard Utility Agreement at Closing provided the same is in a form acceptable to the Parties. All other customarily prorated costs or expenses which are not otherwise prorated or addressed pursuant to the preceding provisions of this Section 7 and which are to be assumed by the Authority under this Agreement shall be prorated between the parties hereto as of the Proration Date. Except with respect to such expense items prorated as of and on the Proration Date, Seller shall be responsible for payment of any and all bills or charges incurred on or prior to the Proration Date for work, services, supplies or materials, and the Authority shall be responsible for payment of any and all bills or charges incurred after the Proration Date for work, services, supplies or materials. All charges and fees of the Title Company for the services contemplated to be performed by the Title Company under this Agreement shall be paid by Authority. The state documentary fee shall be paid by Authority.

(i) Security Deposits. Tenant shall receive a credit for security deposits of Tenants under Leases not previously applied.

Notwithstanding the foregoing or any direction from any Tenant or SDC to the contrary, all rent and charges received by Authority or WMC from Tenants or SDC shall be applied as follows:

(w) first, towards the payment of rent and Additional Charges (including Sears Common Area Charges) attributable to the calendar month in which the Proration Date occurs (including, without limitation, percentage rent so attributable but due after the Proration Date; i.e., percentage rent payable in May, 2011 based on sales for April, 2011),

(x) second, to payment of rent and Additional Charges described on Schedule 7(x), (“**Schedule 7(x) Amounts**”) (provided, however, (1) Seller reserves the right to pursue all Schedule 7(x) Amounts, and (2) Purchaser shall not waive any Schedule 7(x) Amounts nor reduce any of the same),

(y) third, to payment of rent and Additional Charges (including Sears Common Area Charges) attributable to periods after the Proration Date,

(z) fourth, to the payment of rent and Additional Charges (including Sears Common Area Charges) which were past due as of the Proration Date (“**Additional Delinquent Amounts**”) (provided, however, (1) all Reserved Sears Charges shall be retained by Seller and Purchaser shall have no rights with respect thereto, (2) Seller reserves the right to pursue all Additional Delinquent Amounts, and (3) Purchaser shall not waive any Additional Delinquent Amounts nor reduce any of the same).

Subject to the foregoing, any amounts received by Authority for the period on or prior to the Proration Date shall be paid to WMC within 30 days of receipt and any amounts received by WMC attributable to the period after the Proration Date shall be paid to Authority within 30 days of receipt. The obligations in this Section 7 shall survive Closing. In all cases in this Section 7 in which WMC is to pay any amount to Authority, if WMC fails to timely pay such amount, then the other parties constituting Seller agree to pay such amount in accordance with the provisions of Section 7.

8. Closing Deliveries. (i) On or before the Closing Date, Seller shall deliver to Escrow Agent each of the following documents, in recordable form where applicable:

(a) an executed original of the bargain and sale deed in the form attached hereto as **Exhibit H** (“**Deed**”);

(b) two (2) originals executed by the applicable Seller of each of the Bill of Sale in the form attached hereto as **Exhibit I**, the Assignment of First Ground Lease and the Assignment of Second Ground Lease (collectively, “Assignments of Ground Lease”) in the forms attached hereto as **Exhibit J**, the Assignment of the Penney Lease in the form attached hereto as **Exhibit K**, the Assignment of the Tenant Leases in the form attached hereto as **Exhibit L**, the Assignment of Contracts in the form attached hereto as **Exhibit M**, and the Assignment of RCOEA and Other Agreements in the forms attached hereto as **Exhibit N** (collectively, the “**Assignments**”);

(c) A Request for Release of that certain deed of trust, dated December 31, 2002, to the Public Trustee of Jefferson County for the benefit of Gold Bank, a Kansas banking association recorded December 31, 2002, at reception no. F1642585 together with the original promissory note and original or certified copy of such deed of trust, as may be required by

Colorado statutes and releases or terminations of any other recorded documents related to the loan which the deed of trust secures, including without limitation termination(s) of any UCC financing statement(s) all in a form acceptable to Title Company in order to issue the policy of title insurance, with such documents either deleted or shown as released, should Purchaser elect to obtain, at its expense, an owner's policy of title insurance ("**Seller DT Release**");

(d) Two (2) originals of the Loan Agreement executed by the parties thereto other than Purchaser;

(e) A FIRPTA Affidavit executed by Seller;

(f) Notices executed by WMC to SR, Penney and each other Tenant advising it of the change of ownership and delivery of its security deposit, if any, and directing it to pay rent and charges attributable to periods prior to the Proration Date to Seller, and from and after the Proration Date to an address specified by Authority; any and all notices (executed by WMC) required by the RCOEA or Supplemental Agreements in connection with this Agreement or the transactions provided for in this Agreement including, but not limited to, the notice required under Section 50.1. of the RCOEA (but excluding notices to the owners of May Site or Mervyn's Site, which notices shall be the sole obligation of Purchaser); and a general notice executed by WMC to any party to the Service Contracts advising of the transfer and assignment of Seller's interest therein to Authority and directing that all payments and inquiries with respect to matters accruing before the Proration Date made to Seller and those accruing following the Proration Date be made to Authority ("**Tenant and Vendor Notices**");

(g) the Proration Statement (as defined in Section 7) executed by Seller;

(h) one or more affidavits from WMC in favor of the Title Company in form sufficient for the Title Company to delete from the Owner's Policy (should Purchaser elect to obtain such policy, at its expense) (i) the standard mechanics lien exception solely to the extent the lien is caused by Seller (and not any tenant or other party holding by, through or under Seller) and (ii) the lease exceptions shown as items 22, 23, 58, 67 and 72 ("**Terminated Leases**") on the Commitment attached hereto as **Exhibit O** (the "**Commitment**").

(i) Such other documents, instruments or agreements that Seller may reasonably be required to execute and/or deliver on or prior to Closing pursuant to any provision of this Agreement or required by any law to be executed by Seller in connection with the contemplated transactions (including certificates, authorizations or other documents required by laws as a condition of transfer of title to the Real Property).

(ii) On or before the Closing Date, Purchaser shall deliver to Escrow Agent the Cash and each of the following documents, in recordable form where applicable:

(a) an original of each of the Notes execute by Purchaser;

(b) two (2) executed originals of each of the Loan Agreement, Deed of Trust, and any other Loan Documents executed by Authority and, where applicable, City;

(c) two (2) originals executed by Purchaser of each of the Assignments;

(d) the Proration Statement executed by Authority;

(e) the Tenant and Vendor Notices executed by Authority;

(f) Two (2) originals executed by the Authority and the tenant under the Dillard's lease of a lease modification agreement in the form attached hereto as **Exhibit P** (the "**Dillard Modification**"); and

(g) Such other documents, instruments or agreements that Purchaser may be required to execute and/or deliver on or prior to Closing pursuant to any provision of this Agreement or the Loan Documents or required by any laws to be executed by Purchaser in connection with the contemplated transactions or the Loan Documents, together with such other documents, instruments or agreements that Purchaser may be required to execute and/or deliver on or prior to Closing by the Title Company, including without limitation, documents necessary to endorse the Owner's policy of Title Insurance with extended coverage.

9. Closing Costs. Purchaser shall pay all closing, escrow and other fees charged by Escrow Agent; all premiums and other costs of the Lender's Policy and of any title policy it may obtain and any endorsements thereto; all real property transfer taxes, documentary fees, or mortgage fees imposed in connection with the conveyance of the Property or the Loan Documents; and the cost of recording any documents to be recorded in connection with the Closing, except that Seller shall pay the cost to record the Seller DT Release.

10. Representations and Warranties

(a) Purchaser represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

(i) Authority (1) is a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, (2) has full power, authority and legal right to execute, deliver and perform under this Agreement and all of the Exhibits hereto, and under the Loan Documents, and (3) has obtained all necessary consents and approvals of all requisite parties to execute this Agreement;

(ii) This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms; and

(iii) There are no actions, suits, proceedings, orders or investigations pending or threatened against or affecting Purchaser at law or in equity, or before or by any governmental body which might adversely affect Purchaser's performance under this Agreement.

Purchaser's representations and warranties set forth in this Section shall survive the Closing and shall remain in full force and effect for a period ending the earlier of one year following Closing or until satisfaction and payment of all obligations under the Note and other Loan Documents.

(b) Seller represents and warrants to Purchaser, as of the date hereof, as follows:

(i) WMC is a general partnership formed under the Colorado laws, MD1 and MD2 are limited liability companies duly organized in Missouri, and Hibgee is a corporation duly incorporated in Delaware; all of which are qualified to do business in the State of Colorado if required and have the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and Seller has obtained all necessary partnership or corporate authorizations required in connection with the execution, delivery and performance contemplated by this Agreement and has obtained the consent of such respective partners, members and directors as are necessary to bind Seller to this Agreement; and

(ii) To the actual knowledge of Seller, neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which Seller is bound that would (a) prevent consummation of the purchase and sale contemplated hereby or (b) impose liability upon Purchaser; and

(iii) To the actual knowledge of Seller, as of the date of Closing, except such Contracts as will be paid by Seller in the ordinary course of business and except for the Leases and Contracts assumed by Authority as to which adjustments shall be made as provided in Section 7 hereof, there will be no outstanding Contracts made by Seller or Seller's property manager for any improvements to the Property prior to Closing which have not been fully paid for, and Seller shall cause to be discharged all mechanics' and materialmen's liens arising from any labor and materials furnished pursuant to such contracts entered into by Seller (but not any tenant or other party holding by, through or under Seller) prior to Closing; and

(iv) To the actual knowledge of Seller, except as may be set forth on **Schedule 10(b)(iv)** attached hereto there are no unsettled insurance claims concerning the Property; and

(v) To the actual knowledge of Seller, except as may be set forth on **Schedule 10(b)(v)** attached hereto, Seller is not in default under the terms of the Service Contracts or any of the Leases which are being assumed by Purchaser hereunder; provided, however, nothing set forth on such Schedule shall be construed as an admission by Seller of any default.

Seller's representations set forth in subsections (b)(i)-(v) of this Section (b) shall survive the Closing of this Agreement for a period of six (6) months from the Closing Date (the "**Limited Warranty Period**"). Seller's representations and warranties shall be deemed to be reaffirmed as true and correct as of the Closing Date except as revealed by Seller to Purchaser in writing or as may be otherwise known to Purchaser on or before the Closing the Closing Date. As used herein,

the phrase "to the actual knowledge of Seller" means to the actual, present knowledge of Milton Brod, Chief Financial Officer of MD Management, Inc. (in such capacity and not in his individual capacity, and without the imposition of any personal liability) on the Effective Date, without any duty of inquiry.

(c) Seller shall provide to the Title Company such authorizations of the authority of the Seller to enter into this Agreement and close the transaction contemplated hereby as shall be reasonably required by the Title Company in order for it to issue an Owner's Policy of title insurance to Authority at Closing, at Purchaser's expense, should Purchaser wish to obtain such policy.

(d) Seller and Purchaser represent and warrant, each to the other, that they have not dealt with any real estate broker, sales person or finder in connection with this transaction and no other person initiated or participated in the negotiation of this Agreement or showed the Property to Purchaser, and to the knowledge of Seller and Purchaser, there are no real estate brokerage commissions, finder's fees, or other similar fees due any person or entity on account of or as a result of this transaction, except as set forth herein. Seller and Purchaser each agree to defend and hold the other harmless from and against any loss, cost, liability or expense suffered or incurred by the other party as a result of a claim or claims for brokerage commissions, finder's fees or other similar fees from any party or firm that is based on the act or omission of the party in breach of the above warranty. The provisions of this paragraph shall survive the Closing.

11. No Seller Warranties; Release; AS IS.

(a) **No Seller Warranties.**THE ENTIRE AGREEMENT BETWEEN THE SELLER AND PURCHASER WITH RESPECT TO THE SALE OF THE PROPERTY IS EXPRESSLY SET FORTH IN THIS AGREEMENT. SELLER IS NOT BOUND BY ANY AGREEMENTS, UNDERSTANDINGS, PROVISIONS, CONDITIONS, REPRESENTATIONS OR WARRANTIES (WHETHER WRITTEN OR ORAL AND WHETHER MADE BY SELLER OR ANY AGENT, EMPLOYEE OR PRINCIPAL OF SELLER OR ANY OTHER PARTY) EXCEPT AS EXPRESSLY SET FORTH AND STIPULATED (i) IN SUBSECTIONS (b) (THE "10(b) WARRANTY") AND (d) (THE "10(d) WARRANTY") OF SECTION 10 HEREOF (AND SUBJECT TO THE LIMITATIONS SET FORTH IN SAID SECTION) AND (ii) IN THE DEED AND ASSIGNMENTS (THE "CONVEYANCE DOCUMENTS") TO BE SIGNED AND DELIVERED BY SELLER AT CLOSING (COLLECTIVELY, THE " CONVEYANCE WARRANTIES"). PURCHASER ACKNOWLEDGES THAT (A) PURCHASER HAS FULLY INSPECTED ALL OF THE PROPERTY, AND IS FULLY AND COMPLETELY SATISFIED WITH THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ALL REAL PROPERTY AND IMPROVEMENTS, THE PERSONALTY, THE LEASES, AND THE CONTRACTS), (B) PURCHASER IS FULLY FAMILIAR WITH THE FINANCIAL AND PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION THEREOF, AND (C) THE PROPERTY IS BEING PURCHASED BY PURCHASER IN AN "AS IS" AND "WHERE IS" CONDITION AND WITH ALL DEFECTS AND FAULTS (PATENT AND LATENT) AND WITHOUT RELIANCE ON ANY AGREEMENT, UNDERSTANDING, CONDITION, WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), FINANCIAL,

OPERATING OR OTHER INFORMATION (WRITTEN, ORAL OR ELECTRONIC) PROVIDED BY SELLER TO PURCHASER OR ANY REPRESENTATION MADE BY SELLER OR ANY SELLER PARTIES (DEFINED BELOW) OR ANY OTHER PARTY AS TO THE FINANCIAL OR PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION OF THE PROPERTY (INCLUDING ALL REAL PROPERTY AND IMPROVEMENTS, THE PERSONALTY, THE LEASES, RCOEA AND THE CONTRACTS) OR THE AREAS SURROUNDING THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO (I) ANY PERMITTED USE THEREOF, (II) THE ZONING CLASSIFICATION THEREOF OR COMPLIANCE THEREOF WITH FEDERAL, STATE OR LOCAL LAWS, (III) AS TO THE INCOME OR EXPENSE IN CONNECTION THEREWITH, (IV) COMPLIANCE OF THE PROPERTY WITH ANY PRIVATE USE RESTRICTIONS, SUCH AS RECORDED COVENANTS, CONDITIONS, AND RESTRICTIONS, (V) THE ACCURACY OF ANY STATEMENTS, CALCULATIONS OR CONDITIONS STATED OR SET FORTH IN ANY DOCUMENTS DELIVERED OR PROVIDED BY SELLER OR ANY SELLER PARTIES, OR AS TO ANY OTHER MATTER IN CONNECTION THEREWITH. PURCHASER KNOWINGLY WAIVES ANY AND ALL OBJECTIONS TO, COMPLAINTS ABOUT, OR CLAIMS REGARDING THE PROPERTY (INCLUDING ALL REAL PROPERTY, THE PERSONALTY, THE LEASES AND THE CONTRACTS) OR FINANCIAL, PHYSICAL OR OTHER CONDITION THEREOF AND ACKNOWLEDGE AND AGREES THAT PURCHASER IS RELYING SOLELY ON ITS OWN INSPECTIONS, INVESTIGATIONS AND DUE DILIGENCE AND ASSUMES THE RISK THAT ADVERSE MATTERS CONCERNING THE FINANCIAL AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, ANY ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY SUCH INSPECTIONS, INVESTIGATIONS AND/OR DUE DILIGENCE. PURCHASER FURTHER ASSUMES THE RISK OF CHANGES IN ENVIRONMENTAL LAWS AS THEY MAY RELATE TO PAST, PRESENT, OR FUTURE ENVIRONMENTAL CONDITIONS AT OR ABOUT THE PROPERTY, AS WELL AS THE RISK THAT ADVERSE PHYSICAL CHARACTERISTICS AND CONDITIONS, INCLUDING THE PRESENCE OF HAZARDOUS MATERIALS, MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATIONS. PURCHASER ACKNOWLEDGES THAT NEITHER SELLER, NOR ANY SELLER PARTIES NOR ANY OTHER PARTY ACTING ON BEHALF OF SELLER OR SELLER PARTIES, HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY SUCH AGREEMENT, CONDITION, REPRESENTATION OR WARRANTY EITHER EXPRESSED OR IMPLIED. SELLER AND THE SELLER PARTIES HEREBY SPECIFICALLY DISCLAIM ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES AND FURTHER SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES WITH RESPECT TO THE PROPERTY. THIS PARAGRAPH SHALL SURVIVE CLOSING AND DELIVERY OF THE DEED, AND SHALL BE DEEMED INCORPORATED BY REFERENCE AND MADE A PART OF ALL DOCUMENTS DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE SALE OF THE PROPERTY AND THE TRANSACTIONS CONTEMPLATED HEREIN.

(b) **Release.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, PURCHASER HEREBY FULLY AND FOREVER RELEASES AND DISCHARGES SELLER AND (AS THE CASE MAY BE) SELLER'S RESPECTIVE

PARTNERS, EMPLOYEES, MANAGERS, AGENTS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, REPRESENTATIVES, CONSULTANTS, AND ATTORNEYS (“**SELLER PARTIES**”) FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES WHETHER SUIT IS INSTITUTED OR NOT) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (HEREINAFTER COLLECTIVELY CALLED THE "**CLAIMS**") ARISING FROM, REGARDING OR OTHERWISE RELATING TO THE PROPERTY, THE MAY SITE OR THE MERVYN'S SITE (INCLUDING WITHOUT LIMITATION ALL REAL PROPERTY AND IMPROVEMENTS, PERSONALTY, LEASES, RCOEA, SUPPLEMENTAL AGREEMENTS AND SERVICE CONTRACTS), INCLUDING WITHOUT LIMITATION AS TO (I) ANY DEFECTS (PATENT OR LATENT), ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY WHETHER THE SAME ARE THE RESULT OF NEGLIGENCE OR OTHERWISE, OR (II) ANY OTHER CONDITIONS, INCLUDING ENVIRONMENTAL AND OTHER PHYSICAL CONDITIONS, FINANCIAL, TITLE, OR OTHER MATTERS OR CONDITIONS AFFECTING THE PROPERTY WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE. THIS RELEASE SPECIFICALLY INCLUDES, WITHOUT LIMITATION, ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS OR THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED, AS THOSE LAWS MAY BE AMENDED FROM TIME TO TIME AND ANY REGULATIONS, ORDERS, RULES OF PROCEDURES OR GUIDELINES PROMULGATED IN CONNECTION WITH SUCH LAWS, REGARDLESS OF WHETHER THEY ARE IN EXISTENCE ON THE DATE OF THIS AGREEMENT. IN THIS CONNECTION, PURCHASER ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, CONTROVERSIES, DAMAGES, COSTS, LOSSES OR EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND PURCHASER FURTHER ACKNOWLEDGES THAT THIS RELEASE HAS BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THE FOREGOING. PURCHASER EXPRESSLY WAIVES ANY PROVISION OF STATUTORY OR DECISIONAL LAW TO THE EFFECT THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN SUCH PARTY'S FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY SUCH PARTY, MUST HAVE MATERIALLY AFFECTED SUCH PARTY'S SETTLEMENT WITH THE RELEASED PARTIES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF PURCHASER'S SELECTION AND PURCHASER IS GRANTING THIS RELEASE OF ITS OWN VOLITION AND AFTER CONSULTATION WITH PURCHASER'S COUNSEL.

(B) **Environmental Definitions.** As used in this Section: (i) The term “**Environmental Law**” shall mean any common law or any federal, state or local law, statute, code, ordinance, rule or regulation, and any amendments thereto (whether such state or local law, statute, code, ordinance, rule or regulation derives its authority from the constitution or laws of the United States or the State of Colorado) relating to either the waters of the United States or the State of Colorado or to the emission, discharge, spill, release or threatened release of any Hazardous Substance into the environment (including, but not limited to, ambient air, surface

water, groundwater or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. "CERCLA", the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., the Federal Clean Air Act, 42 U.S.C. § 7401-7626, the Federal Water Pollution Control Act and Federal Clean Water Act of 1977, 33 U.S.C. § 1251, et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135 et seq., the Federal Environmental Pesticide Control Act, the Federal Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Federal Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq., and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C., § 11001, et seq., (reference to all of such Acts to include all amendments), together with all similar laws, ordinances, rules, regulations and orders enacted or promulgated by any agency or instrumentality of any government, or applicable state or local government or political subdivision of any government; and (ii) the term "**Hazardous Substance**" includes, without limitation, those substances included within the definitions of "Hazardous Substances," "Hazardous Materials," "Toxic Substances," "Hazardous Waste," or "Solid Waste" in any Environmental Law, and oil and petroleum (and their products), asbestos, polychlorinated biphenyls, urea formaldehyde, lead-based paint, and medical or infectious waste or any other substance regulated by Environmental Law.

(C) **AS IS.** PURCHASER SHALL ACCEPT THE PROPERTY (INCLUDING ALL REAL PROPERTY, PERSONALTY, LEASES AND CONTRACTS), AT THE TIME OF CLOSING IN THE SAME CONDITION AS THE SAME ARE AS OF THE DATE OF THIS AGREEMENT, AS SUCH CONDITION SHALL HAVE CHANGED BY REASON OF WEAR AND TEAR, DAMAGE BY FIRE OR OTHER CASUALTY OR DUE TO ANY CONDEMNATION (I.E., BY A THIRD PARTY). SELLER SHALL HAVE NO OBLIGATION TO MAKE ANY REPAIRS, REPLACEMENTS OR IMPROVEMENTS WHATSOEVER, WHETHER ORDINARY OR EXTRAORDINARY, STRUCTURAL, CAPITAL OR OTHERWISE, OR REQUIRED BY REASON OF WEAR AND TEAR, FIRE OR OTHER CASUALTY, NOR SHALL THE CLOSING DATE BE EXTENDED OR THE PURCHASE PRICE REDUCED AS A CONSEQUENCE THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER SPECIFICALLY ACKNOWLEDGES THAT THE FACT THAT ANY PORTION OF THE PROPERTY MAY NOT BE IN WORKING ORDER OR CONDITION AT THE CLOSING DATE FOR ANY REASON OR MAY BE SUBJECT TO ANY CONDEMNATION (I.E., BY A THIRD PARTY), SHALL NOT RELIEVE PURCHASER OF ITS OBLIGATION TO COMPLETE CLOSING UNDER THIS AGREEMENT AND PAY THE FULL PURCHASE PRICE. SELLER MAY, WITH PURCHASER'S EXPRESS WRITTEN CONSENT (WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED) AT SELLER'S OPTION, MAKE ANY SUCH REPAIRS AND REPLACEMENTS PRIOR TO CLOSING IF SELLER, IN GOOD FAITH, BELIEVES SUCH REPAIRS AND REPLACEMENTS ARE NECESSARY OR LEGALLY REQUIRED TO PROTECT THE PROPERTY OR ARE NECESSARY TO COMPLY WITH CONTINUING OBLIGATIONS UNDER ANY LEASE AND THE REASONABLE COST OF SUCH REPAIRS AND REPLACEMENTS SO APPROVED BY PURCHASER AND WHICH IS NOT COVERED BY INSURANCE SHALL BE ADDED TO THE PURCHASE PRICE AND SHALL BE PAYABLE BY PURCHASER TO SELLER ON THE CLOSING DATE.

(D) **Effect of Disclaimers.** PURCHASER ACKNOWLEDGES AND AGREES THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED TO TAKE INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD SUBJECT TO THE PROVISIONS OF THIS SECTION 11 AND THAT SELLER WOULD HAVE CHARGED A HIGHER PURCHASE PRICE IF THE PROVISIONS OF THIS SECTION 11 WERE NOT AGREED UPON BY THE PURCHASER. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE DEED AND SHALL BE DEEMED INCORPORATED BY REFERENCE AND MADE A PART OF ALL DOCUMENTS DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE SALE OF THE PROPERTY AND THE TRANSACTIONS CONTEMPLATED HEREIN.

12. Default (a) If Seller shall fail to perform any of its material obligations hereunder, and if such failure is not cured within ten (10) days after written notice to Seller specifying such failure, Purchaser shall have the following rights: (i) proceed to Closing without any reduction or abatement of the Purchase Price; (ii) terminate this Agreement, in which event all amounts deposited by Purchaser shall be promptly returned to Purchaser; or (iii) in the event that Seller refuses to complete the transactions provided for in this Agreement, Purchaser shall be entitled to specific performance (and Purchaser shall not be entitled to any monetary damages). The remedies set forth in this Section shall be Purchaser's sole and exclusive remedies in the event of Seller's default.

(b) If Purchaser shall default in the performance of any of its obligations hereunder including, without limitation, Purchaser's failure to close, Seller shall have the right at its election to pursue all remedies available at law or in equity.

13. Like-Kind Exchange by Seller. (a) It is understood and agreed that Seller shall have the option to qualify this transaction as part of a tax deferred like-kind exchange under Section 1031 of the Internal Revenue Code. Purchaser shall cooperate with Seller in effecting such exchange and to undertake such customary accommodations as Seller and its attorneys may request to accomplish the exchange in a tax deferred manner (including, without limitation, executing such documents to acknowledge such exchange as are reasonably necessary for Seller to effect such exchange); provided, however, that Purchaser shall not be obligated to incur any expense directly resulting from Seller's exchange unless Seller agrees to reimburse Purchaser for such expenses, and, provided, that such like-kind exchange shall not delay the Closing.

(b) **Condemnation Replacement.** It is understood and agreed that Seller is selling the Property to Purchaser in lieu of condemnation and Seller desires to have the opportunity to replace the Property with similar in use or like-kind property under Section 1033 of the Internal Revenue Code. Purchaser agrees to cooperate with Seller in effecting such replacement and to undertake such accommodations as Seller and its attorneys may request to accomplish such replacement in a tax deferred manner (including, without limitation, modifying the payees and terms of promissory notes and related security documents which the Seller gives in such manner as is requested by Purchaser as long as such modifications do not increase the aggregate amount Seller has to pay under such notes); provided, however, that Purchaser shall not be obligated to incur any expense directly resulting from Seller's replacement unless Seller agrees to reimburse Purchaser for such replacement, and, provided, further, that such replacement shall not delay the Closing.

14. Notices. Any notice, request, demand, instruction or other document or communication to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be deemed to be delivered (a) upon personal delivery to and receipt by the person to whom delivered (including without limitation delivery to and/or receipt by telecopy), or (b) three (3) days after deposit in United States registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) day after deposit with a nationally recognized overnight express courier for next day delivery, in each case addressed to the parties at their respective addresses or telecopy numbers (as applicable) set forth below:

If to Seller: c/o MD Management, Inc.
5201 Johnson Drive, Suite 450
Mission, Kansas 66201
Attention: Milton Brod
Telecopy No.: 913-384-2996

with a simultaneous copy to:

Lewis, Rice & Fingersh L.C.
1010 Walnut Street, Suite 500
Kansas City, Missouri 64106
Attention: William E. Carr, Esq.
Telecopy No.: 816.472.2500

If to Purchaser: Westminster Economic Development
Authority
c/o Finance Department
City of Westminster, Colorado
4800 W. 92nd Avenue
Westminster, CO 80031
Telecopy No.: 303-477-0965

with a simultaneous copy to:

Malcolm Murray
Murray, Dahl, Kuechenmeister & Renaud LLP
2401 15th Street, Suite 200
Denver, CO 80202
Telecopy No.: 303-477-0965

A party may change its address and telecopy number for receipt of notices by service of a notice of such change in accordance herewith.

15. Invalidity. If any term, provision or condition of this Agreement is found to be or is rendered invalid or unenforceable, it shall not affect the remaining terms, provisions and conditions of this Agreement, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Colorado.

17. **No Third Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances, rules, regulations, orders or decrees.

18. **Entirety and Amendments.** This Agreement contains the entire agreement among the parties hereto with respect to its subject matter and shall supersede all negotiations, prior discussions, agreements, letters of intent and understandings between Seller, Purchaser, and their respective employees, agents and representatives, all of same being merged herein and extinguished. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. This Agreement has been drafted through a joint effort of the parties and, therefore, shall not be construed in favor of or against either of the parties, but shall be construed in accordance with its fair meaning.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

20. **Time.** Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

21. **Assignment.** This Agreement may not be assigned by Purchaser without the prior written consent of the Seller. Subject to the foregoing, all terms, covenants, conditions and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, executors, administrators, legal representatives, and permitted successors in interest and assigns.

22. **Waiver and Consent.**

(a) One or more waivers of any term, covenant or condition of this Agreement by any party shall not be construed as a waiver of any subsequent breach of the same or any other term, covenant or condition; nor shall any delay or omission by any party in seeking a remedy for any breach of this Agreement, or in exercising any right accruing to such party by reason of any such breach, be deemed a waiver by such party of its rights or remedies with respect to such breach.

(b) The failure of any party to insist upon the strict performance of any provision of this Agreement, or the failure of any party to exercise any right, option or remedy hereby reserved or granted, shall not be construed as a waiver for the future of any such provision, right, option or remedy, or as a waiver of any subsequent breach thereof, or as an alteration or modification of this Agreement.

(c) No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing, signed by the party against whom such waiver is sought to be enforced.

23. **Gender and Number.** Words of any gender shall include the other gender and the neuter. Whenever the singular is used, the same shall include the plural wherever appropriate, and whenever the plural is used, the same shall also include the singular wherever appropriate. Without limiting the generality of the foregoing, the plural form of any term that is defined in the singular shall mean collectively all items so defined and the singular form of any term that is defined in the plural shall mean singly each item so defined.

24. **Illustrative Terms.** Whenever the word “including”, “includes” or any variation thereof is used herein, such term shall be construed as a term of illustration and not a term of limitation. For example, the term “including” shall be deemed to mean “including, without limitation”, and the term “includes” shall be deemed to mean “includes, without limitation”.

25. **Joint and Several.** The obligations of each Purchaser hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim (whether such claim is one against the other entities which comprise the Purchaser) until all obligations of the collective Purchaser to the Seller hereunder (and all obligations under the Note and Deed of Trust) are satisfied in full.

26. **Survival.** Except as to those matters herein specifically stated to survive the Closing, all covenants, representations and warranties, if any, set forth in this Agreement shall merge with the Deed and shall not survive Closing; provided, however, this shall not be deemed to affect the provisions of the Deed, Bill of Sale, Assignments and Loan Documents.

27. **Attorney’s Fees.** In the event either Party institutes any action or proceeding against the other Party relating to the interpretation or enforcement of the provisions of this Agreement or any violation hereunder, the unsuccessful Party in such action or proceeding shall reimburse to the successful Party its reasonable attorneys’ fees and costs.

28. **Exhibits.** All Exhibits which are attached to this Agreement are hereby made a part of this Agreement by this reference.

A	Legal Description of Real Property
B	Excluded Personalty
C	Leases
D	Service Contracts
E	Allocation of Interests and Purchase Price
F-1 to F-3	Form of Notes, Loan Agreement and Deed of Trust
G	[Intentionally Deleted]
H	Form of Deed
I	Form of Bill of Sale
J	Form of Assignments of Ground Leases
K	Form of Assignment of Penney Lease
L	Form of Assignments of Tenant Leases
M	Form of Assignment of Contracts
N	Form of Assignment of RCOEA and Other Agreements
O	Commitment
P	Form of Dillard Modification Agreement

SELLER:

WESTMINSTER MALL COMPANY,
a Colorado general partnership

By: M D Management, Inc., a Missouri corporation, Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation, Manager

By: _____
Printed
Name: _____
Its: _____

THE HIGBEE COMPANY,
a Delaware corporation
and successor by merger to Mersco Realty Co., Inc., an Ohio corporation

By: _____
Printed
Name: _____
Its: _____

MD WESTMINSTER 1ST TRACT, LLC,
a Missouri limited liability company

By: _____
Thomas S. Morgan, Manager

MD WESTMINSTER 2ND TRACT, LLC,
a Missouri limited liability company

By: _____
Thomas S. Morgan, Manager

PURCHASER:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT A

Real Property

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

Excluded Personalty

Office computers of bookkeeper, manager, management assistant and security

Front End loader

Truck

EXHIBIT C

List of Leases

UNIT	TENANT	LEASE DOCUMENTS
012	Things Remembered, Inc.	Lease Extension Agreement dated 8/31/07 Second Lease Extension Agreement dated 1/1/09
016	Footlocker Retail, Inc. f/k/a Venator Group Retail Inc. f/k/a Kinney Shoe Corporation d/b/a Foot Locker	Lease dated 6/21/96 Lease Extension Agreement dated 9/16/03 Second Lease Extension Agreement dated 1/8/10 Third Lease Extension Agreement dated 3/21/11
018	Spencer Gifts LLC	Lease dated 1/12/98 Lease Extension Agreement dated 9/28/07 Second Lease Extension Agreement dated 11/28/08 Third Lease Extension Agreement dated 2/1/10 Letter dated April 21, 2001
020	Michael Amani d/b/a Riviera Clothing	Lease dated 7/11/05 Lease Extension and Amendment Agreement dated 11/1/08
022	General Nutrition Corporation	Lease dated 12/7/94 Lease Amendment and Extension Agreement dated 10/29/04 Second Lease Amendment and Extension Agreement dated 11/30/06 Third Lease Amendment and Extension Agreement dated 10/31/07 Fourth Lease Amendment and Extension Agreement dated 8/7/09 Fifth Lease Amendment and Extension Agreement dated 11/30/09 Guaranty by General Nutrition Centers Inc. dated 12/7/94
023	Bath & Body Works, LLC	Lease dated 11/08/96 Letter Agreement dated 7/19/10

035	Dillard Juniors	Part of premises under Dillard lease (Main 3) described below
042	Infinite Design Jeweler	Lease dated 2/23/06
044	FL Retail Operations d/b/a Foot Action	Lease dated 8/10/98 Guaranty of Lease dated 8/10/98 Assignment and Assumption of Lease Agreement dated 5/7/04 1 st Amendment dated 8/04 Second Lease Extension Agreement dated 3/21/11
045	Visionary Properties, Inc. d/b/a Doctor's Vision World	Lease dated 9/14/00
049	Genesco Inc. d/b/a Journey's	Lease dated 10/25/01 Lease Modification Agreement dated 11/1/08 Second Lease Modification Agreement dated 11/1/09 Third Lease Modification Agreement dated 10/1/10
050A	Claire's Boutiques	Lease dated 4/26/04 Letter dated December 7, 2004
058	Victoria's Secret Stores, Inc.	Lease dated 10/29/03 Lease Amendment Agreement dated 6/17/04 Second Lease Amendment Agreement dated 1/27/05 Termination letter dated October 28, 2010
072	Pet City, Inc.	Lease dated 4/17/01
139	Footlocker Retail, Inc. d/b/a Champ Sports	Lease dated 1/9/04 Lease Amendment Agreement dated 3/___/10 Second Lease Extension Agreement dated 3/21/11
K012	Compass Bank	Lease 11/11/2002

		Lease Extension 1/1/2005
K015	Compass Bank	Lease 11/11/2002
MAIN 3 & Unit 035	Dillard's f/k/a Higbee Lancoms, LP, a Delaware limited partnership (successor to The Joslin Dry Goods Company)	Lease and Declaration of Restrictions dated September 9, 1976 between Westminster Mall Company and The Joslin Dry Goods Company Memorandum of lease recorded in Book 2985 at Page 672 First Lease Modification Agreement dated July 1, 1977 Amendment No. 1 to Lease and Declaration of Restrictions dated February 1, 1979 Amendment and Modification No. 2 to Lease and Declaration of Restrictions dated October 10, 1985 First Amendment to Lease and Declaration of Restrictions dated February 13, 1986 Second Lease Modification Agreement dated February 13, 1986 Amended and Restated Lease and Declaration Restrictions dated 12/5/87
MAIN 4	J.C. Penney Properties, Inc.	The following documents constituting the "Penney Lease": Lease dated 2/13/86 (partial copy recorded at Reception. No. 86016388) Letter Guaranty from J.C. Penney Company dated 2/13/86 Letter Agreement dated 2/13/86 Letter Agreement dated 2/13/86 Term Agreement dated 6/18/93 recorded July 12, 1993 under Reception No. 93101704 and recorded January 10, 1994 under Reception No. 94005874
PAD2	U.S. Bank f/k/a Central Bancorporation	Lease dated 1/31/85 Memorandum of Lease recorded March 27, 1985 under Reception No. 85028159
PAD5	GMRI, Inc. d/b/a Olive Garden	Sublease dated 11/20/92 Memorandum of Sublease dated 4/22/93 recorded May 14, 1993 under Reception No. 93067818 and recorded October 19, 1993 under Reception No. 93167959 Attornment Agreement of Ground Lease recorded May 14, 1993 under

		Reception No. 93067819 Extension letter dated 3/21/05 Extension letter dated 1/27/10
PAD6	Sears & Roebuck Company (Sears Auto Center)	Lease dated 2/25/02
TEMP	Corn LTD	Agreement dated 09/08/09
TEMP	Extreme Mini Golf Inc.	Agreement dated 11/02/09

EXHIBIT D

Service Contracts

1. Service Agreement dated January, 2011 and Renewal Mechanical Service Agreement dated December 8, 2010 with Long Mechanical Solutions.
2. Service Agreement Non-Hazardous Waste dated January 25, 1989 with Waste Management.
3. Maintenance and Guarantee Agreement dated April 17, 2007 with Plantek Distinctive Interiorscaping, Inc.

EXHIBIT E

Allocated Interests and Purchase Price of each Seller Party

Seller Party	Total Purchase Price	Cash portion of Purchase Price	Deferred Amount of Purchase Price
WMC	\$19,125,000	\$18,500,000	\$625,000
MD1	\$250,000	\$0.00	\$250,000
MD2	\$1,187,500	\$0.00	\$1,187,500
Higbee, as to the property subject to the First Ground Lease	\$250,000	\$0.00	\$250,000
Higbee, as to the property subject to the Second Ground Lease	\$1,187,500	\$0.00	\$1,187,500

EXHIBITS F-1 – F-3
Loan Documents

EXHIBIT F-1

Higbee Promissory Note

PROMISSORY NOTE

\$1,750,000.00

May __, 2011

FOR VALUE RECEIVED, **CITY OF WESTMINSTER**, a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal agency (hereinafter collectively called "Borrower"), having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, promise to pay to the order of **THE HIGBEE COMPANY**, a Delaware corporation (hereinafter collectively called "Lender"), with an address at 1600 Cantrell Road, Little Rock, Arkansas 72205, Attn: Vice President, Real Estate, or at such other place as the Lender may from time to time designate in writing, the principal sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (U.S. \$1,750,000.00)**, together with interest thereon, as follows (*certain capitalized terms used herein are hereinafter defined*):

§1. Accrual of Interest; Interest Rate; Payments.

(a) Interest shall accrue on the outstanding principal balance under this Note from the date hereof through the Maturity Date at the Applicable Rate, or if applicable under the terms of this Note, the Default Rate.

(b) On June 1, 2011, and on the corresponding day of each succeeding calendar month to and including April 1, 2012, Borrower shall pay to Lender, the entire amount of interest accrued and then unpaid on the indebtedness evidenced hereby.

(c) The entire unpaid principal balance of this Note, together with all interest accrued but unpaid thereon, shall be due and payable on the Maturity Date. If Borrower should fail to repay this Note in full by the Maturity Date, then interest shall accrue at the Default Rate on the outstanding principal balance under this Note from the Maturity Date until this Note is repaid in full (notwithstanding the entry of any decree, order, judgment or other judicial action concerning this Note).

(d) Borrower acknowledges that the periodic interest payments described above will not provide any amortization of the Loan over the term of this Note, and that a payment of all principal owing under this Note (a balloon payment) will be required on the scheduled Maturity Date.

(e) All payments under this Note (other than payments of late charges) shall be first applied to interest and the remainder to principal. Remittances in payment of any part of the indebtedness evidenced hereby other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder

hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

§2. Prepayments. Borrower shall have the right to prepay this Note and the Related Note together, both in full without premium or penalty at any time upon giving written notice to Lender and Additional Lender specifying the date of prepayment not less than three (3) business days prior to such prepayment. No prepayment of this Note shall be accepted unless the Related Note is also paid in full at the same time. If notice of intention to prepay is given, the entire principal balance hereof and of the Related Note, together with all accrued, unpaid interest thereon, shall become due and payable on the date specified for prepayment in such notice.

§3. Security. This Note, together with the Related Note, is secured by the Mortgage, encumbering real property in Westminster, Colorado, and other security.

§4. Certain Terms Defined. In addition to words and terms defined elsewhere in this Note the following terms, as used in this Note, shall have the following meanings:

“Agent” shall mean _____, the Agent of the Lender and Additional Lender under the terms of the Loan Agreement.

“Additional Lender” shall mean collectively MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company, MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company, MD WESTMINSTER HOLDINGS, LLC, a Missouri limited liability company, and TM WESTMINSTER HOLDINGS, LLC, a Missouri limited liability company and collectively the payee of the Related Note.

“Applicable Rate” shall mean six percent (6%) per annum.

“Default Rate” shall mean a per annum interest rate equal to five percent (5%) in excess of the Applicable Rate.

“Event of Default” shall mean an “Event of Default” as defined in the Loan Agreement.

“Loan” shall mean all of the indebtedness evidenced hereby from time to time, whether principal, interest or otherwise, and all sums coming due Lender under this Note, together with all amounts due to Additional Lender under the Related Note and all sums due to Lender and Additional Lender under any of the Loan Documents from time to time.

“Loan Agreement” shall mean the Loan Agreement of even date herewith among Borrower, Lender, Additional Lender and Agent.

“Loan Documents” shall mean collectively this Note, the Related Note, the Loan Agreement, the Mortgage, and each other instrument, agreement or document now or hereafter evi-

dencing, securing, supporting, guaranteeing or executed in connection with the indebtedness evidenced hereby, and any amendments to any of the same hereafter made.

“Maturity Date” shall mean the date one year following the date of this Note.

“Mortgage” shall mean that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from Borrower for the benefit of Agent, on behalf of Lender and Additional Lender, encumbering the Mortgaged Property and securing repayment of the Loan, as the same may hereafter be amended.

“Mortgaged Property” shall mean the “Mortgaged Property” as defined in the Mortgage.

"Note" shall mean this Promissory Note, as the same may be amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

“Related Note” shall mean that certain promissory note of even date herewith in the principal amount of \$1,750,000.00 made by Borrower and payable to the order of Additional Lender.

"Usury Law" shall mean any law or regulation of any governmental authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money.

§5. Late Charge. If any payment due under this Note is not received by Lender within five (5) days after such payment is due, Borrower shall pay to Lender on demand a late charge in an amount equal to five percent (5.00%) of such overdue payment, to compensate Lender for some of the additional costs and expenses of processing late payments. Such five (5) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Lender or Agent may have and is in addition to any fees and charges of any agents or attorneys which Agent may employ upon the occurrence of an Event of Default, whether authorized herein or by law.

§6. Event of Default. If an Event of Default shall occur and exist, then: (a) the entire unpaid principal balance of the Loan and all other sums payable to Lender under this Note, the Related Note and/or any of the other Loan Documents, together with unpaid interest on the Loan and all such sums, shall at the option of Lender become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or other action, all of which are hereby waived by Borrower; and (b) notwithstanding any other provision of this Note, during the period of existence of such Event of Default, interest on the Loan shall accrue and be paid at the lesser of (i) the Default Rate, or (ii) the maximum lawful rate of interest under the applicable Usury Law. All of the rights, remedies, powers and privileges (together, "Rights") of the holder hereof provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust

it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by the holder hereof to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the holder hereof from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect. If any holder of this Note retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, reasonable attorneys' fees and expenses as permitted by law, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

§7. Joint and Several Liability; Certain Waivers. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute suit or exhaust its remedies hereunder against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the State in which payment is to be made as specified in this Note, and venue in the county in which payment is to be made as specified in this Note, over any suit, action or proceeding arising out of, or relating to, the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Agent to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full.

§8. Choice of Governing Law. This Note is to be delivered to and accepted by Lender in the State of Colorado. Lender and Borrower have therefore agreed, and do agree, that this Note is to be construed and enforced in all respects in accordance with the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other jurisdiction) of the State of Colorado, including but not limited to the Usury Laws of the State of Colorado.

§9. Compliance with Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Borrower to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto, then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If from any circumstance, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law.

§10. Revival of Liability. If any payments or proceeds received by Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

§11. Miscellaneous Provisions. This Note may not be changed, amended or modified except by agreement in writing signed by Borrower and Lender. Time is of the essence with respect to all of Borrower's obligations and agreements under this Note. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Section headings and captions herein are provided solely for convenience, and shall not be considered in interpreting or construing the provisions of this Note.

§12. Successors and Assigns. Whenever used in this Note, the words "Borrower" and "Lender" shall be deemed to include the respective successors of Borrower and of Lender, and "Lender" shall also include any subsequent holder of this Note. This Note shall be binding in

accordance with its terms upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower. The holder of this Note may, from time to time, sell or offer to sell the loan evidenced by this Note, or interests therein, to one or more assignees or participants and is hereby authorized to disseminate any information it has pertaining to the Loan evidenced by this Note, including, without limitation, any security for this Note and credit information on Borrower, any of its principals and any guarantor of this Note, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to this Note and the other Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

§13. Not for Nominee. Borrower hereby represents and warrants to Lender that: (a) Borrower is borrowing the Loan on Borrower's own behalf, and not as nominee, designee, or agent for another, and (b) Borrower is not acting for another in so borrowing the Loan. This Note and the other Loan Documents collectively: (a) constitute the final expression of the agreement between Borrower and Lender concerning the Loan; (b) contain the entire agreement among Borrower, Lender, Additional Lender and Agent respecting the matters set forth herein and in such other Loan Documents; (c) may not be contradicted by evidence of any prior or contemporaneous oral agreements or understandings among Borrower and Lender or Additional Lender or Agent; and (d) supersede all prior agreements and understandings among Borrower, Lender, Additional Lender and Agent respecting such matters.

§14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given: (a) three (3) days after being sent by certified United States Mail, return receipt requested, to Borrower and to Lender at their respective addresses hereinabove set forth, or to such other place or places as either party hereto may from time to time designate to the other for the purpose of receiving notices hereunder; or (b) if given in the manner provided for the giving of notices under the Mortgage.

§15. Waiver of Jury Trial. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER OR AGENT MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR

HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

“BORROWER”:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT F-2

MD Promissory Note

PROMISSORY NOTE

\$1,750,000.00

May __, 2011

FOR VALUE RECEIVED, **CITY OF WESTMINSTER**, a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal agency (hereinafter collectively called "Borrower"), having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, promise to pay to the order of **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company (hereinafter collectively called "Lender"), at its office at c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205 or at such other place as the Lender may from time to time designate in writing, the principal sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (U.S. \$1,750,000.00)**, together with interest thereon, as follows (*certain capitalized terms used herein are hereinafter defined*):

§1. Accrual of Interest; Interest Rate; Payments.

(a) Interest shall accrue on the outstanding principal balance under this Note from the date hereof through the Maturity Date at the Applicable Rate, or if applicable under the terms of this Note, the Default Rate.

(b) On June 1, 2011, and on the corresponding day of each succeeding calendar month to and including April 1, 2012, Borrower shall pay to Lender, the entire amount of interest accrued and then unpaid on the indebtedness evidenced hereby.

(c) The entire unpaid principal balance of this Note, together with all interest accrued but unpaid thereon, shall be due and payable on the Maturity Date. If Borrower should fail to repay this Note in full by the Maturity Date, then interest shall accrue at the Default Rate on the outstanding principal balance under this Note from the Maturity Date until this Note is repaid in full (notwithstanding the entry of any decree, order, judgment or other judicial action concerning this Note).

(d) Borrower acknowledges that the periodic interest payments described above will not provide any amortization of the Loan over the term of this Note, and that a payment of all principal owing under this Note (a balloon payment) will be required on the scheduled Maturity Date.

(e) All payments under this Note (other than payments of late charges) shall be first applied to interest and the remainder to principal. Remittances in payment of any part of the indebtedness evidenced hereby other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and

shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

§2. Prepayments. Borrower shall have the right to prepay this Note and the Related Note together, both in full without premium or penalty at any time upon giving written notice to Lender and Additional Lender specifying the date of prepayment not less than three (3) business days prior to such prepayment. No prepayment of this Note shall be accepted unless the Related Note is also paid in full at the same time. If notice of intention to prepay is given, the entire principal balance hereof and of the Related Note, together with all accrued, unpaid interest thereon, shall become due and payable on the date specified for prepayment in such notice.

§3. Security. This Note, together with the Related Note, is secured by the Mortgage, encumbering real property in Westminster, Colorado, and other security.

§4. Certain Terms Defined. In addition to words and terms defined elsewhere in this Note the following terms, as used in this Note, shall have the following meanings:

“Agent” shall mean _____, the Agent of the Lender and Additional Lender under the terms of the Loan Agreement.

“Additional Lender” shall mean The Higbee Company, a Delaware corporation and the payee of the Related Note.

“Applicable Rate” shall mean six percent (6%) per annum.

“Default Rate” shall mean a per annum interest rate equal to five percent (5%) in excess of the Applicable Rate.

“Event of Default” shall mean an “Event of Default” as defined in the Loan Agreement.

“Loan” shall mean all of the indebtedness evidenced hereby from time to time, whether principal, interest or otherwise, and all sums coming due Lender under this Note, together with all amounts due to Additional Lender under the Related Note and all sums due to Lender and Additional Lender under any of the Loan Documents from time to time.

“Loan Agreement” shall mean the Loan Agreement of even date herewith among Borrower, Lender, Additional Lender and Agent.

“Loan Documents” shall mean collectively this Note, the Related Note, the Loan Agreement, the Mortgage, and each other instrument, agreement or document now or hereafter evi-

dencing, securing, supporting, guaranteeing or executed in connection with the indebtedness evidenced hereby, and any amendments to any of the same hereafter made.

“Maturity Date” shall mean the date one year following the date of this Note.

“Mortgage” shall mean that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from Borrower for the benefit of Agent, on behalf of Lender and Additional Lender, encumbering the Mortgaged Property and securing repayment of the Loan, as the same may hereafter be amended.

“Mortgaged Property” shall mean the “Mortgaged Property” as defined in the Mortgage.

"Note" shall mean this Promissory Note, as the same may be amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

“Related Note” shall mean that certain promissory note of even date herewith in the principal amount of \$1,750,000.00 made by Borrower and payable to the order of Additional Lender.

"Usury Law" shall mean any law or regulation of any governmental authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money.

§5. Late Charge. If any payment due under this Note is not received by Lender within five (5) days after such payment is due, Borrower shall pay to Lender on demand a late charge in an amount equal to five percent (5.00%) of such overdue payment, to compensate Lender for some of the additional costs and expenses of processing late payments. Such five (5) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Agent or Lender may have and is in addition to any fees and charges of any agents or attorneys which Agent may employ upon the occurrence of an Event of Default, whether authorized herein or by law.

§6. Event of Default. If an Event of Default shall occur and exist, then: (a) the entire unpaid principal balance of the Loan and all other sums payable to Lender under this Note, the Related Note and/or any of the other Loan Documents, together with unpaid interest on the Loan and all such sums, shall at the option of Lender become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or other action, all of which are hereby waived by Borrower; and (b) notwithstanding any other provision of this Note, during the period of existence of such Event of Default, interest on the Loan shall accrue and be paid at the lesser of (i) the Default Rate, or (ii) the maximum lawful rate of interest under the applicable Usury Law. All of the rights, remedies, powers and privileges (together, "Rights") of the holder hereof provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust

it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by the holder hereof to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the holder hereof from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect. If any holder of this Note retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, reasonable attorneys' fees and expenses as permitted by law, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

§7. Joint and Several Liability; Certain Waivers. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute suit or exhaust its remedies hereunder against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the State in which payment is to be made as specified in this Note, and venue in the county in which payment is to be made as specified in this Note, over any suit, action or proceeding arising out of, or relating to, the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Agent to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full.

§8. Choice of Governing Law. This Note is to be delivered to and accepted by Lender in the State of Colorado. Lender and Borrower have therefore agreed, and do agree, that this Note is to be construed and enforced in all respects in accordance with the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other jurisdiction) of the State of Colorado, including but not limited to the Usury Laws of the State of Colorado.

§9. Compliance with Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Borrower to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto, then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If from any circumstance, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law.

§10. Revival of Liability. If any payments or proceeds received by Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

§11. Miscellaneous Provisions. This Note may not be changed, amended or modified except by agreement in writing signed by Borrower and Lender. Time is of the essence with respect to all of Borrower's obligations and agreements under this Note. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Section headings and captions herein are provided solely for convenience, and shall not be considered in interpreting or construing the provisions of this Note.

§12. Successors and Assigns. Whenever used in this Note, the words "Borrower" and "Lender" shall be deemed to include the respective successors of Borrower and of Lender, and "Lender" shall also include any subsequent holder of this Note. This Note shall be binding in

accordance with its terms upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower. The holder of this Note may, from time to time, sell or offer to sell the loan evidenced by this Note, or interests therein, to one or more assignees or participants and is hereby authorized to disseminate any information it has pertaining to the Loan evidenced by this Note, including, without limitation, any security for this Note and credit information on Borrower, any of its principals and any guarantor of this Note, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to this Note and the other Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

§13. Not for Nominee. Borrower hereby represents and warrants to Lender that: (a) Borrower is borrowing the Loan on Borrower's own behalf, and not as nominee, designee, or agent for another, and (b) Borrower is not acting for another in so borrowing the Loan. This Note and the other Loan Documents collectively: (a) constitute the final expression of the agreement between Borrower and Lender concerning the Loan; (b) contain the entire agreement among Borrower, Lender, Additional Lender and Agent respecting the matters set forth herein and in such other Loan Documents; (c) may not be contradicted by evidence of any prior or contemporaneous oral agreements or understandings among Borrower and Lender or Additional Lender or Agent; and (d) supersede all prior agreements and understandings among Borrower, Lender, Additional Lender and Agent respecting such matters.

§14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given: (a) three (3) days after being sent by certified United States Mail, return receipt requested, to Borrower, Lender and Agent at their respective addresses hereinabove set forth, or to such other place or places as either party hereto may from time to time designate to the other for the purpose of receiving notices hereunder; or (b) if given in the manner provided for the giving of notices under the Mortgage.

§15. Waiver of Jury Trial. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER OR AGENT MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR

HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

“BORROWER”:

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

EXHIBIT F-3

Loan Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT is made as of _____, 2011, by and among:

CITY OF WESTMINSTER (“City”), a Colorado home rule city and **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”)**, a Colorado urban renewal authority, each having an address at Borrower’s Address, and collectively referred to herein as **“Borrower”**;

AND

_____ [AGENT TO BE DETERMINED], having an office at Agent’s Address, as Agent for Lenders.

AND

THE HIGBEE COMPANY (“Higbee”), a Delaware corporation, **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company (collectively **“MD Lender”** Higbee and MD Lender are sometimes referred to individually as a **“Lender”** or collectively as **“Lenders”**).

RECITALS:

(A) Certain capitalized words and terms used herein are defined in Section 19.7 of that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of even date herewith from WEDA to the Public Trustee of Jefferson County, Colorado for the benefit of Agent encumbering among other things the Land and Improvements, and any amendments or supplements to the same hereafter made (the **“Mortgage”**), which Section 19.7 is incorporated herein by reference.

(B) Lenders have agreed to finance a portion of the cost of Borrower’s acquisition of the Mortgaged Property upon the terms and subject to the conditions hereinafter set forth.

Accordingly, Borrower, Lenders and Agent hereby agree as follows:

§1. INCORPORATION OF RECITALS. The Recitals to this Loan Agreement are incorporated herein as part of this Loan Agreement.

§2. USE OF PROCEEDS. The proceeds of the Loan will be used solely to finance Borrower’s acquisition of the Mortgaged Property, and related closing costs.

§3. THE LOAN

(a) Loan Advances. Borrower acknowledges receipt of the entire Loan Amount on the Closing Date.

(b) Loan Payments. Although the Loan is a single loan secured by the Mortgage and other Loan Documents, Higbee and MD Lender each hold a Note. Borrower shall make all payments on the loan 50% to Higbee and 50% to MD Lender, and in no event shall Borrower make any payment (whether of principal, interest, late charges or other amounts due under the Loan Documents) to Higbee without making a payment in identical amount to MD Lender or to MD Lender without making a payment in identical amount to Higbee. Failure of Borrower to comply with the requirements of this paragraph (b) shall constitute an Event of Default.

§4. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Agent as follows:

(a) Authority. The City of Westminster is a Colorado home rule city in good standing in the State of Colorado, and has all requisite legal capacity to own, mortgage, develop, lease, sell and otherwise deal in and with real and personal property in the State of Colorado and to execute, deliver and perform its obligations as provided in the Loan Documents. WEDA is a Colorado urban renewal authority in good standing in the State of Colorado, and has all requisite legal capacity to own, mortgage, develop, lease, sell and otherwise deal in and with real and personal property in the State of Colorado and to execute, deliver and perform its obligations as provided in the Loan Documents.

(b) No Conflict. The execution, delivery and performance by City and WEDA of the Loan Documents will not cause or constitute a violation of any law or regulation or any order, writ, injunction or decree of any court or Governmental Authority, or result in a breach of or constitute a default under any agreement to which either of them is bound.

(c) Binding Agreements. This Loan Agreement and all other Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

(d) Borrower Authorization. The execution, delivery and performance by Borrower of the Loan Documents to which Borrower is a party have been duly authorized by all necessary action on the part of Borrower.

(e) No Governmental Consent. No authorization, approval or consent by, or filing with, any Governmental Authority or public regulatory authority is necessary in connection with the authorization, execution, delivery and performance of any Loan Document by either the City or WEDA, other than the filing for record of the Mortgage.

(f) No Current Default. On the date hereof, there exists no Event of Default, nor any event, circumstance or situation which, with the giving of notice, the passage of time, or both, could become such an Event of Default.

All representations and warranties made in this §4 shall survive the closing of the Loan.

§5. COVENANTS. Until payment in full of the Note and performance of all of Borrower's other obligations under the Loan Documents:

(a) Notices. Borrower shall promptly give Agent notice of (1) any Event of Default or any event known to Borrower which, with notice or the lapse of time or both, would constitute an Event of Default, promptly after the same becomes known to Borrower, together with a written statement of the action being taken by Borrower to remedy the same, and (2) all litigation or proceedings before any court or Governmental Authority affecting any of the Mortgaged Property.

(b) Legal Requirements. Borrower shall comply with all Legal Requirements applicable to the Land and the Improvements, and with the agreements or instruments to which it is a party or by which its properties or assets may be bound.

(c) Liens. Borrower shall not create or suffer to exist any assignment, mortgage, pledge, security interest, conditional sale or other title retention agreement, lien, charge or encumbrance not created by one of the Loan Documents upon the Mortgaged Property or any part thereof, except Permitted Encumbrances, and except to the extent contested in compliance with §10(q) hereof. All equipment, furnishings, and fixtures to be affixed to or attached to the Mortgaged Property shall be owned by Borrower in Borrower's own name except for trade fixtures, equipment and furnishings owned by any of the tenants of the Mortgaged Property under occupancy leases.

(d) Application of Revenues. While any of the Loan remains outstanding, Borrower shall apply all revenues earned from the operation of the Mortgaged Property first to the payment of the reasonable and necessary operating expenses of the Mortgaged Property, and next to the payment of the sums currently due on account of the Loan, before applying the same to any other purpose.

§6. CERTAIN PROPERTY-RELATED COVENANTS.

(a) Maintenance. Until the Debt is paid in full, and the Loan Documents released and discharged, Borrower will keep the Mortgaged Property in good order and condition, and do all necessary Maintenance. All Maintenance shall be equal in quality and class to the original work. The standard for Maintenance required shall be that which is appropriate for facilities and buildings of similar construction and class, provided that Borrower shall in any event do all Maintenance necessary to avoid any structural damage or injury to the Improvements, to comply with all Legal Requirements and to keep each of the Improvements in a proper condition for

their respective Permitted Uses. Borrower will not permit any condition to exist on any of the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

(b) Inspection by Agent. Without notice to Borrower, but subject to the rights of tenants under their respective occupancy leases, Agent and Agent's representatives may enter the Mortgaged Property at reasonable times to inspect the same; provided, however, Agent shall have no obligation to make any such inspections nor any responsibility to Borrower or any Person, for any deficiency in construction or other problems which may be revealed by any such inspection, whether or not discovered by Agent. If any Event of Default occurs, Agent may, at its option, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Agent shall not be liable for any such entry upon the Mortgaged Property except in the event of intentional misconduct by its agents or employees. Agent shall use reasonable efforts to assure that such inspections and entry do not unreasonably interfere with any tenant's use of the Mortgaged Property.

(c) Compliance Required. Borrower shall promptly comply with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting any of the Mortgaged Property. Borrower will not make any application to any Governmental Authority for a change in zoning affecting any of the Mortgaged Property, nor will Borrower consent to any such change, without the prior written consent of Agent.

(d) Conditions to Permitted Changes. Borrower shall not make any changes or alterations in or to the Improvements without the prior written consent of Agent in each instance.

§7. EVENTS OF DEFAULT. An "Event of Default" shall exist if any one or more of the following events shall occur and be continuing:

(a) any sum of money coming due under the Note, whether principal, interest, late charges, or otherwise, is not paid when due;

(b) any sum of money coming due under this Loan Agreement or under any of the other Loan Documents (other than the Note) is not paid when due and such default continues for a period of five (5) days after written notice thereof from Agent to Borrower;

(c) there shall at any time exist a default or an "Event of Default" under the Mortgage or any other Loan Document (other than this Loan Agreement), and such default shall continue beyond the applicable period of notice and opportunity to cure, if any;

(d) any representation or warranty made by or on behalf of Borrower or in the Mortgage or any other Loan Document or in any certificate, financial statement or other document furnished to Agent pursuant to the provisions hereof or of any other Loan Document, shall prove to have been false or misleading in any material respect when made or when deemed to have been made hereunder;

(e) Borrower shall assign or attempt to assign this Loan Agreement or its right to receive any Loan proceeds hereunder;

(f) the entry of any lien or encumbrance against any of the Mortgaged Property, except for Permitted Encumbrances, subject to Borrower's right to contest Liens as provided in §10(q) hereof;

(g) a default shall occur under any Lien upon any of the Mortgaged Property, if the effect of such default is to cause, or (immediately or upon the giving of notice or passage of time, or both) to permit the holder or holders (or a trustee on behalf of such holder or holders) of the indebtedness secured by such Lien to cause, the indebtedness secured by such Lien to become due prior to its stated maturity or to cause any of the Mortgaged Property to be subject to sale to foreclose or enforce such Lien;

(h) the occurrence of any Transfer without Agent's written consent;

(i) a "Casualty" (as defined in the Mortgage) shall occur which causes damages in excess of \$4,500,000 to the Improvements.

(j) insurance on any of the Mortgaged Property is not provided or maintained, or evidence of such insurance is not delivered by Borrower to Agent, as required by the Mortgage;

(k) the legal existence of the City or WEDA shall terminate for any reason;

(l) if (x) Borrower shall default in the performance or observance of or compliance with any covenant, agreement, condition or provision contained in (a) this Loan Agreement and not otherwise specified in this §7, or (b) contained in the Settlement Agreement of even date herewith among Borrower, MD Westminster 1st Tract, LLC, MD Westminster 2nd Tract, LLC, and MD Westminster Parcels LLC or (y) Borrower shall default under any of the other Loan Documents and such default is not specifically defined as an "Event of Default" under such other Loan Document, and such default shall not be cured within 15 days after notice thereof to Borrower; provided, that if such default is of such a nature that it can be cured but not by the mere payment of money, and not within such 15 day period, then Borrower shall have such additional time as may be required to cure the same (but in no event extending more than 30 days after such notice of default is given to Borrower), if Borrower commences to cure it within said 15 day period (and gives notice to Agent of Borrower's intention to cure it), and prosecutes such cure with diligence and continuity to completion;

(m) if any default by Borrower shall occur under any Lease or under the Reciprocal Easement Agreement and not be cured within any applicable cure period provided in such Lease.

(n) REMEDIES UPON AN EVENT OF DEFAULT. Upon the occurrence of an Event of Default, in addition to any banker's lien rights, rights and remedies available to Agent under law,

equity, the Note and/or any other Loan Document including the right to declare all the outstanding principal balance under the Note, together with all accrued interest and other sums due under the Note and Loan Documents, immediately due and payable.

§8. MISCELLANEOUS.

(a) No Broker. Borrower represents that no broker was involved in procuring the Loan or in connection with the transactions contemplated hereby and shall indemnify and save Agent and Lenders harmless from and against any and all claims for any brokerage commission arising out of the making of the Loan or the transactions contemplated hereby. Borrower's obligations under this §8(a) shall survive the payment of the Note.

(b) Estoppel Certificate. Borrower, within three days upon request in person or within seven (7) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Agent setting forth the unpaid amount of the Loan (including principal, interest, and otherwise), and stating either that no offsets or defenses exist against the obligation to pay such unpaid amount of the Loan, or if such offsets or defenses are alleged to exist, the nature and extent thereof, and containing such other matters as Agent shall reasonably request.

(c) Lost Note. If either of the two notes constituting the "Note" shall be mutilated, destroyed, lost or stolen, Borrower will deliver to Higbee or MD Lender, as applicable, in substitution therefor a new promissory note containing the same terms and conditions as the lost note with a notation thereon of the unpaid principal and accrued but unpaid interest. Borrower shall be furnished with reasonably satisfactory evidence of the mutilation, destruction, loss or theft of such note, and also such security or indemnity as may be reasonably requested by Borrower.

§9. AGREEMENTS CONCERNING AGENT.

(a) Appointment and Authorization. MD Lender and Higbee each hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any such other Loan Document, together with such powers as are reasonably incidental thereto. Lenders (i) authorize Agent to execute, deliver and perform each of the Loan Documents to which such Agent is or is intended to be a party and (ii) agree to be bound by all of the agreements of Agent contained in the Loan Documents.

(b) No Implied Fiduciary Duties. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities except those expressly set forth herein and in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

Without limiting the generality of the foregoing sentence, the use of the term “Agent” in this Agreement is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such terms are used merely as a matter of market custom, and are intended to create or reflect only a relationship between independent contracting parties.

(c) Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel, accountants, appraisers or other experts or advisors concerning all matters pertaining to such duties. Agents shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

(d) Limitation of Liability. Neither Agent nor any Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any Lender or any other Person for any recital, statement, representation or warranty made by the Borrower or any affiliate of the Borrower contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by any Agent under or in connection with, this Agreement or any other Loan Document, or for the value of or title to any collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. Neither Agents nor any Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document.

(e) Credit Decision. MD Lender and Higbee each acknowledge and agree that each of them has made an independent credit decision to make its portion of the Loan and has not relied on the other for underwriting, documentation or other advice or support in connection with this Agreement or the transactions arising in connection herewith.

(f) Receipt of Payments. MD Lender and Higbee each hold a separate Note made by Borrower for one-half of the Loan. MD Lender and Higbee shall each receive direct payments from the Borrower. Although the Borrower is obligated to make equal payments to MD Lender and Higbee Lender, should Borrower fail to do so or should either MD Lender or Higbee ever receive more than 50% of all payments made by Borrower and all proceeds from the collateral for the Loan, then the Lender receiving the excess proceeds shall immediately make payment to the other Lender of the amount required to restore each Lender to a 50% share of all payments and proceeds.

(g) Indemnity. The Lenders shall indemnify upon demand Agent and the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), *pro rata* in accordance with the aggregate principal amount of the Loans held by such Lender, from and against any and all Indemnified Liabilities; provided,

however, that no Lender shall be liable for the payment to any Agent or the Agent-Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct.

(h) Cooperation of Lenders. Lenders hereby acknowledge and agree that although each of them holds its own separate note (collectively constituting the Note) the Loan is a unified loan to be enforced by the actions of the Agent and that neither Lender has any priority or preference to receipt of payment or proceeds of collateral. In the event of a foreclosure of the Mortgage and the acquisition of the Mortgaged Property, the Lenders shall cooperate to form an entity to own the foreclosed collateral in equal shares.

(i) Successor Agent. Upon the Agreement of MD Lender and Higbee, a successor Agent may be designated at any time. Such successor Agent shall have all of the rights and duties of Agent under this Agreement and the Loan Documents as if it were the original Agent hereunder.

(j) Taking of Action after Event of Default. Agent shall not take any action to institute a foreclosure upon collateral or exercise any other right or remedy under the Loan Documents unless it receives joint written instructions from MD Lender and Higbee to do so.

§10. PROVISIONS APPLICABLE TO ALL LOAN DOCUMENTS. The provisions of this §10 shall be applicable to this Loan Agreement, and shall also be applicable to and deemed incorporated into each of the Loan Documents which incorporate this §10 by reference.

(a) Notices. All notices, demands, requests and consents required under this Loan Agreement or any of the other Loan Documents, unless telephonic notice or notice by facsimile is expressly provided for, shall be in writing, and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other nationally recognized overnight delivery service; or (d) if sent by facsimile transmission, confirmed by certified or Registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender, and addressed to the appropriate party or parties at their respective addresses, or at such other address or addresses as any party hereto may hereafter designate for itself by written notice to each other party to the Loan Documents. Notices, demands and requests hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three (3) days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission, with confirmation by certified or registered mail, on the date such facsimile transmission is sent if electronic confirmation of receipt is received by the sender.

(b) Revival of Liability. If any payments or proceeds received by a Lender hereunder, or under any other Loan Document, are subsequently invalidated, declared to be

fraudulent or preferential, set aside, or required to be repaid to a trustee, to Borrower, directly or as a debtor-in-possession, to a receiver, or any other person, whether directly or indirectly, under any bankruptcy law, state or federal law, common law, or equitable cause, then Borrower's obligation to make all such payments shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Agent.

(c) Proceedings, Etc. All proceedings taken in connection with the transactions provided for herein, including without limitation the appraisals and documents required or contemplated by this Loan Agreement or any of the Loan Documents, the persons responsible for the execution and preparation thereof, all insurers and policies of insurance required hereby or by any of the Loan Documents, shall be satisfactory in form, scope and content and all other respects to Agent.

(d) No Third Party Rights. Nothing in this Loan Agreement or in any of the Loan Documents, whether express or implied, shall be construed to give to any person other than the parties hereto or the parties to the Loan Documents any legal or equitable right, remedy or claim under or in respect of this Loan Agreement or any other Loan Document, which is intended for the sole and exclusive benefit of the parties hereto.

(e) Amendments. No provision of this Loan Agreement or of any of the other Loan Documents shall be changed, altered, modified, waived, discharged, terminated or released, except by an instrument in writing signed by the party against whom enforcement of the change, alteration, modification, waiver, discharge, termination or release is sought.

(f) No Waiver, Etc. No failure on the part of Agent to exercise, and no delay in exercising, any right, power or remedy hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein and in any other Loan Documents shall be cumulative and not exclusive of any remedies provided by law, or of any other remedies provided herein or in any of the other Loan Documents.

(g) Expenses. Borrower shall promptly pay upon request all actual and reasonable costs and expenses incurred by Agent, including actual and reasonable attorney's fees, together with interest thereon at the Default Rate from the tenth (10th) day after demand by Agent for the payment thereof, in connection with:

(1) all costs of collection (including to the extent not prohibited by law, reasonable attorney's fees) if default is made in the payment of the Loan or any other sums payable to Agent under the Loan Documents or if any Event of Default shall occur;

(2) any action, proceeding, litigation or claim instituted or asserted by or against Agent, or in which Agent becomes engaged, wherein it becomes necessary in the opinion of Agent to protect Agent's interests in the Mortgaged Property or the security afforded by any of the Loan Documents, or to defend or uphold the Lien of the Mortgage, or the validity or

effectiveness of any assignment of any leases, rents, claims, awards, payments, insurance policies or any other right or property conveyed, encumbered or assigned by Borrower to Agent under any of the Loan Documents, or the priority of any of the same;

(3) the collection and/or enforcement of any of the Debt and/or Obligations, including realization upon any of the Mortgaged Property or other security for any of the Debt or Obligations; and

(4) the collection and application of any insurance proceeds and Condemnation Awards.

All of Borrower's obligations under this §10(g) shall survive the payment of the Note, the termination of this Loan Agreement and any release of the Mortgage. All such expenses and costs, with interest thereon at the Default Rate, shall be added to and become part of the indebtedness and shall be secured by each of the Loan Documents, including the Mortgage.

(h) Application of Moneys. Whenever in the Note, this Loan Agreement, or any of the other Loan Documents Agent is to apply, or shall elect to apply, any sum of money to payment of any of the Debt, or to performance of any of the Obligations, Agent and the Lenders may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Agent and the Lenders may elect, unless a different order of priority is required by non-waivable applicable law.

(i) Governing Law. This Loan Agreement shall be construed in accordance with and governed by the internal laws (without regard to any conflicts of laws rules which might otherwise require reference to the laws of any other state) of the State of Colorado.

(j) Successors and Assigns. Each of the Loan Documents, including this Loan Agreement, shall be binding upon and inure to the benefit of the parties to such Loan Document and their respective heirs, personal representatives and successors, any assigns of Lenders, and any assigns of Borrower permitted under the Loan Documents.

(k) Multiple Counterparts. Each of the Loan Documents, including this Loan Agreement, may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which when taken together shall constitute a single counterpart instrument. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

(l) Provisions Severable. If any provision of the Loan Documents, including this Loan Agreement, or application thereof to any person or circumstances shall, to any extent, or for any reason, be held invalid or unenforceable, the remainder of such Loan Document or the application of

such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Loan Document shall be valid and be enforced to the fullest extent permitted by law.

(m) Agent Approvals and Consents. Except as otherwise expressly stated in any of the Loan Documents, with respect to any matters which Agent shall have the right to approve, consent to, be satisfied with respect to, exercise its judgment with regard to determine or calculate, under any of the Loan Documents, including this Loan Agreement, the decisions of Agent with respect to such matters shall be made in the sole discretion of Agent exercised in a commercially reasonable manner and subject to such conditions as Agent may reasonably require. The immediately preceding sentence shall not apply to the Agent's decision to take actions following an Event of Default, which shall be made in the Agent's sole discretion, but subject to the rights of the Lenders to direct the Agent as provided in this Agreement.

(n) Time of Essence. Time is of the essence with respect to all obligations of Borrower under this Loan Agreement and under any of the Loan Documents.

(o) Other Interpretive Provisions. As used herein, and as used in each of the other Loan Documents, the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein"; and (iv) "any of" shall mean all or any part of or interest in that with respect to which such phrase is used. The headings and captions in this Loan Agreement and in the other Loan Documents are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Loan Agreement or such other Loan Documents. Each of the parties have participated in the negotiation and preparation of this Loan Agreement and the other Loan Documents, with the advice of counsel, and this Loan Agreement and the other Loan Documents shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Loan Agreement or such other Loan Documents.

(p) Miscellaneous Provisions. Whenever used in this Loan Agreement or in any of the other Loan Documents, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Loan Agreement or of any of the other Loan Documents shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of the Agent in the Mortgaged Property, afford the Agent greater financial security in the Mortgaged Property and/or tend to assure payment of the Debt and performance of the Obligations in full, shall control. The granting of consent by Agent to any matter as to which such consent is required by the provisions of this Loan Agreement or of any of the other Loan Documents shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Borrower and Agent that such property be treated for all purposes

under this Loan Agreement and each of the other Loan Documents as real estate. If Borrower is ever more than one person (or entity), the obligations of Borrower hereunder and under the other Loan Documents are joint and several.

(q) Right to Contest. After prior written notice to Agent, Borrower may contest, in good faith and by appropriate legal proceedings timely commenced and diligently prosecuted with continuity to completion, the validity or amount of any mechanic's or materialmen's Lien, provided that:

(1) no Event of Default, nor any event or circumstance which, with the giving of notice or passage of time or both would constitute an Event of Default shall exist;

(2) Borrower or such owner shall provide to Agent such cash or other security assuring payment of the Lien contested, with interest and penalties in amounts satisfactory to Agent, as Agent may request;

(3) Such contest operates as a stay of or prevents enforcement of any Lien (or any judgment based thereon) against the Mortgaged Property;

(4) Borrower shall pay all fees and expenses of Agent reasonably incurred in connection with any such contest or proceeding, including without limitation reasonable attorney's fees and expenses;

(5) Agent shall have the right to pay or require payment of any such Lien at any time when Agent reasonably believes that continuation of such contest or failure to pay such Lien could jeopardize or impair the value or safety of Agent's security; and any amount so paid by Agent shall be added to the Debt, shall bear interest at the Default Rate until paid, and shall be secured by the Mortgage; and

(6) If such contest is terminated adversely to the Borrower or discontinued, Borrower shall immediately pay such Lien.

IN WITNESS WHEREOF, Borrower, Agent and Lenders have duly executed this Loan Agreement as of the day and year first above written.

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

"BORROWER"

[Add signature blocks appropriate to the following:]

"MD LENDER"

"AGENT"

"HIGBEE"

This instrument prepared by:
John C. Hickey, Esq.
Lewis, Rice & Fingersh
One Petticoat Lane, Suite 500
1010 Walnut
Kansas City, Missouri 64106
(816) 421-2500

PURCHASE MONEY DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS PURCHASE MONEY DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING (as the same may be amended or supple-
mented at any time, the "Deed of Trust") is made as of _____, 2011, by and among:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal
authority, having an address at 4800 West 92nd Avenue, Westminster, Colorado 80031, as
grantor; AND

THE PUBLIC TRUSTEE OF JEFFERSON COUNTY, COLORADO, as trustee;

FOR THE BENEFIT OF:

_____, as Agent for MD Lender and Higbee, with Agent having an address
at _____, as beneficiary.

RECITALS

A. Certain capitalized terms used in these Recitals and elsewhere herein are defined
in §19.7 of this Deed of Trust. Other terms are defined throughout the text of this Deed of Trust
or, if not defined herein, are used herein as defined in the Loan Agreement.

B. Borrower has requested that Lenders make the Loan to Borrower, as purchase
money financing for Borrower's acquisition of the Mortgaged Property.

C. Lenders will not make the Loan unless Borrower grants this Deed of Trust to
Trustee for the benefit of Agent as security for payment of the Debt and performance of the
Obligations, and Borrower is willing to do so.

GRANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of Lender's agreement to make the Loan secured hereby upon and subject to the terms of the Loan Documents, and of the payment of ten dollars (\$10.00) and other good and valuable consideration given by Lenders to Borrower, the receipt and sufficiency of which are hereby acknowledged by Borrower, at all times until the Debt is fully paid and the Obligations fully performed, Borrower hereby acts, and covenants, promises and agrees with Trustee, Agent and Lenders, as follows:

1. GRANTING CLAUSES

1.1. Grant of the Real Estate Security. Borrower, to secure the payment of the Debt and payment and performance of the Obligations, hereby grants, bargains, sells, mortgages, warrants, assigns, conveys and transfers to the Trustee, in trust with power of sale, all of the following described property:

(a) The Land, together with all of Borrower's right, title and interest, if any, in and to: the Improvements; the easements, rights of way, privileges, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances belonging or appertaining to the Land; the streets and ways adjacent to the Land; all reversions and remainders pertaining to the Land; and all air rights, development rights, water rights (including but not limited to, conditional water rights, ditch rights, ditch stock, pipeline well, spring and reservoir rights whether or not adjudicated or evidenced by stock or shares, or evidenced by any well or other permit; all rights with respect to noncontributory ground water underlying the Land; any permit to construct any water well; all water and sewer taps; and all of Borrower's right, title and interest under any decreed or pending plan of augmentation or water exchange plan) and mineral rights appurtenant or belonging to the Land or relating to the Land; and

(b) The Fixtures, and

(c) All of the Borrower's right title and interest to its leasehold estates under the Ground Leases and any and all other benefits thereof; and

(d) All of Leases and the Rents and all the other benefits of any of the Land, Improvements and Fixtures; and

(e) All proceeds of the conversion, voluntarily or involuntarily, of any of the property described in this §1.1 into cash or liquidated claims, including proceeds of insurance and Condemnation Awards.

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, his/her/its successors and assigns, forever.

UNDER AND SUBJECT to Permitted Encumbrances.

IN TRUST HOWEVER, for the purpose of securing in such order of priority as Agent shall elect, the payment of the Debt and the performance of the Obligations, in accordance with their respective terms.

1.2. Grant of Security Interest and Assignment. Borrower, to secure payment of the Debt and payment and performance of the Obligations, hereby transfers and assigns to the Trustee and to Agent, and grants to the Trustee and the Agent a security interest under the Code in and to, the following described property, whether now owned or hereafter acquired by Borrower:

(a) All of the Fixtures and all other property described in §1.1 thereof which, under any applicable law, may be deemed to be personal property or fixtures, the creation and perfection of a lien on which is governed by the Code;

(b) All of the Intangibles;

(c) All of the Collateral; and

(d) All the proceeds of any of the property described in this §1.2.

This Deed of Trust creates a security interest in the Personal Property Security, and shall constitute a Security Agreement under the Code.

1.3. Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns, transfers, pledges, grants a lien upon and encumbers in favor of Agent all of the Leases and Rents, as security for the prompt and timely payment of the Debt and performance of the Obligations. This assignment is in addition to any absolute assignment made pursuant to any separate lease assignment. Agent shall apply any amounts received pursuant to this assignment to the payment of the Debt, the performance of the Obligations, and/or to the operation and Maintenance of the Mortgaged Property, in such order as Agent may elect, without regard to the adequacy of the security or the solvency of the Borrower. Notwithstanding such assignment, Agent hereby grants to Borrower a revocable license to collect and retain the Rents for Borrower's own account, until an Event of Default shall occur; but upon occurrence of any Event of Default, the right herein granted to Borrower to collect the Rents shall at Agent's option, terminate. Borrower shall apply any Rents collected in accordance with the terms of the Loan Agreement. This assignment of Rents to Agent is intended to be an absolute assignment from Borrower to Agent and not merely the passing of a security interest. The Rents are hereby assigned absolutely by Borrower to Agent subject only to Borrower's license to collect such amounts prior to the occurrence of any Event of Default.

Notwithstanding anything seemingly to the contrary contained herein or in any of the other Loan Documents, Borrower may enter into or execute any Lease of any of the Mortgaged Property without the prior written approval of such Lease by Agent provided that such Lease shall be subordinate in all respects to this Deed of Trust.

Borrower hereby represents and warrants to Agent: (A) That Borrower has full right and power to assign the Leases and Rents to Agent, and has not executed any prior and now existing assignment of any of its rights under any Lease or to any portion of the Rents to any person other than Agent; and (B) That Borrower has not done any act or thing which might prevent Agent from enjoying the benefits of the Leases and Rents assigned hereby.

Borrower hereby covenants, promises and agrees that Borrower will: (i) Observe, fulfill and perform each and every condition, covenant and provision of the Leases to be fulfilled or performed by Borrower; (ii) Enforce at the sole cost and expense of Borrower the performance or observance of each and every material covenant and condition of each of the Leases; (iii) At the sole cost and expense of Borrower, appear in and defend any action growing out of or in any manner connected with any of the Leases, Rents or the obligations or liabilities of Borrower or any party thereunder; (iv) From time to time, upon request by Agent, execute and deliver to Agent, acknowledge when appropriate and record or file in the public records when appropriate, any and all writings, including without limitation further assignments of any Lease or Leases, financing statements and other writings that Agent may deem necessary or desirable to carry out the purpose and intent of this assignment, or to enable Agent to enforce any right or rights hereunder; and (v) From time to time, upon request by Agent, furnish to Agent a true copy of any Lease.

Borrower will not, without the prior written consent of Agent in each instance: (A) Modify or alter any of the terms or provisions of any of the Leases; (B) Anticipate Rents for more than one calendar month prior to the accrual thereof under the terms of the Leases; (C) Waive, or release any party under any of the Leases; (D) Pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents; (D) In any other manner impair the value of the Leases or Rents or the security of the assignment thereof as provided herein; or (E) Execute any Lease except for actual occupancy by the lessee thereunder. Notwithstanding the foregoing, Borrower may terminate any of the Leases or Ground Leases without the prior written consent of Agent, but Borrower shall provide notice to Agent of such termination in each instance.

1.4. Fixture Filing. From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all the Fixtures. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a
Colorado urban renewal agency.

Address: as set forth above.

(b) Name and Address of Secured Party:

Address: as set forth above.

(c) Borrower's organizational identification number is _____.

(d) This document covers goods which are or are to become, or may be or become, fixtures. This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit A. Borrower is the record owner of the real estate.

2. COVENANTS AS TO PAYMENT, PERFORMANCE AND TITLE; WARRANTIES

2.1. Payment of Note. Borrower and/or the City shall pay to Higbee and MD Lender the entire Debt, punctually as and when the same shall become due, without offset, counterclaim or defense. Borrower will fully and faithfully observe and perform all of the provisions of the Loan Documents. The Loan Documents are incorporated herein by this reference.

2.2. Defeasance. If all the Debt shall be paid and the Obligations shall be performed, all at the times and in the manner provided in the Loan Documents, then the Trustee shall release or reconvey to Borrower all of the Mortgaged Property and shall release this Deed of Trust of record.

2.3. Warranty of Title. Borrower warrants that: Borrower has taken no action to impair the title conveyed to Borrower concurrently with the execution of this Deed of Trust. Borrower shall not, without the prior written consent of Agent, install in or locate on the Mortgaged Property any equipment or fixtures which are subject to any Lien other than Permitted Encumbrances. None of the Rents will be assigned except to Agent as security for any of the Debt and/or Obligations.

2.4. Agreement to Defend. Borrower shall preserve Borrower's title and interest in the Mortgaged Property as described in §2.3, subject only to Permitted Encumbrances.

2.5. Additions to the Mortgaged Property. All right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, Borrower, or constructed, assembled or placed by Borrower on the Land, immediately upon such acquisition, release, construction, assembling or placement, and in each such case, without any further act by Borrower, shall become subject to the lien and security interest of this Deed of

Trust as though they were now owned by Borrower and specifically described in the granting clauses hereof.

2.6. Easements Outside the Land. In the event any easements or rights in common or otherwise (other than revocable rights) in any lands not covered by the lien of this Deed of Trust are granted as an appurtenance to the use and operation of any of the Mortgaged Property, including without limitation the easements and rights created by the Reciprocal Easement Agreement, then this Deed of Trust shall attach to and be a lien on such easements and rights in such other lands, and the lien hereof spread to cover such easements and rights with the same force and effect as though specifically described in the granting clauses hereof. Borrower shall not amend or terminate the Reciprocal Easement Agreement without the prior written consent of Agent.

2.7. Further Assurances. Promptly upon request of Agent, Borrower shall do all acts and things, including but not limited to the execution and delivery of any further deeds, conveyances, mortgages, assignments, financing statements, continuation statements, and further assurances, deemed necessary or desirable by Agent to establish, confirm, maintain and continue the Lien and security interest created and intended to be conferred hereby and the priority thereof. Borrower hereby appoints Agent as attorney-in-fact for Borrower to execute, deliver and file any and all such documents, writings, and other instruments as Agent may require, in order to perfect and maintain the priority of such Lien and security interest.

3. COVENANTS AS TO IMPOSITIONS

3.1. Payment of Impositions. Prior to the date on which any interest or penalties shall commence to accrue thereon, Borrower will pay and discharge all Impositions.

3.2. Evidence of Payment. Within thirty (30) days after the date when any Impositions which are or could become a Lien on any part of the Mortgaged Property would become delinquent, Borrower will furnish to Agent official receipts of the appropriate Governmental Authorities to which the Impositions are payable, or other evidence reasonably satisfactory to Agent evidencing the payment thereof. The certificate, advice or bill of the appropriate official designated by law to receive payment of any Imposition indicating non-payment of such Imposition shall be conclusive evidence (as between Agent and Borrower) that such Imposition is due and unpaid, and Agent may rely thereon.

4. INSURANCE

4.1. INSURANCE REQUIRED. Borrower will obtain, keep in force and maintain the following insurance coverages at all times until this Deed of Trust is satisfied of record:

(a) Property Insurance. At all times until this Deed of Trust has been satisfied of record, Borrower shall maintain coverage for property claims ("Commercial Property

Insurance”) on the Improvements and Fixtures through the Colorado Intergovernmental Risk Sharing Agency and/or through a commercial insurance company having a rating of A-, VII or better by the A.M. Best Company in an amount not less than the full replacement cost of the Improvements and Fixtures.

(b) Liability Insurance. At all times until this Deed of Trust has been satisfied of record, Borrower shall maintain through the Colorado Intergovernmental Risk Sharing Agency and/or a commercial insurance company having a rating of A-, VII or better by A.M. Best Company a CGL Policy, with coverage on an "occurrence" basis, with a "per occurrence" limit of not less than \$5,000,000. Agent shall be named as an additional insured with Borrower on all liability policies. All policies required by this §4.1(b) shall name Agent as an additional insured under an endorsement satisfactory to Agent.

4.2. REQUIREMENTS RE: INSURING COMPANIES, POLICIES, MORTGAGEE CLAUSE, COVERAGE INCREASES, DEDUCTIBLES, ETC. All policies of insurance required herein: (a) shall be issued by and maintained with Colorado Intergovernmental Risk Sharing Agency and/or a commercial insurance company having a rating of A-, VII or better by A.M. Best Company; (b) include a provision naming Agent, its successors and assigns as their interests may appear: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee on all property insurance policies under a standard non-contributory mortgagee clause (or Agent's loss payable clause), and (3) as the Agent's loss payee on all loss of rents or loss of business income insurance policies. Each insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Agent prior to any policy reduction or cancellation for any reason other than non-payment of a premium and at least ten (10) days' prior written notice to Agent prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Agent in accordance with the terms of such policy notwithstanding any act, omission or negligence of Borrower which might otherwise result in forfeiture of such insurance; and (iii) shall waive all rights of subrogation against Agent. Such policies shall be evidenced by ACORD certificates so identifying the Agent, in form and substance satisfactory to Agent.

4.3. AGENT NOT RESPONSIBLE FOR INSURANCE. Agent, by approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, shall not incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment of lawsuits and expenses, and Borrower hereby expressly assumes full responsibility therefor and for any liability, if any, thereunder.

4.4. PROCEEDS ON FORECLOSURE. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property in extinguishment of the Debt, all right, title and interest of the Borrower in and to all proceeds of any insurance policies required hereby then in force shall pass to the purchaser or grantee.

4.5. PROOF OF LOSS; ADJUSTMENT OF CLAIMS. If any Casualty shall occur, Borrower shall promptly make proof of loss to the insurers; but Agent may itself make proof of loss if Agent gives written notice to Borrower electing to make such proof of loss. Borrower shall not adjust or compromise any claim under any insurance required hereby without the written consent of Agent.

4.6. DELIVERY OF POLICIES; RENEWALS. Borrower, as of the date hereof, shall deliver to Agent evidence that the insurance policies required hereby have been prepaid as required above and either duplicate originals of such policies, if required by Agent, or certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, and satisfactory to Agent. Borrower shall renew all such insurance and deliver to Agent certificates and policies evidencing such renewals at least thirty (30) days before any such insurance shall expire.

4.7. BLANKET POLICIES. Any insurance policies required hereby may be in the form of a blanket policy provided that the blanket policy must properly identify and fully protect the Mortgaged Property as if a separate policy were issued for full replacement cost (insurable value) thereof, without reduction for depreciation, at the time of loss and otherwise meet all of Agent's insurance requirements set forth in this §4. Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Mortgaged Property or by any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Mortgaged Property to be insured by a separate, single-property policy.

4.8. MAINTENANCE OF OTHER INSURANCE. Borrower shall not obtain insurance for the Mortgaged Property in addition to that required by Agent and contributing, in the event of loss, with any insurance required hereby, without the prior written consent of Agent, which consent will not be unreasonably withheld provided that: (a) Agent is a named insured on such insurance, (b) Agent receives complete copies of all policies evidencing such insurance, and (c) such insurance complies with all of the requirements set forth herein.

4.9. AGENT'S RIGHT TO INSURE. If Borrower fails at all required times to maintain the insurance coverages required hereby, or fails to deliver to Agent the policies and evidences of insurance and renewals thereof required hereby, or if Agent receives notice that any insurance required hereby will be cancelled, Agent shall have the right to obtain such insurance and any sums expended by Agent in obtaining such insurance shall be due and payable to Agent on demand, shall be a part of the Obligations, and shall be secured hereby.

5. MAINTENANCE AND REMOVAL; PERMITTED USES

5.1. Permitted Removal; Waste. Except as permitted by Section 9, Borrower will not cause or permit any Improvement to be removed or demolished. No Fixture shall be removed, severed or destroyed, without the prior written consent of Agent, unless simultaneously with, or

prior to, any such permitted removal such Fixture has been replaced with another Fixture of at least equal value. By such removal and replacement Borrower shall be deemed to have subjected such Fixtures to the Lien of this Deed of Trust. Borrower will not abandon, or cause or permit any waste to, the Mortgaged Property.

5.2. Maintenance. Throughout the term of this Deed of Trust, Borrower will do all necessary Maintenance required to keep the Mortgaged Property in the same condition as existed when the Mortgaged Property was conveyed to Borrower, and Borrower shall in any event do all Maintenance necessary to comply with all Legal Requirements. Borrower will not permit any condition to exist on the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

5.3. Inspection of Agent. Without notice to Borrower, Agent and Agent's representatives may enter the Mortgaged Property at reasonable times to inspect the same. If any Event of Default occurs, Agent may, at its option, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Agent shall not be liable for any such entry upon the Mortgaged Property.

5.4. Permitted Uses. Borrower will use the Mortgaged Property solely for Permitted Uses.

6. COMPLIANCE WITH LAWS, ORDINANCES, ETC.

Borrower shall promptly comply with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting the Mortgaged Property. Borrower will not make any application to any federal, state or local Governmental Authority for a change in zoning affecting the Mortgaged Property, nor will Borrower consent to any such change, without the prior written consent of Agent.

7. CHANGES AND ALTERATIONS BY BORROWER

Borrower shall not have the right to make changes and alterations in or to the Improvements without the prior written consent of Agent except as provided in Section 9 pertaining to restoration or demolition after a Casualty.

8. MECHANICS' AND OTHER LIENS

Borrower will pay, from time to time when the same shall become due, all claims and demands of contractors, subcontractors, architects, mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a Lien on any of the Mortgaged Property. Borrower will not create or permit to accrue or suffer to exist any Lien, except Permitted Encumbrances, upon any of the Mortgaged Property, including the Leases and Rents, and shall promptly cause any other Lien whatsoever to be paid and discharged. Borrower shall pay all Liens included in Permitted Encumbrances in accordance with their terms, when and as the same become due.

9. DAMAGE OR DESTRUCTION

9.1. Notice of Casualty; Covenant to Rebuild. If any Casualty shall occur, Borrower shall promptly give written notice thereof to Agent, describing the damage and the Casualty. Regardless of the damage resulting from any Casualty, and whether or not the Net Insurance Proceeds shall be sufficient or made available for the purpose, Borrower shall promptly either (i) commence the Restoration, and prosecute it with diligence and continuity to completion or (ii) demolish the damaged portion of the Improvements so that such damaged Improvements shall comply with all laws and regulations of all governmental authorities in effect as of the date of this Deed of Trust.

9.2. Application of Proceeds. Insurance proceeds not to exceed the outstanding balance of the Debt shall be paid to Agent and applied by Agent first to payment of the actual costs, fees and expenses, if any, incurred by Agent in connection with proof of and adjustment of the loss and settlement with the insurance company. The Net Insurance Proceeds held by the Agent shall be applied by Agent: (a) to the payment of the Debt and/or performance of the Obligations; or (b) at Agent's option, to the payment of any of the cost of the Restoration.

9.3. Disbursement of Proceeds. If Net Insurance Proceeds are to be applied to the Restoration, Agent shall hold such Net Insurance Proceeds and advance the same for costs of the Restoration from time to time as the Restoration progresses. Such funds will be advanced upon written request of Borrower, and upon Borrower's compliance with such requirements as to the disbursement thereof as Agent shall impose.

10. CONDEMNATION

10.1. Notice of Condemnation; Participation. Borrower shall give Trustee and Agent immediate notice of any actual or threatened Condemnation. In the event that any of the Mortgaged Property shall be taken in Condemnation proceedings, Agent may participate in such Condemnation proceedings. Borrower shall not adjust, contest, accept, reject or compromise any proposed Condemnation Award without approval of Agent. Agent may collect the Condemnation Award and endorse any drafts therefor. All Condemnation Awards shall be deposited with Agent. Borrower will execute any and all further documents that may be required in order to facilitate collection of any Condemnation Award and the payment of any Condemnation Award to Agent.

10.2. Condemnation. If a Condemnation shall occur, the Net Condemnation Award received by Agent shall, at the option of Agent, (i) be applied to the payment of the Debt and/or performance of the Obligations, or (ii) be held by Agent and applied and paid over toward the cost of Restoration, substantially in the same manner and subject to the same conditions as those provided in §9 hereof with respect to Net Insurance Proceeds and other monies.

10.3. Expenses of Collection. Trustee and Agent shall be entitled as a first priority to reimbursement out of any Condemnation Award for all reasonable costs and fees of, expenses

incurred by, and reimbursements to, the Trustee and Agent with respect to the determination and collection of any Condemnation Award.

11. EVENTS OF DEFAULT AND REMEDIES

11.1. Events of Default Defined. The occurrence of any "Event of Default" as defined in the Loan Agreement shall constitute an Event of Default under this Deed of Trust.

11.2. Remedies Upon an Event of Default.

(a) Acceleration of Debt. Upon the occurrence of an Automatic Acceleration Event of Default, the entire unpaid Debt (principal, interest and otherwise), shall automatically become immediately due and payable without notice or demand. Upon the occurrence of any other Event of Default, at Agent's option, the entire unpaid Debt (principal, interest and otherwise), shall become immediately due and payable without notice or demand.

(b) Other Remedies. Upon the occurrence of any Event of Default, Agent and/or Trustee may immediately undertake any one or more of the following:

(1) Foreclosure. Institute an action to foreclose this Deed of Trust, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the Mortgaged Property, and proceed thereon to final judgment and judicial sale or execution thereon for the entire unpaid balance of the Debt, including interest at the rates and pursuant to the methods of calculation specified in the Note, together with all costs of suit, interest at the Default Rate on any judgment obtained by Agent from and after the date of any judicial sale of the Mortgaged Property until actual payment is made to Agent of the full amount due Agent, and an attorneys' reasonable fee for collection, any usage or custom to the contrary notwithstanding.

(2) Entry. Agent personally, or by its agents or attorneys, to the extent permitted by applicable law, may enter into and upon any of the Mortgaged Property and may exclude Borrower and its agents wholly therefrom without liability for trespass, damages or otherwise and Borrower agrees to surrender possession to Agent on demand after the happening of any Event of Default. Upon such an entry, Agent may: (i) use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its agents or receivers and exercise all rights and powers of Borrower with respect thereto either in the name of Borrower or otherwise as Agent shall deem best; (ii) restore the Mortgaged Property; (iii) complete the construction of any Improvements under construction or renovation and in the course of such completion may make such changes in the contemplated or completed Improvements as Agent may deem desirable and may insure the same; and (iv) do all such Maintenance as to Agent may reasonably deem advisable. Agent shall be entitled to collect and receive all Rents, and after deducting the expenses of conducting the business thereof and of all necessary Maintenance and amounts necessary to pay for Impositions, premiums for insurance and other proper charges upon any of the Mortgaged Property, as well as just and reasonable compensation for the services of Agent and for all attorneys and agents properly engaged and employed by Agent, Agent shall apply the remaining Rents in such order as Agent may elect, to

the payment of the Debt and/or performance of the Obligations, and the payment of any other sums required to be paid by Borrower under any of the Loan Documents. Agent shall be liable to account only for Rents actually received by Agent.

(3) Receivership. If an Event of Default occurs and be continuing, Agent, as a matter of right upon *ex parte* application and without notice to Borrower or anyone claiming under Borrower and without regard to the then value of the Mortgaged Property or the solvency of Borrower or any other Person who may be liable to pay any of the Debt and/or perform any of the Obligations shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Borrower and each such Person shall be deemed to have waived such proof and Borrower and each such Person hereby irrevocably consents to such appointment and waives notice of any application therefor. Should Agent or any receiver collect Rents, the moneys so collected shall not be substituted for payment of the Debt nor can they be used to cure the Event of Default, without the prior written consent of Agent. Borrower hereby expressly consents to the appointment of a receiver for the Mortgaged Property upon the occurrence of any Event of Default, and waives any requirement for the posting of any bond or other security in connection with such appointment and such receiver, and for any hearing in connection with such appointment.

(4) Sale of personal property. Agent shall also have such rights and remedies in respect of any of the Personal Property Security and Fixtures as are provided by the Code and such other rights and remedies in respect thereof which Agent may have at law or in equity or under any of the Loan Documents, including the right to take possession of the Mortgaged Property wherever located and to sell all or any portion thereof at public or private sale, without prior notice to Borrower, except as otherwise required by law (and if notice is required by law, after 10 days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Agent in its sole discretion may determine. Agent shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by Agent in connection with such sale or collection, including reasonable attorney's fees and legal expenses, and second to the payment of the Debt and performance of the Obligations, and then to pay the balance, if any, as required by law. Upon the occurrence of any Event of Default Borrower, upon demand by Agent, shall promptly assemble any personal property and Fixtures included in the Mortgaged Property and make it available to Agent at a place to be designated by Agent which shall be reasonably convenient to Agent and Borrower. Both Borrower and Agent shall be eligible to purchase any part or all of such property at any such disposition.

(5) Power of Sale for the Mortgaged Property. Agent may elect to cause any of the Mortgaged Property to be sold as follows:

(A) Agent may proceed as if all of the Mortgaged Property were real property in accordance with §11.2(b)(5) hereof, or Agent may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land and Improvements without causing structural damage thereto as if the same were personal property

and dispose of the same in accordance with §11.2(b)(4), separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(B) Upon the occurrence of an Event of Default, Agent may file notice with Trustee declaring such default, violation, or breach and making its election and demand for sale in writing as provided by law and requesting that the Mortgaged Property be advertised for sale and sold in accordance with the laws of the State of Colorado. Upon receipt of such notice of election and demand for sale, Trustee shall cause a copy of the same to be recorded in the clerk and recorder's office of the county in which the Mortgaged Property is located, and thereupon Trustee shall sell and dispose of the Mortgaged Property at public auction, public notice having been previously given of the time and place of such sale at such place authorized by law and specified in such notice in accordance with the laws of the State of Colorado in a newspaper of general circulation at the time published in said county, together with such other notice, if any, as may then be required by law and shall issue, execute, and deliver a certificate of purchase, public trustee's deed, or certificate of redemption in the manner provided by law to the party entitled thereto. The public trustee's deed may be in the ordinary form of conveyance. Trustee shall, out of the proceeds of such sale, after first paying and retaining all fees, charges, and costs of making such sale, pay to Agent the then existing amount of indebtedness, including a reasonable sum for attorney's fees secured hereby and pay the surplus, if any, to Borrower, its successors and assigns or to such other party as may be entitled thereto by law, provided that it shall not be the obligation of Agent to see to the application of such funds. Agent may bid for and purchase the Mortgaged Property at the sale, and may credit the amount of any indebtedness secured hereby against the amount of Agent's bid. If a release of deed of trust is required, Borrower shall pay the costs and expense thereof. The purchaser at any foreclosure sale shall not be obligated to look to the application of the proceeds thereof. If the Agent should become the purchaser, it shall be entitled to credit any of the unpaid balance of the Debt against the amount of the purchase price. The purchaser at any sale or foreclosure sale hereunder may disaffirm any easement granted or Lease made in violation of any provision of this Deed of Trust, and may take the Mortgaged Property free from, and despite the terms of, such grant of easement or Lease. Borrower hereby expressly waives any right which Borrower may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto. In the event of a sale or other disposition of any of the Mortgaged Property, and the execution of a deed or other conveyance pursuant thereto, the recitals in such deed or conveyance of facts, such as default, the giving of notice of default and notice of sale, terms of sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. In case of any sale under this Deed of Trust by virtue of judicial proceedings, or under the power of sale, the Mortgaged Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Agent in its sole discretion may elect. Notwithstanding anything to the contrary contained herein, Trustee shall (to the extent permitted by applicable law) allocate or apply the proceeds of sale (including the amount of any credit bid) in such manner and in such priority as Agent may elect in its sole and absolute discretion.

(C) Agent may cause any such sale or other disposition to be conducted as soon as permitted under applicable law, or Agent may delay any such sale or other disposition for such period of time as Agent deems to be in its best interest. Should Agent desire that more than one such sale or other disposition be conducted, Agent may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Agent may deem to be in its best interest.

(D) Agent, at its option, may set aside any declared acceleration of maturity of the Note, whereupon the terms and provisions therein stated and the covenants, terms and conditions in this Deed of Trust shall revive and continue with the same force and effect as if such acceleration had not occurred.

(E) Upon the occurrence of an Event of Default hereunder, Agent in pursuance of the foregoing remedies, or in addition thereto, shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as Agent may think fit without impairing Agent's lien in, or rights to, any of such securities and without affecting the liability of any Person for the Debt.

11.3. Waivers and Releases.

(a) Consent to Jurisdiction, Venue, etc. Borrower hereby consents to the jurisdiction of the courts of the State in and for the county in which the Mortgaged Property is located with respect to any action, suit or other legal proceeding commenced by Agent pursuant to any of the Loan Documents, and hereby waives any right to transfer any such action to any other court.

(b) Waiver of Marshalling, etc. Borrower, for itself and its successors in title, hereby waives all rights at law or in equity to have the Mortgaged Property marshaled in the event of the foreclosure of this Deed of Trust. Borrower will not at any time insist upon, plead, or in any manner whatsoever claim or take any benefit or advantage of any present or future laws pertaining to the administration of the estates of decedents, exempting any of the Mortgaged Property from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, or providing for the valuation or appraisal of any of the Mortgaged Property prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court. Borrower hereby covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Agent, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

(c) Waiver of Notices. Borrower hereby waives all notices not herein elsewhere specifically required, of Borrower's default or of Agent's exercise, or election to exercise, any option or election under this Deed of Trust.

(d) Waiver of Personal Service. Borrower hereby waives personal service of process in any action or proceeding at any time commenced to enforce this Deed of Trust, and agrees that such process shall be deemed properly and adequately served if sent to Borrower at the address

provided in or pursuant to §12 hereof for the giving of notices to Borrower, by certified or registered mail, return receipt requested, in the manner provided in §12 hereof for the giving of notices to Borrower.

(e) Foreclosure Subject to Leases. In the event that Agent shall have the right to foreclose this Deed of Trust, Borrower authorizes Agent at its option to foreclose subject to the rights of any tenants, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be asserted by Borrower as a defense to any proceeding instituted by Agent to collect any of the Debt or any deficiency after foreclosure.

12. NOTICES

12.1. Addresses. All notices, demands, requests and consents required under this Deed of Trust shall be in writing, and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other overnight delivery service; or (d) if sent by facsimile transmission, confirmed by certified or registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender, and addressed if to Borrower at the Borrower's address hereinabove set forth, or if to the Trustee, at the Trustee's address hereinabove set forth, or if to the Agent, at the Agent's address hereinabove set forth, or at such other address or addresses as any party hereto may hereafter designate for itself by written notice to each other party hereto.

12.2. Manner of Delivery. Notices, demands and requests hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission, with confirmation by certified or registered mail, on the date such facsimile transmission is received by the Person to whom it is sent.

13. CERTAIN SECURITY AGREEMENT PROVISIONS

13.1. Status of Borrower. Borrower's exact legal name is correctly set forth at the end of this Deed of Trust. Borrower is an organization of the type specified in the first paragraph of this Deed of Trust. Borrower is incorporated in or organized under the laws of the Formation State. Borrower will not cause or permit any change to be made in its name, identity or corporate, limited liability company or partnership structure unless the Borrower shall have first notified the Agent in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by the Agent for the purpose of perfecting or protecting the lien and security interest of the Agent. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the

entire period of the existence of the Borrower) and will continue to be the address of the Borrower set forth at the end of the Deed of Trust (unless Borrower notifies the Agent in writing at least 30 days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in §1.4(c) of this Deed of Trust. Borrower shall promptly notify the Agent of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, the Borrower promptly shall notify the Agent of such organizational identification number.

13.2. Authorization to File Financing Statements; Power of Attorney. Borrower hereby authorizes the Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of the Borrower as authorized by applicable law, as applicable to all or part of the Mortgaged Property. For purposes of such filings, the Borrower agrees to furnish any information requested by the Agent promptly upon request by the Agent. Borrower also ratifies its authorization for the Agent to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this security instrument. Borrower hereby irrevocably constitutes and appoints the Agent and any officer or agent of the Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Borrower or in the Borrower's own name to execute in the Borrower's name any documents and otherwise to carry out the purposes of this §13.1, to the extent that the Borrower's authorization above is not sufficient. To the extent not prohibited by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

14. NON WAIVER, ETC.

14.1. Waiver Not Affecting Deed of Trust. No failure by Agent to insist upon the strict performance by Borrower of any of the provisions hereof shall be deemed to be a waiver of any of the provisions hereof, and Trustee and Agent, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Borrower of all of the provisions of this Deed of Trust. Neither Borrower nor any Person liable for the payment of any of the Debt or the performance of any of the Obligations, nor any Person giving security for any of the Debt or for the performance of any of the Obligations, shall be relieved of any of such respective obligations, nor shall any security given by any of them be released, nor the position of any subordinate lienholder be improved, by reason of: (a) any failure by Agent to comply with any request by Borrower or of any other Person so obligated to foreclose or otherwise enforce this Deed of Trust; (b) the release, regardless of consideration, of any of the security held for payment of any of the Debt and/or the performance of any of the Obligations; (c) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Agent extending the time of payment or modifying the terms of the Note or any of the Loan Documents; (d) any grant of forbearance or extension of time for the payment of any of the Debt or the performance of the Obligations; (e) Agent's acceptance of any other or additional security for the payment of any of the Debt or the performance of any of the Obligations; (f) Agent's

waiver of or failure to exercise any right granted herein or in any of the Loan Documents; (g) any changes hereafter made in any of the terms, covenants, conditions or agreements of this Deed of Trust or in any other Loan Document; (h) Agent's giving of consent to the filing of any map, plat, replat or condominium declaration affecting any of the Mortgaged Property; (i) Agent's giving of consent to the granting of any easement or other right affecting the Mortgaged Property; or (j) Agent's making or consenting to any agreement subordinating the lien hereof.

14.2. Right to Cure Defaults. If Borrower shall fail to fully and timely perform any of the Obligations, Agent shall be under no obligation to take action to correct such failures. However, at its option, Agent may take such action and expend such sums as Agent deems necessary to correct such failures and/or any consequences thereof. Such action or payment by Agent shall not constitute a waiver by Agent of the performance of said act, and Agent may treat Borrower's failure to perform such act as a default (and, upon expiration of any applicable grace period, an Event of Default) notwithstanding Agent's having undertaken (or completed) the performance of the act. Borrower will repay to Agent upon demand any amounts expended by Agent to correct each such failure and/or any consequences thereof, and all expenses of Agent in taking such action, with interest at the Default Rate from the incurring of such expense or the making of such payment, as the case may be. The payment of such amounts to Agent shall be secured by this Deed of Trust.

15. GENERAL COVENANTS

15.1. Estoppel Certificate. Borrower, within three (3) days upon request in person or within ten (10) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Agent setting forth the amount of the Debt then secured by this Deed of Trust, and stating either that no offsets or defenses exist against the Debt, or if such offsets or defenses are alleged to exist, the nature and extent thereof, and containing such other matters as Agent shall reasonably request.

15.2. Agent and Trustee Expenses. Borrower shall promptly pay upon request all expenses and costs incurred by Agent or Trustee, including reasonable attorney's fees, together with interest thereon at the Default Rate from the date of the payment by Agent or Trustee, in connection with:

(a) any action, proceeding, litigation or claim instituted or asserted by or against Agent and/or Trustee or in which Agent and/or Trustee becomes engaged, wherein it becomes necessary in the opinion of Agent and/or Trustee to protect Agent's or Trustee's interests in the Mortgaged Property or the security afforded hereby, or by any of the Loan Documents, or to defend or uphold the Lien of this Deed of Trust, or the validity or effectiveness of any assignment of any claim, award, payment, insurance policy or any other right or property conveyed, encumbered or assigned by Borrower to Trustee or Agent under this Deed of Trust, or the priority of any of the same;

(b) any further assurances requested by Agent under §2.7, or any other provision hereof, including all filing and recording costs and costs of searches;

(c) all taxes, fees and other assessments, including stamp taxes, if any, upon any documents or transactions contemplated by this Deed of Trust or in connection with the recording and filing of any Loan Document;

(d) the collection and/or enforcement of any Debt and/or Obligations, including the realization upon any of the Mortgaged Property or other security for any of the Debt or Obligations; and

(e) the collection and application of any insurance proceeds and Condemnation Awards.

All such expenses and costs, with interest thereon at the Default Rate as provided above, shall be added to and become part of the Debt and be secured by this Deed of Trust; provided, however, that in any action to foreclose this Deed of Trust or to recover or collect the sums due hereunder, the provisions of law and of this Deed of Trust relative to the recovery of costs, disbursements, commissions, allowances and attorneys' fees, shall prevail over any conflicting requirements of this §15.2. The provisions of this §15.2 shall survive payment of the Debt and performance of the Obligations and any release of, or reconveyance under, this Deed of Trust.

15.3. Amendments. No provision of this Deed of Trust shall be changed, altered, modified or released except by an agreement in writing signed by Borrower and Agent. No compliance with or failure to comply with any provision of this Deed of Trust shall be waived or excused except by a written instrument executed by Agent.

15.4. Subrogation. Agent shall be subrogated, notwithstanding their release of record, to any Liens, superior titles, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Property to the extent that the same are paid or discharged from the proceeds of the Loan or are otherwise paid by Agent.

15.5. Application of Moneys. Whenever in this Deed of Trust Agent is to apply, or shall elect to apply, any sum of money to payment of any of the Debt, or to performance of any of the Obligations, Agent may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Agent may elect, unless a different order of priority is required by applicable law.

15.6. Agent Not Liable; Indemnity. Neither Trustee, Lender nor Agent shall be responsible or liable in any way for any condition in or upon any of the Mortgaged Property (whether or not discovered by Agent or Lender), including any condition relating to the presence on the Mortgaged Property of any Hazardous Substance or any defects in any of the Mortgaged Property or any personal injury, death, damage to property, loss, cost, liability, damage or expense in any way arising out of or connected with the condition or maintenance of any of the Mortgaged Property or any construction or other work thereon, or Borrower's use and occupancy of the Mortgaged Property. For any such condition in or upon any of the Mortgaged Property which first arises after the date of this instrument, Borrower will indemnify, defend and hold

Agent, Lender and the Trustee harmless from and against all such liability and responsibility. The provisions of this Section 15.6. shall survive the payment of the Debt, performance of the Obligations, release of this Deed of Trust and the reconveyance of the Mortgaged Property for a period of three years from the date of such reconveyance of the Mortgaged Property.

15.7. Lease Priority. Each Lease hereafter made shall: (a) require the tenant to enter into an agreement with Agent, if Agent so requests, which will provide that, in the event of the sale of any of the Mortgaged Property under the power of sale herein contained, or under any judicial foreclosure hereof, or of a deed in lieu of foreclosure, such tenant will, upon the written request of any Person succeeding to the interest of Borrower as the result of said sale or deed, automatically become the tenant of any such successor in interest, without any change in the terms or other provisions of the Lease, and that said successor in interest shall not be bound by (i) any payment of rent for more than one (1) month in advance, (ii) any provision requiring the return of any security deposit or prepayment in the nature of security for the performance by said Tenant of its obligations under said Lease, or any provision entitling the Tenant to credit any such amounts to its obligations under its Lease, or (iii) any amendment or modification in the Lease made without the consent of Agent or any such successor in interest; and (b) require the tenant, upon Agent's request, to enter into an agreement in recordable form with Agent to provide, at the option of Agent, that this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to any Condemnation Awards or insurance proceeds), to such tenant's Lease. Borrower shall join in any of such agreements if Agent so requests. On request of Agent, Borrower shall obtain from the tenants and furnish to Agent the agreements required by this §15.7, all of which agreements shall be in form and substance satisfactory to Agent. Nothing set forth in this Section shall constitute an agreement of Agent to enter into any agreement for subordination, nondisturbance or attornment with any tenant.

16. TRANSFER OF MORTGAGED PROPERTY

16.1. Restrictions Upon Transfer. Lenders have made the Loan in reliance in part upon the identity of Borrower. Accordingly, without the prior written approval of Agent, Borrower, except as may be permitted by §16.2 hereof, shall not: (a) allow a Transfer of any of Borrower's interest in the Mortgaged Property to occur; or (b) permit any Transfer of any ownership interest (whether stock, general partnership interest or otherwise) in Borrower; or (c) permit or suffer to occur any Transfer of any ownership interest (direct or indirect) in any non-publicly traded Person which is a shareholder, partner, member or other owner of an interest in Borrower; and any such prohibited act shall be an Event of Default.

16.2. Permitted Transfers. Agent shall have the right to condition its consent to any Transfer prohibited by §16.1 hereof upon the payment of a fee or charge and/or upon an increase in the rate of interest and/or changes in the other provisions of any of the Loan Documents. References in this Deed of Trust to proceeds of any of the Mortgaged Property are not intended as a consent to, and do not authorize, any Transfer of any of the Mortgaged Property.

17. FUTURE ADVANCES

In addition to the indebtedness evidenced by the Note and all other Debt, this Deed of Trust, to the fullest extent permitted by the law of the State, shall secure also and constitute a Lien on the Mortgaged Property for all future advances made by Lenders or Agent to Borrower and future obligations incurred by Borrower to Lenders or Agent in connection with the Mortgaged Property or the Loan to the same extent as if such future advances were made or such future obligations incurred on the date of the execution of this Deed of Trust.

18. ENVIRONMENTAL MATTERS

18.1. Environmental Covenants. Borrower hereby covenants and agrees with Agent as follows:

(a) At all times until this Deed of Trust has been satisfied of record, the Mortgaged Property and the use and operation of the Mortgaged Property shall comply with all Environmental Requirements, all governmental permits, approvals and licenses required with respect to the Mortgaged Property by any Environmental Requirements shall be and remain in effect, and Borrower shall comply therewith. Any Hazardous Substance at any time present, handled or generated on the Mortgaged Property will be disposed of in strict compliance with all Environmental Requirements. Without limiting the foregoing, Borrower shall not allow or permit any Hazardous Substance to exist or be stored, located, discharged, manufactured, possessed, managed, processed or otherwise handled on the Mortgaged Property at any time, except in strict compliance with all applicable Environmental Requirements.

(b) Borrower will not place or allow any underground storage tanks or above-ground storage tanks to be placed on the Mortgaged Property while this Deed of Trust remains in effect.

(c) Borrower shall immediately notify Agent should Borrower become aware of any Hazardous Substance on, in, or under the Mortgaged Property, and any other environmental problem or liability with respect to the Mortgaged Property. Borrower shall immediately notify Agent and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Mortgaged Property or its compliance with Environmental Requirements.

(d) Borrower shall not do or take any action or omit or fail to take any action which will result in the unauthorized release of any Hazardous Substance or the existence of any environmental contamination in, on, under or with respect to, any of the Mortgaged Property.

(e) Failure of Borrower to comply with all Environmental Requirements and governmental safety requirements shall be a default under this Deed of Trust.

(f) Borrower shall promptly after obtaining knowledge thereof advise Agent in writing of (i) any governmental or regulatory actions instituted or threatened in writing under any Environmental Requirements affecting the Mortgaged Property or any Indemnity hereunder

including, without limitation, any notice of inspection, abatement or noncompliance, (ii) all claims made or threatened in writing by any third party against Borrower or the Mortgaged Property relating to any Hazardous Substance or to any alleged violation of an Environmental Requirement, and (iii) Borrower's discovery of any occurrence or condition on the Mortgaged Property or any real property adjoining or in the vicinity of the Mortgaged Property which could subject Borrower or the Mortgaged Property to a claim under any Environmental Requirement or to any restrictions on ownership, occupancy, transferability or use of the Mortgaged Property under any Environment Requirement. Borrower shall deliver to Agent all such documentation and records relating to any matter, notice of which is required by this §18.1, as Agent may reasonably request.

18.2. Right to Inspect, etc. Agent, in person or by agent, shall have the right, but not the obligation, at any time and from time to time to enter upon the Mortgaged Property, take samples, review Borrower's books and records, interview Borrower's employees and officers, and conduct similar activities to ascertain the status of Borrower's compliance with this §18. Borrower shall cooperate in the conduct of such an audit. Such entry may be made at any time or times upon not less than 24 hours notice (which may be oral notice) to Borrower. In addition, Agent may have tests (which may include drilling and sampling, among other things) and audits of the Mortgaged Property done for the purpose of testing for evidence of noncompliance.

19. DEFINITIONS, CONSTRUCTION AND INTERPRETATION.

19.1. Governing Law. This Deed of Trust shall be construed and enforced in accordance with the internal laws (without regard to the conflict of laws rules) of the State. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other document described herein, Borrower expressly consents to jurisdiction in the courts and laws of the State, and consents to the applicability of the laws of the State, with respect to any personal liability and any action for a deficiency judgment, whether before or after any exercise of a power of sale or any judicial foreclosure.

19.2. Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the Land, and shall apply to, bind and inure to the benefit of, the successors of Borrower and any subsequent owner of the Land or the Improvements, and the successors of Agent and any subsequent holders of the Note.

19.3. Provisions Severable. If any term or provision of this Deed of Trust or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

19.4. Multiple Counterparts. This Deed of Trust may be executed in any number of counterparts and by the parties hereto on different counterparts. Each such counterpart shall for all purposes be deemed to be an original and all such counterparts shall together constitute but

one and the same Deed of Trust. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

19.5. Other Interpretive Provisions. As used herein, the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "any of" shall mean all or any part of or interest in that with respect to which such phrase is used.

19.6. Miscellaneous Provisions. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Deed of Trust shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of the Agent in the Mortgaged Property, afford the Agent greater financial security in the Mortgaged Property and/or assure payment of the Debt and performance of the Obligations in full, shall control. Except as otherwise expressly stated herein, with respect to any matters which, under this Deed of Trust, Agent shall have the right to approve, consent to, be satisfied with, exercise its judgment with regard to or calculate, the decisions of Agent with respect to such matters shall be made in the sole discretion of Agent, may be given or withheld without regard to reasonableness, and shall be final and conclusive. The headings and captions in this Deed of Trust are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Deed of Trust. The granting of consent by Agent to any matter as to which such consent is required by the provisions hereof shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Borrower and Agent that such property be treated for all purposes hereunder as real estate. Each of the parties have participated in the negotiation and preparation of this Deed of Trust, with the advice of counsel, and this Deed of Trust shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Deed of Trust.

19.7. Definitions. As used herein, each of the following terms shall have the meaning indicated below, unless the context clearly requires otherwise:

"Agent's Address" shall mean c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205, or such other address as Agent, by written notice to the other parties, shall designate as "Agent's Address" for purposes of the Loan Documents.

"Agent-Related Persons" shall mean Agent, and any successor Agent appointed pursuant to the Loan Agreement, together with their respective officers, directors, employees, representatives, attorneys, agents and affiliates.

“Automatic Acceleration Event of Default” shall mean an “Automatic Acceleration Event of Default” as defined under the Loan Agreement.

“Borrower” shall mean **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, a Colorado urban renewal authority, their successors and assigns permitted under the Loan Documents.

"Borrower's Address" shall mean 4800 West 92nd Avenue, Westminster, Colorado 80031, or such other address as Borrower, by written notice to Lenders and Agent, shall designate as "Borrower's Address" for purposes of the Loan Documents.

"Casualty" shall mean any damage, destruction, or loss to or of any of the Mortgaged Property resulting from fire, any peril insured against, or any other cause except a Condemnation.

"Certified" shall mean certified: (a) if the Person providing the financial statement to be certified is a general or limited partnership, by the general partner or managing general partner(s) of such Person, and if such general partner is a corporation, the chief financial officer of such corporate general partner of such Person; (b) if such Person is a corporation, by the chief financial officer of the corporation; (c) if such Person is a trust, by the trustee; (d) if such Person is a limited liability company, by the manager or managing member, or if none, by all members; or (e) if such Person is one or more individuals, by each such individual.

“CERCLA” shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as now and hereafter amended.

“CGL Policy” shall mean a Commercial General Liability insurance policy meeting the requirements of §4.1(b) hereof.

“City” shall mean the **CITY OF WESTMINSTER**, a Colorado home rule city.

“Closing” shall mean the execution and delivery of the Loan Documents and their acceptance by Agent, satisfaction of all conditions of the Loan Agreement to the making of the Loan, and recording of the Mortgage.

“Closing Date” shall mean the date upon which the Closing is completed.

“Code” shall mean the Uniform Commercial Code as adopted and in effect in the State on the date hereof and as amended or supplemented at any time hereafter.

"Collateral" shall mean collectively the “Accounts”, “Chattel Paper”, “Deposit Accounts”, “Documents”, “Equipment”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, as such terms are defined in the Code, and all Personal Property, Records, Intellectual Property, and other assets, tangible or intangible, now owned or hereafter acquired by Borrower, and the Proceeds of each thereof.

"Condemnation" shall mean any condemnation or taking of any of the Mortgaged Property or the use thereof by any Governmental Authority or other Person pursuant to the power of eminent domain or condemnation, and any conveyance of any of the Mortgaged Property in lieu of condemnation.

"Condemnation Award" shall mean any and all awards, damages and other sums of money at any time owed or becoming payable, or paid, with respect to any Condemnation, including any payments for any conveyance in lieu of Condemnation, and awards for changes of grade of any streets.

"Debt" shall mean (i) all indebtedness of Borrower evidenced by the Notes, including principal, interest at the rate set forth in the Notes, additional interest if any, late charges, and interest after default at the rate set forth in the Note, (ii) any and all extensions, renewals, refinancings or refundings thereof in whole or in part, whether or not now provided for in the Loan Documents, (iii) all costs and expenses incurred by Agent in the collection of any of such indebtedness, including attorneys' fees and legal expenses, (iv) all future advances made by Agent for the protection or preservation of any of the Mortgaged Property, and (v) all other amounts coming due to Agent under any provision of any of the Loan Document.

"Default Rate" shall mean the "Default Rate" as defined in the Notes.

"Environmental Activity" (whether one or more), shall mean any one or more of the following: (1) any present or future storage, holding, existence, release, emission, discharge, generation, abatement, disposition, handling or transportation of any Hazardous Substance from, on, under or otherwise relating to the Mortgaged Property or any Migration Tract, or the use, operation or occupancy thereof, or any threat of any such activity, including but not limited to any failure of all "hazardous waste" (as defined in RCRA) generated or removed from the Mortgaged Property to be removed and disposed of at sites and transported by carriers which maintain valid permits under RCRA and any other applicable Environmental Requirements; (2) any failure of any Person, including without limitation the Borrower, to comply with any of the Environmental Requirements relating to the Mortgaged Property or the ownership, use, operation or occupancy thereof, or any Migration Tract, including but not limited to any failure by any Person to properly obtain or file any notices, permits, licenses or similar authorizations, if any, required under any Environmental Requirements in connection with the Mortgaged Property or the ownership, use, operation or occupancy thereof; (3) any investigation, inquiry, order or proceeding by any Governmental Authority, and/or any remedial obligations of the Borrower or any Person under any Environmental Requirements relating to the Mortgaged Property or any Migration Tract; (4) any failure of any representation or warranty set forth in §18 of this Deed of Trust to be true and correct in all respects when made; and (5) any failure of the Borrower to perform, or cause to be performed, any covenant in §18 of this Deed of Trust.

"Environmental Requirements" shall mean, collectively: CERCLA; RCRA; the Hazardous Materials Transportation Act (49 U.S.C. §1802 et seq.); the Federal Water Pollution Prevention and Control Act (33 U.S.C. §1251 et seq.); the Safe Drinking Water Act (42 U.S.C. §300f et

seq.); the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Clean Water Act, 33 U.S.C. §7401 et seq.; all international treaties, compacts, conventions and agreements having the force of law in the United States of America and all federal, state or local statutes, ordinances, codes, rules, regulations, orders and decrees, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect, each as now or hereafter amended; and any and all judgments, orders, decrees, permits, licenses, authorizations, concessions, grants, franchises, agreements or other governmental restrictions or requirements relating to the environment or to any Hazardous Substance or to any Environmental Activity.

"Event of Default" shall mean an Event of Default as defined in §11.1 hereof, and any event, omission or circumstance otherwise specifically stated in this Deed of Trust to be an Event of Default.

"FEMA" shall mean the Federal Emergency Management Agency, and its successors.

"Fixtures" shall mean all fixtures, equipment, apparatus, machinery, fittings and appliances, chattels, building materials and tangible personal property of every kind and character, now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy, operation and/or maintenance of the Improvements or the Land, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the removal of dust, refuse or garbage, and all renewals, replacements and substitutions thereof, additions and accessions thereto, and all spare parts for any of the same.

"Formation State" shall mean the State of Colorado, under the laws of which the Borrower is organized or formed.

"Governmental Authority" shall mean the United States of America, the State, any political subdivision of either of them, and any court, agency, department, commission, board, bureau, officer or instrumentality of any of them.

"Ground Leases" shall mean collectively (i) Lease dated June 21, 1976 between Mersco Realty Co., Inc. and Westminster Mall Company, as amended and assigned and (ii) Lease dated January 14, 1986 between Frank S. Morgan, et al and Westminster Mall Company, as amended and assigned.

"Hazardous Substance" shall mean: (a) any "hazardous substance" as such term is presently defined in CERCLA; (b) any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substance" for the purposes of CERCLA; (c) any element, substance, compound or mixture, including disease-causing agents, now or hereafter designated as, or containing components designated as, hazardous, dangerous, toxic, harmful, and/or subject to regulation by any Environmental Requirement, including asbestos in any form

and any substance containing asbestos, mold, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid or polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials, lead and any waste, substance or material now or hereafter regulated by any Environmental Requirement; (d) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2014, as now or hereafter amended; (e) any lead-based paint; and (f) mold, fungus, microbacterial contamination or pathogenic organisms.

“Higbee” shall mean **THE HIGBEE COMPANY**, a Delaware corporation, and the holder of one of the Notes.

"Higbee's Address" shall mean 1600 Cantrell Road, Little Rock, Arkansas 72205, Attn: Vice President, Real Estate, or such other address as Higbee, by written notice to the other parties, shall designate as "Higbee's Address" for purposes of the Loan Documents.

“Impositions” shall mean all taxes and assessments of every kind and nature now or hereafter assessed against or levied upon any of the Mortgaged Property or the revenues, rents, issues or profits thereof by any Governmental Authority, including real and personal property taxes, general and special assessments, inspection and license fees, water and sewer rents and charges

“Improvements” shall mean the buildings, structures and other improvements now or hereafter located on the Land.

“Indemnified Liabilities” shall mean all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, charges, expenses or disbursements (including attorney's fees and expenses) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loan or the termination, resignation or replacement of any Agent or any Lender) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Agreement or any other Loan Document and any other document or instrument contemplated by or referred to herein or therein, or the transactions contemplated hereby and thereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to the exercise by Agent of any of its rights or remedies under any of the Loan Documents, and any investigation, litigation or proceeding (including any bankruptcy, insolvency, reorganization or other similar proceeding or appellate proceeding) related to this Agreement or any other Loan Document or the Loan, or the use of the proceeds thereof.

“Intangibles” shall mean all goodwill, trademarks, trade names, option rights, purchase contracts, computer records and software, books and Records and general intangibles of the Borrower relating to any of the Mortgaged Property, all Intellectual Property, all rights of the Borrower under or with respect to all accounts, contract rights, instruments, chattel paper and other rights of the Borrower for payment of money for property sold or lent, for services

rendered, for money lent, or for advances or deposits made, all rights of the Borrower to plans and specifications, designs, drawings, models and other matters prepared for any construction or renovation on the Land, all rights of the Borrower under any contracts executed by the Borrower as owner with any provider of goods or services in connection with any construction or renovation undertaken on, or services performed or to be performed in connection with, any part of the Mortgaged Property, and all other intangible property of the Borrower related to or used in connection with any of the Mortgaged Property, and shall specifically include, without limiting the foregoing, all trade insignia and logos (including goodwill related thereto), if any, used in connection with the operation of the Mortgaged Property.

"Intellectual Property" shall mean all patents, trademarks, trade names, and service marks, and related goodwill, now or hereafter acquired by Borrower.

"ISO" shall mean the Insurance Services Office.

"Land" shall mean all of the real property and interests in real property described on Exhibit A attached to and incorporated into this Deed of Trust.

"Lease" shall mean any of the Leases.

"Leases" shall mean all agreements for use and occupancy of any part of the Mortgaged Property, now existing or hereafter entered into, including all present and future leases (including subleases), licenses, concessions, rights in respect of tenants holding over and tenancies following attornment, and all extensions, modifications, renewals or supplements to any lease, license or concession, and all cash or securities deposited with the Borrower to secure performance of the tenant's obligations under such Lease.

"Legal Requirements" shall mean collectively (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, including those with respect to zoning, subdivision, building, safety, fire protection, wetlands protection, historical preservation, access for the handicapped or disabled, ecological or environmental matters; and (ii) all covenants, restrictions and conditions now or hereafter of record which may apply to any of the Mortgaged Property or the use, occupancy, possession, Maintenance, Restoration or enjoyment thereof.

"Lender or Lenders" shall mean MD Lender and Higbee, the holders of the Notes.

"Lien" shall mean any mortgage, deed of trust, security agreement, financing statement, security interest, judgment lien, mechanic's or materialman's lien, any other lien, encumbrance, charge, retention or reservation of title as security, pledge, hypothecation or assignment as security, of any of, or upon, the Mortgaged Property, whether now existing or hereafter created, suffered or incurred.

"Loan" shall mean the loan in the Loan Amount made by Lenders to Borrower and the City pursuant to the Loan Agreement.

"Loan Agreement" shall mean that certain Loan Agreement dated the date hereof among Borrower, City, Agent, MD Lender and Higbee, and any amendments, extensions and supplements thereto made at any time.

"Loan Amount" shall mean the maximum aggregate principal amount of the Loan, which is THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS (U.S. \$3,500,000.00).

"Loan Documents" shall mean collectively the Loan Agreement, the Notes, this Deed of Trust, financing statements to evidence security interests securing the Loan, and all other instruments, documents and agreements now or hereafter evidencing, securing or supporting any of the Debt or the Obligations, and any amendments, extensions and supplements to any of them made at any time.

"Maintenance" shall mean all repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property (whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen), that are necessary to keep the Mortgaged Property in good order, condition and repair, consistent with the standard described in §5.2 and suitable for the Permitted Uses.

"Maturity Date" shall mean the Maturity Date as set forth in the Note.

"MD Lender" shall mean collectively, **MD WESTMINSTER 1ST TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER 2ND TRACT, LLC**, a Missouri limited liability company, **MD WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, and **TM WESTMINSTER HOLDINGS, LLC**, a Missouri limited liability company, the holders of one of the Notes.

"MD Lender's Address" shall mean c/o MD Management, Inc. 5301 Johnson Drive, Suite 450, Mission, Kansas 66205, or such other address as MD Lender, by written notice to the other parties, shall designate as "MD Lender's Address" for purposes of the Loan Documents.

"Member" shall mean any member of Borrower, if applicable.

"Migration Tract" shall mean any property other than the Land, from which any Hazardous Substance may move or migrate onto, into or under the Land (including the groundwater thereunder), and any property other than the Land into, onto or under which any Hazardous Substance may move or migrate from the Land (including the groundwater thereunder).

"Mortgaged Property" shall mean collectively all the property and interests, tangible and intangible, described or referred to in §§1.1, 1.2 and 1.3 hereof, whether now owned or hereafter acquired by Borrower.

"Net Condemnation Award" shall mean a Condemnation Award, less the costs and expenses, including reasonable attorney's fees, incurred by Agent and/or Trustee in connection with such Condemnation Award and the Condemnation to which it relates.

"Net Insurance Proceeds" shall mean all of the proceeds and sums of money owed or becoming due or paid under any policy of insurance upon any of the Mortgaged Property, including any sums paid in settlement of any claim under any such insurance policy, less the costs and expenses, including reasonable attorney's fees, incurred by Agent and/or Trustee in connection with such insurance proceeds and the Casualty to which they relate.

"Note" shall mean the two Notes, collectively or one of the two Notes as the context requires.

"Notes" shall mean the two certain Promissory Note of even date herewith each in one-half of the Loan Amount from Borrower and the City to the order of MD Lender and Higbee, as amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

"Obligations" shall mean the obligation to pay the Debt and all obligations of Borrower and the City to Lenders and Agent arising from or out of any of the Loan Documents.

"Permitted Encumbrances" shall mean only those matters listed as exceptions to coverage on Schedule B to the Agent's policy of title insurance insuring the lien of this Deed of Trust; except that those matters which are listed in said policy as matters which are subordinate to the lien of this Deed of Trust shall be included as "Permitted Encumbrances" only as matters which are so subordinate, and notwithstanding any provision of any of the Loan Documents seemingly to the contrary, none of the Loan Documents shall be subject to such items so listed as subordinate.

"Permitted Uses" shall mean use solely as a retail shopping center and activities incidental thereto.

"Person" shall mean an individual, corporation, general partnership, limited partnership, limited liability company, unincorporated association, trust or any other legal entity.

"Personal Property" shall mean all tangible personal property now owned or hereafter acquired by Borrower.

"Personal Property Security" shall mean, collectively, all the Fixtures, Intangibles, and all other property described in §1.2 hereof, whether now owned or hereafter acquired by Borrower.

"Proceeds" shall mean all "Proceeds" as defined in the Code, with respect to the Collateral or Mortgaged Property, and includes without limitation proceeds of insurance payable by reason of loss or damage to Collateral or Mortgaged Property.

"RCRA" shall mean the Resources Conservation and Recovery Act of 1976, as now or hereafter amended (42 U.S.C. §6901 et seq.) and any regulations promulgated thereunder.

"Reciprocal Easement Agreement" shall mean Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986 and recorded February 18, 1986 under Reception No. 86016389 , as amended, assigned, and supplemented.

"Records" shall mean all "Records" as defined in the Code, now owned or hereafter acquired by Borrower, and includes without limitation all books, records, computer records and software relating to any part of the Mortgaged Property.

"Rents" shall mean: all rentals, security deposits, reimbursements and other sums of money now or hereafter due to Borrower under any Lease; all of the rents, issues, profits, royalties, income, receipts, revenues and earnings now or hereafter due Borrower under any Lease or arising from the use and enjoyment of any of the Mortgaged Property; all damages for default by any party under any Lease; all proceeds of any policy of insurance covering loss of rents or business interruption resulting from any Casualty; all rights of Borrower to collect and recover any of such amounts; and the proceeds of all such Rents.

"Restoration" shall mean the restoration, repair, rebuilding, alteration and/or replacement of any of the Mortgaged Property made necessary by any Casualty or Condemnation, to a condition as nearly as possible to its condition prior to such Casualty or Condemnation (but with such changes as Borrower may make pursuant to §7 hereof), and includes demolition, temporary repairs and the protection of the Mortgaged Property pending the completion of Restoration.

"State" shall mean the State of Colorado.

"Transfer" shall mean: (a) with respect to Borrower's interest in the Mortgaged Property, any sale, assignment, lease, transfer or conveyance (whether voluntarily, involuntarily, by operation of law or otherwise) of any of Borrower's interest in the Mortgaged Property, or any agreement by Borrower to do any of the same; and (b) with respect to any ownership interest (whether stock, partnership interest, membership interest or otherwise) of any Person in Borrower, or any ownership interest (direct or indirect) in any Person which is a shareholder, partner, member or other owner of an interest in Borrower, any sale, assignment, conveyance, transfer, grant of a security interest in or encumbrance of any of such interest, or any agreement by any such Person to do so.

"Trustee" shall mean the Public Trustee of Jefferson County, Colorado.

"Usury Law" shall mean any law or regulation of any Governmental Authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money and applicable to the Debt and/or any of the Obligations.

"WEDA" shall mean WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal agency.

20. WAIVER OF TRIAL BY JURY

20.1. Waiver of Trial By Jury. AGENT, BORROWER AND THE TRUSTEE IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY COURT IN ANY ACTION: (A) AGENT OR THE TRUSTEE BRINGS TO COLLECT AMOUNTS OWED UNDER OR SECURED BY THIS DEED OF TRUST; (B) ALLEGING THAT (I) AGENT OR THE TRUSTEE OR BORROWER HAS BREACHED THIS AGREEMENT OR ANY AGREEMENT SECURED BY THIS AGREEMENT, (II) AGENT, THE TRUSTEE OR BORROWER HAS BREACHED ANY OTHER AGREEMENT, EXPRESS OR IMPLIED, (III) AGENT OR THE TRUSTEE OR ANY OF AGENT'S OR THE TRUSTEE'S OFFICERS, EMPLOYEES OR AGENTS HAVE ACTED WRONGFULLY, NEGLIGENTLY OR OTHERWISE TORTIOUSLY WITH RESPECT TO BORROWER; OR (C) TO WHICH BORROWER, AGENT AND/OR THE TRUSTEE ARE PARTIES. THIS WAIVER OF TRIAL BY JURY DOES NOT WAIVE EITHER BORROWER'S, THE TRUSTEE'S OR AGENT'S RIGHT TO BRING A LAWSUIT THAT A JUDGE, WITHOUT A JURY, WOULD DECIDE.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the day and year first above written.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

"BORROWER":

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director of Westminster Economic Development Authority, a Colorado urban renewal agency, and attested by Linda Yeager, Authority Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A
Legal Description

EXHIBIT G

[INTENTIONALLY DELETED]

EXHIBIT H

Form of Deed

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

BARGAIN AND SALE DEED

WESTMINSTER MALL COMPANY, a Colorado general partnership, THE HIGBEE COMPANY, a Delaware corporation, successor by merger to Mersco Realty Co., Inc., an Ohio corporation, MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company, and MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company (“Grantor”) for the consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in hand paid, hereby sells and conveys to WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Grantee”), whose address is c/o Finance Department, City of Westminster, Colorado, 4800 W. 92nd Avenue, Westminster, CO 80031, all the right, title, interest, claim and demand which the Grantor has, if any, in and to the following real property, situate, lying and being in the County of Jefferson and State of Colorado, to wit:

SEE EXHIBIT A ATTACHED HERETO (the “Property”).

This instrument does not convey, and shall not be construed to convey, any interest of Grantor under the purchase money deed of trust or other conveyance made by Grantee to Grantor and/or other parties in connection with the Grantee’s acquisition of the Property. Grantor hereby states and confirms that the conveyance of the Property to the Grantee is made under threat of condemnation.

IN WITNESS WHEREOF, the Grantor has executed this Bargain and Sale Deed as of the ____ day of _____, 2011.

GRANTOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

THE HIGBEE COMPANY, a Delaware corporation,
successor by merger to Mersco Realty Co., Inc., an Ohio
corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 1ST TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

MD WESTMINSTER 2ND TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation, successor by merger to Mersco Realty Co., Inc., an Ohio corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT I

Form of Bill of Sale

BILL OF SALE

THIS BILL OF SALE ("**Bill of Sale**") is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership ("**Assignor**") and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority ("**Assignee**").

RECITALS:

A. Concurrently with the execution and delivery of this Bill of Sale, Assignee has purchased from Assignor and from The Higbee Company, MD Westminster 1st Tract, LLC, and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the "**Real Property**").

B. The parties have agreed that Assignor will assign to Assignee all of Assignor's right, title and interest in and to the "FF&E" (hereinafter defined) relating to the Real Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby GIVE, GRANT, BARGAIN, SELL, ASSIGN, CONVEY and DELIVER unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to all furniture, furnishings, fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, supplies and other tangible personal property of every kind and description and all replacements thereof now owned by Assignor and located in or on, attached to or used in operating the Real Property ("**FF&E**") EXCEPT that property listed on **Exhibit B** attached hereto; and

2. The sale and assignment hereunder is made "**AS IS,**" "**WHERE IS**" and "**WITH ALL FAULTS.**" Assignor makes no representations or warranties whatsoever, express or implied or otherwise, as to the merchantability, condition, workmanship, quality, fitness or suitability for any purpose of the FF&E, and Assignor expressly disclaims any and all warranties.

3. This Bill of Sale shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. This Bill of Sale may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

The remainder of this page is intentionally blank.
The parties' signatures are on the next page.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Bill of Sale effective as of the date first above written.

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

**WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY**, a Colorado urban renewal authority

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

EXCLUDED PERSONALTY

Office computers of bookkeeper, manager, management assistant and security

Front End loader

Truck

EXHIBIT J

Form of Assignments of Ground Leases

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

(First Ground Leasehold)

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between THE HIGBEE COMPANY, a Delaware corporation and MD WESTMINSTER 1ST TRACT, LLC, a Missouri limited liability company (collectively, “**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, MD Westminster 2nd Tract, LLC and Westminster Mall Co., the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Lease” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the lease described on **Exhibit B** attached hereto and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Lease**”) together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor or the landlord under the Ground Lease accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Lease accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Lease occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out a breach by Assignor of its obligations under the Ground Lease occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\ALRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment First Ground Lease 042711.doc

ASSIGNOR:

THE HIGBEE COMPANY, a Delaware corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 1ST TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____

J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 1ST TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

GROUND LEASE

Lease dated 6/21/76 between Mersco Realty Co., Inc., an Ohio Corporation, Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded July 21, 1976, in Book 2879 at Page 852

Agreement Amending Lease dated 6/28/76

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

(Second Ground Leasehold)

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between THE HIGBEE COMPANY, a Delaware corporation and MD WESTMINSTER 2ND TRACT, LLC, a Missouri limited liability company (collectively, “**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, MD Westminster 1st Tract, LLC and Westminster Mall Co., the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Lease” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the lease described on **Exhibit B** attached hereto and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Lease**”) together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor or the landlord under the Ground Lease accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Lease accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Lease occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Ground Lease occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment of Second Ground Lease 042711.doc

ASSIGNOR:

THE HIGBEE COMPANY, a Delaware corporation

By: _____
James W. Cherry, Jr., Vice-President

MD WESTMINSTER 2ND TRACT, LLC, a Missouri
limited liability company

By: _____
Thomas S. Morgan, Manager

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____

J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of THE HIGBEE COMPANY, a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, Manager of MD WESTMINSTER 2ND TRACT LLC, a Missouri limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

GROUND LEASE

Lease dated 1/14/86 between Frank S. Morgan, et al., Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded February 18, 1986, under Reception No. 86016387

EXHIBIT K

Form of Assignment of Penney Lease

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF PENNEY LEASE

THIS ASSIGNMENT AND ASSUMPTION OF PENNEY LEASE (this “**Agreement**”), is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Agreement, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminister, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in and to the Penney Lease (as defined herein) and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest in, to and under the lease described on **Exhibit B** attached hereto and made a part hereof and any and all amendments, extensions, modifications and supplements thereto (the “**Penney Lease**”), together with any guaranties relating thereto.

2. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, provisions, covenants and conditions of the Penney Lease on the part of Landlord to be performed and agrees not to use or occupy the Property in any manner which would constitute a violation of the terms of the Penney Lease. The provisions hereof are directly enforceable by J.C. Penney Properties, Inc.

3. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Agreement shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

4. This Agreement may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Agreement effective as of the date first above written.

F:\LRF\MMM\md\westminster\City\Deed and Assignments\CMP Assignment of Penney Lease 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____

J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

PENNEY LEASE

Lease dated 2/13/86 between Westminster Mall Co and J.C. Penney Properties, Inc. (a partial copy of which was recorded 2/18/86 at Reception No. 86016388)

Memorandum of Lease between Westminster Mall Co and J.C. Penney Properties, Inc.

Letter Guaranty from J.C. Penney Company to Westminster Mall Co. dated 2/13/86

Letter from Westminster Mall Co to J.C. Penney Properties, Inc. dated 2/13/86 (regarding Tenant's Parcel)

Letter from Westminster Mall Co to J.C. Penney Properties, Inc. dated 2/13/86 (regarding leases)

Term Agreement between Westminster Mall Co and J.C. Penney Properties, Inc. dated 6/18/93

EXHIBIT L

Form of Assignment of Tenant Leases

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF LEASES

(WESTMINSTER MALL COMPANY)

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this “**Assignment**”), is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“**Assignor**”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“**Assignee**”) and the CITY OF WESTMINSTER, a Colorado home rule city (“**City**”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “**Property**”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest, if any, in and to the “Ground Leases” (hereinafter defined) and the “Leases” (hereinafter defined) relating to the Property, and Assignee will assume all obligations of Assignor thereunder.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby TRANSFER and ASSIGN to Assignee all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under (i) the leases described on **Exhibit B** attached hereto and made a part hereof and any and all amendments, extensions, modifications and supplements thereto (the “**Ground Leases**”) and (ii) all leases, subleases and occupancy agreements for premises in the Property, amendments, extensions, modifications and supplements thereto, including without limitation those with tenants or occupants described on **Exhibit C** attached hereto and made a part hereof (the “**Leases**”), together with any guaranties relating thereto. Assignee hereby accepts such assignment and assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor, the tenant under the Ground Leases, or the landlord under the Leases accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Ground Leases or the Leases accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“**Assignor Parties**”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Ground Leases or Leases occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Ground Leases or Leases occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

5. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Leases effective as of the date first above written.

F:\ALRF\MMM\md\westminster\City\Deed and Assignments\Assignment and Assumption of Tenant Leases 042711 comp.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

**WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority**

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

**CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city**

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Thomas S. Morgan, President of MD Management, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by James W. Cherry, Jr., the Vice President of Dillard Store Services, Inc., Manager of WESTMINSTER MALL COMPANY, a Colorado general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B
GROUND LEASES

First Ground Lease

Lease dated 6/21/76 between Mersco Realty Co., Inc., an Ohio Corporation, Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded July 21, 1976, in Book 2879 at Page 852

Agreement Amending Lease dated 6/28/76

Second Ground Lease

Lease dated 1/14/86 between Frank S. Morgan, et al., Lessor, and Westminster Mall Company, a Colorado General Partnership, Lessee

Memorandum of Lease recorded February 18, 1986, under Reception No. 86016387

EXHIBIT C

1. Space 12: Things Remembered
2. Space 16: Footlocker Store Number #7512
3. Space 18: Spencer's Gifts
4. Space 20: Rivera Clothing
5. Space 22: GNC
6. Space 23: Bath and Body
7. Space 35: Dillard's Juniors
8. Space 43: Infinite Design Jewelry
9. Space 44: Footlocker (Owned by Footlocker)
10. Space 45: Doctor's Vision World
11. Space 49: Journey's
12. Space 50A: Claires Boutiques
13. Space 58: Victoria's Secret
14. Space 72: Pet City
15. [intentionally deleted]
16. Space 139: Champs (Owned by Footlocker)
17. Space K12: Compass Bank ATM
18. Space K15: Compass Bank ATM
19. Space Main 3: Dillard's Department Store
20. Space Main 4: JC Penney Department Store
21. Space Pad 2: US Bank
22. Space Pad 5: Olive Garden
23. Space Pad 6: Sears TBA
24. Temporary Tenant: Corn LTD
25. Temporary Tenant: Extreme Mini Golf

EXHIBIT M

Form of Assignment of Contracts

ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS (this “Assignment”) is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership (“Assignor”), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority (“Assignee”), and the CITY OF WESTMINSTER, a Colorado home rule city (“City”).

RECITALS:

A. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor and from The Higbee Company, MD Westminster 1st Tract, LLC, and MD Westminster 2nd Tract, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the “Property”).

B. The parties have agreed that Assignor will assign to Assignee all of Assignor’s right, title and interest in the “Contracts” (hereinafter defined) relating to the Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby SELL, TRANSFER, ASSIGN and SET OVER unto Assignee, all of Assignor’s right, title and interest, if any, to the extent assignable, in, to and under the contracts relating to the Property described in **Exhibit B** attached hereto (the “Contracts”), and Assignee hereby accepts such assignment and hereby assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor under the Contracts from and after the date of this Assignment. Assignor shall remain liable for all obligations under the Contracts accruing prior to the date of this Assignment.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them (“Assignor Parties”), from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the Contracts occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys’ fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the Contracts occurring before the date of this Assignment.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and the City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and the City and their respective successors and assigns.

4. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment and Assumption of Contracts effective as of the date first above written.

F:\LRF\MMM\nd\westminster\City\Deed and Assignments\CMP Assignment of Contracts 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

CONTRACTS

1. Service Agreement dated January, 2011 and Renewal Mechanical Service Agreement dated December 8, 2010 with Long Mechanical Solutions.
2. Service Agreement Non-Hazardous Waste dated January 25, 1989 with Waste Management.
3. Maintenance and Guarantee Agreement dated April 17, 2007 with Plantek Distinctive Interiorscaping, Inc.

EXHIBIT N

Form of Assignment of RCOEA and Other Agreements

Please record and return to:
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn.: Michele M. McCue

ASSIGNMENT AND ASSUMPTION OF RCOEA AND ADDITIONAL AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF RCOEA AND ADDITIONAL AGREEMENTS (this "Assignment") is made as of the _____ day of _____, 2011, by and between WESTMINSTER MALL COMPANY, a Colorado general partnership ("Assignor"), and WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority ("Assignee") and the CITY OF WESTMINSTER, a Colorado home rule city ("City").

RECITALS:

A. Assignor is a party to that certain Reciprocal Construction, Operation and Easement Agreement dated February 13, 1986 and recorded February 18, 1986 under Reception No. 86016389, as the same may have been amended, supplemented, assigned or modified (collectively, "RCOEA").

B. Concurrently with the execution and delivery of this Assignment, Assignee has purchased from Assignor, The Higbee Company, MD Westminster 1st Tract, LLC and MD Westminster 2nd, LLC, the real property legally described in **Exhibit A** attached hereto in the City of Westminster, Jefferson County, Colorado (the "Property"), and the parties have agreed that Assignor will assign to Assignee all of Assignor's right, title and interest in the RCOEA and the "Additional Agreements" (hereinafter defined).

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor does hereby SELL, TRANSFER, ASSIGN and SET OVER unto Assignee, all of Assignor's right, title and interest in, to and under the RCOEA, all agreements relating to the RCOEA which are identified in Exhibit B attached hereto as "supplemental agreements", and all recorded easements and other recorded documents affecting the Property (collectively, the "Additional Agreements") and Assignee hereby accepts such assignment and hereby assumes and agrees to perform and observe all obligations, terms, covenants and conditions imposed upon Assignor thereunder accruing from and after the date of this Assignment. Assignor shall remain liable for all obligations under the RCOEA or Additional Agreements accruing prior to the date of this Assignment excepting and excluding, however any and all obligations under the "May Supplemental Agreement" or "Mervyn's Supplemental Agreement" identified in Exhibit B, or under the RCOEA or any other Additional Agreements with respect to either the May Site or the Mervyn's Site (as defined in the RCOEA) or as to which the City of Westminister is a party.

2. Assignee agrees to protect, defend, indemnify and hold harmless Assignor, its partners, employees, managers, agents, members, officers, directors, shareholders, affiliates, representatives, consultants, and attorneys or any of them ("Assignor Parties"), from any and all

losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignee (or its assigns) of its obligations under the RCOEA or Additional Agreements occurring from and after the date of this Assignment.

3. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, arising out of a breach by Assignor of its obligations under the RCOEA or Additional Agreements occurring before the date of this Assignment, excepting and excluding any and all matters with respect to the May Supplemental Agreement or Mervyn's Supplemental Agreement, or under the RCOEA or other Additional Agreements with respect to either the May Site or the Mervyn's Site or as to which the City of Westminster is a party.

4. To the extent permitted by law, City hereby unconditionally and absolutely guarantees to Assignor the full, prompt and complete performance by Assignee of the obligations of Assignee herein. The obligations of Assignee and City hereunder are and shall constitute the joint and several obligation of each, without contribution, offset, subrogation or other relative claim. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and City and their respective successors and assigns.

4. This Assignment may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor, Assignee and City have executed this Assignment effective as of the date first above written.

F:\ALRF\MM\nd\westminster\City\Deed and Assignments\Assignment of RCOEA 042711.doc

ASSIGNOR:

WESTMINSTER MALL COMPANY, a Colorado
general partnership

By: M D Management, Inc., a Missouri corporation,
Manager

By: _____
Thomas S. Morgan, President

By: Dillard Store Services, Inc., an Arizona corporation,
Manager

By: _____
James W. Cherry, Jr., Vice President

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY, a Colorado urban renewal authority

By: _____
J. Brent McFall,
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, City Clerk

CITY OF WESTMINSTER, COLORADO, a
Colorado home rule city

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the Executive Director and Secretary and by Linda Yeager, the City Clerk OF WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011 by J. Brent McFall, the City Manager and by Linda Yeager, the City Clerk of the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

EXHIBIT B

SCHEDULE OF ADDITIONAL AGREEMENTS

The following documents (“**Supplemental Agreements**”):

1. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and The May Department Stores Company (“**May Supplemental Agreement**”)
2. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and Mervyn’s (“**Mervyn’s Supplemental Agreement**”)
3. Supplemental Agreement dated February 13, 1986 between Westminster Mall Company and Carter Hawley Hale Stores, Inc.
4. Assignment and Assumption of Agreements recorded February 8, 1990 under Reception No. 90011510.
5. REA Assignment and Assumption Agreement recorded February 22, 1996 under Reception No. F0189712.
6. Assignment and Assumption of Operating Agreements recorded September 27, 2004 under Reception No. F2102228.
7. Assignment and Assumption Agreement recorded January 11, 2006 under Reception No. 2006004250.
8. Assignment and Assumption of Operating Agreement recorded May 18, 2009 under Reception No. 2009045088.

and the following additional documents:

1. THE RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES THEREBY GRANTED AND RIGHTS OF WAY FOR DITCHES AND CANALS AS RESERVED IN UNITED STATES PATENT RECORDED IN BOOK 32, PAGE 107.
2. THE RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES THEREBY GRANTED AND RIGHTS OF WAY FOR DITCHES AND CANALS AS RESERVED IN UNITED STATES PATENT RECORDED IN BOOK 119, PAGE 54.
3. TERMS, CONDITIONS, PROVISIONS, BURDENS, AND OBLIGATIONS SET FORTH IN WESTMINSTER MALL SUBDIVISION AGREEMENT RECORDED JANUARY 14, 1976 IN BOOK 2809 AT PAGE 337.

4. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL RECORDED JANUARY 14, 1976 UNDER RECEPTION NO. 758563.

5. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL AMENDED RECORDED APRIL 16, 1976 UNDER RECEPTION NO. 779637.

6. EASEMENT GRANTED TO THE ALLEN DITCH COMPANY BY THE INSTRUMENT RECORDED OCTOBER 5, 1976 IN BOOK 2911, PAGE 261.

7. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION AGREEMENT RECORDED OCTOBER 15, 1976 IN BOOK 2915 AT PAGE 453.

8. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 25, 1976, IN BOOK 2919 AT PAGE 34.

9. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR UTILITIES AND INCIDENTAL PURPOSES BY THE INSTRUMENT RECORDED JANUARY 31, 1977 IN BOOK 2956, PAGE 777.

10. AN EASEMENT FOR STORM AND SANITARY SEWER LINES, WATER LINES AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED SEPTEMBER 1, 1977 IN BOOK 3063, PAGE 242.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

11. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED AUGUST 18, 1978 AT RECEPTION NO. 78076109.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF BRUNSWICK CENTER RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076112.

NOTE: PLAT RATIFICATION RECORDED SEPTEMBER 28, 1978 UNDER RECEPTION NO. 78089787.

13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BRUNSWICK CENTER SUBDIVISION AGREEMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076110.

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN OFFICIAL DEVELOPMENT PLAN FOR BRUNSWICK SUBDIVISION

PLANNED UNIT DEVELOPMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076111.

15. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED SEPTEMBER 8, 1978 AT RECEPTION NO. 78082939.

16. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY BY THE INSTRUMENT RECORDED APRIL 3, 1979 AT RECEPTION NO. 79028820.

17. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1979, UNDER RECEPTION NO. 79113496.

18. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE OFFICIAL DEVELOPMENT PLAN FOR WESTMINSTER MALL, RECORDED AUGUST 25, 1980 AT RECEPTION NO. 80062536 AND AS AMENDED BY ODP MAP RECORDED MARCH 5, 1981 AT RECEPTION NO. 81014999, AND AMENDMENT THERETO RECORDED JUNE 6, 1983, UNDER RECEPTION NO. 83051906 AND AMENDMENT THERETO RECORDED JUNE 14, 1993 UNDER RECEPTION NO. 93084172 AND AMENDMENT THERETO RECORDED FEBRUARY 8, 1985 UNDER RECEPTION NO. 85012857.

19. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED DECEMBER 18, 1980 AT RECEPTION NO. 80098451.

20. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED DECEMBER 18, 1980 AT RECEPTION NO. 80098452.

21. EASEMENT FOR PUBLIC WALKWAY AND INCIDENTAL PURPOSES GRANTED TO THE PUBLIC BY THE INSTRUMENT RECORDED JANUARY 20, 1981 AT RECEPTION NO. 81004595.

22. EASEMENT FOR STORM DRAINAGE AND INCIDENTAL PURPOSES GRANTED TO THE CITY OF WESTMINSTER BY THE INSTRUMENT RECORDED SEPTEMBER 3, 1982 AT RECEPTION NO. 82061813.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

23. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 16, 1984 AT RECEPTION NO. 84005094.

24. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 16, 1984 AT RECEPTION NO. 84005095.

25. AN EASEMENT FOR UTILITY PURPOSES AS RESERVED IN ORDINANCE NO. 1488 SERIES OF 1985 VACATING A PORTION OF WEST 91ST AVENUE, RECORDED MAY 10, 1985 AT RECEPTION NO. 85044026.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

26. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED MAY 16, 1985 AT RECEPTION NO. 85045599.

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE PRELIMINARY DEVELOPMENT PLAN AND OFFICIAL DEVELOPMENT PLAN RECORDED SEPTEMBER 5, 1985 AT RECEPTION NO. 85084672, AND AS AMENDED BY MAPS RECORDED NOVEMBER 25, 1985 AT RECEPTION NO. 85113479 AND RECORDED OCTOBER 25, 1991 AT RECEPTION NO. 91098710, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710 AND AMENDMENT THERETO RECORDED APRIL 28, 1993 UNDER RECEPTION NO. 93056877 AND AMENDMENT THERETO RECORDED MAY 11, 1994 UNDER RECEPTION NO. 94086564 AND AMENDMENT THERETO RECORDED JULY 12, 1996 UNDER RECEPTION NO. F0267601.

NOTE: RELEASE OF CERTAIN PROPERTY RECORDED DECEMBER 18, 1985 UNDER RECEPTION NO. 85122760.

28. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, ET AL AND BRUNSWICK CORPORATION RECORDED DECEMBER 16, 1985 AT RECEPTION NO. 85121733.

29. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL 2ND AMENDED RECORDED FEBRUARY 14, 1986 UNDER RECEPTION NO. 86016236.

30. EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND INCIDENTAL PURPOSES GRANTED TO MERVYNS, A CALIFORNIA CORPORATION BY THE INSTRUMENT RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016383.

31. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS SPECIFIED UNDER THE EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN ET AL AND CARTER HAWLEY HALE STORES, INC. RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016386.

32. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR SIDEWALKS, CURBS AND INCIDENTAL PURPOSES GRANTED TO THE MAY DEPARTMENT STORES COMPANY BY THE INSTRUMENT RECORDED FEBRUARY 18, 1986 AT RECEPTION NO. 86016384.

33. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED APRIL 2, 1986 AT RECEPTION NO. 86033564.

34. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 19, 1986, UNDER RECEPTION NO. 86096170.
35. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED SEPTEMBER 3, 1986 AT RECEPTION NO. 86103237.
36. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 5, 1987 AT RECEPTION NO. 87001381.
37. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS SPECIFIED UNDER THE AGREEMENT AND WAIVER BY AND BETWEEN THE CITY OF WESTMINSTER AND WESTMINSTER MALL COMPANY RECORDED FEBRUARY 12, 1987 AT RECEPTION NO. 87019125.
38. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004112.
39. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004113.
40. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004114.
41. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004115.
42. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED BY THE INSTRUMENT RECORDED JANUARY 15, 1991 AT RECEPTION NO. 91004116.
43. EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED NOVEMBER 9, 1992 AT RECEPTION NO. 92144664.
44. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 30, 1992, UNDER RECEPTION NO. 92169138.
45. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 27, 1993, UNDER RECEPTION NO. 93012257.

46. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CITY OF WESTMINSTER AGREEMENT FOR POSSESSION AND USE OF RIGHT-OF-WAY RECORDED AUGUST 14, 1997 UNDER RECEPTION NO. F0460650.

47. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FIRST AMENDED OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL SUBDIVISION FOR SEARS AUTO CENTER RECORDED MARCH 29, 2001 UNDER RECEPTION NO. F1208340.

EXHIBIT O
Commitment



Land Title Guarantee Company

CUSTOMER DISTRIBUTION

Date: 04-28-2011

Our Order Number: ABD70297803-10

Property Address:
WESTMINSTER MALL

If you have any inquiries or require further assistance, please contact one of the numbers below:

For Closing Assistance:

Leigh Renfro
3033 E 1ST AVE #600
DENVER, CO 80206
Phone: 303-331-6231
Fax: 303-331-6374
EMail: lrenfro@ltgc.com

Closer's Assistant:

Laurie McKee
Phone: 303-331-6238
Fax: 303-331-6373
EMail: lmckee@ltgc.com

For Title Assistance:

Commercial Title "ABD" Unit
David Knapp
5975 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111
Phone: 303-850-4174
Fax: 303-393-4947
EMail: dknapp@ltgc.com

LAND TITLE GUARANTEE COMPANY
3033 E 1ST AVE #600
DENVER, CO 80206
Attn: Leigh Renfro
Phone: 303-331-6231
Fax: 303-331-6374
Copies: 1
EMail: lrenfro@ltgc.com

LEWIS RICE & FINGERSON
ONE PETICOAT LANE
1010 WALNUT #500
KANSAS CITY, MO 64106
Attn: MICHELE MCCUE
Phone: 816-472-2536
Fax: 816-472-2500
Copies: 1
EMail: mmmccue@lrf-kc.com
Linked Commitment Delivery

MURRAY DAHL KUECHENMEISTER & RENAUD
1530 16TH STREET
SECOND FLOOR
DENVER, CO 80202
Attn: MALCOLM M. MURRAY
Phone: 303-493-6677
Copies: 1
EMail: mmurray@mdkrlaw.com
Linked Commitment Delivery

LEWIS RICE & FINGERSON
ONE PETICOAT LANE
1010 WALNUT #500
KANSAS CITY, MO 64106
Attn: BRAD MADDOCK
Phone: 816-472-2561
Copies: 1
EMail: bjmaddock@lrf-kc.com
Linked Commitment Delivery

BANKS & IMATANI, PC
225 UNION BLVD. #310
LAKEWOOD, CO 80228
Attn: BARBARA BANKS
Phone: 303-984-5605
Copies: 1
EMail: bsbei@earthlink.net
Linked Commitment Delivery

CITY OF WESTMINSTER
CITY ATTORNEY'S OFFICE
4800 W. 92ND AVENUE
WESTMINSTER, CO 80031
Attn: TAMI CANNON
Phone: 303-658-2235
Copies: 1
EMail: tcannon@cityofwestminster.us
Linked Commitment Delivery



Land Title Guarantee Company

Date: 04-28-2011

Our Order Number: ABD70297803-10

Property Address:
WESTMINSTER MALL

Buyer/Borrower:
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

Seller/Owner:
WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

Wire Information:

Bank: FIRSTBANK OF COLORADO
10403 W COLFAX AVENUE
LAKEWOOD, CO 80215
Phone: 303-237-5000
Credit: LAND TITLE GUARANTEE COMPANY
ABA No.: 107005047
Account: 2160521825
Attention: Leigh Renfro

Note: Once an original commitment has been issued, any subsequent modifications will be emphasized by underlining.

Need a map or directions for your upcoming closing? Check out Land Title's web site at www.ltgc.com for directions to any of our 54 office locations.

ESTIMATE OF TITLE FEES

ALTA Owners Policy 06-17-06	\$15,253.00
ALTA Loan Policy 06-17-06	\$150.00
Deletion of General Exception 4 (Owner)	\$25.00
Endorsement 103.1 #9 & #10 (Owner)	\$1,000.00
Tax Report (x29)	\$725.00

If Land Title Guarantee Company will be closing this transaction, above fees will be collected at that time.

TOTAL **\$17,153.00**

First American Title Insurance Company

ALTA COMMITMENT

Our Order No. ABD70297803-10

Schedule A

Cust. Ref.:

Property Address:
WESTMINSTER MALL

1. **Effective Date:** April 25, 2011 at 5:00 P.M.

2. **Policy to be Issued, and Proposed Insured:**

"ALTA" Owner's Policy 06-17-06 \$22,000,000.00

Proposed Insured:
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

"ALTA" Loan Policy 06-17-06 \$3,500,000.00

Proposed Insured:
WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; THE HIGBEE COMPANY, A DELAWARE CORPORATION; MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY; AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

3. **The estate or interest in the land described or referred to in this Commitment and covered herein is:**

A Fee Simple

4. **Title to the estate or interest covered herein is at the effective date hereof vested in:**

WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY

5. **The Land referred to in this Commitment is described as follows:**

LOTS 1 THROUGH 7, INCLUSIVE, 9, 10, 12 AND 14 THROUGH 19, INCLUSIVE, BLOCK 1, WESTMINSTER MALL 2ND AMENDED PLAT, COUNTY OF JEFFERSON, STATE OF COLORADO.

EXCEPTING FROM SAID LOT 15, THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED JUNE 21, 1989 UNDER RECEPTION NO. 89053018.
AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED MARCH 26, 1999 UNDER RECEPTION NO. F0832987.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

Item (c) Payment of all taxes, charges or assessments levied and assessed against the subject premises which are due and payable.

Item (d) Additional requirements, if any disclosed below:

1. (ITEM INTENTIONALLY DELETED)
2. (ITEM INTENTIONALLY DELETED)
3. (ITEM INTENTIONALLY DELETED)
4. BARGAIN AND SALE DEED FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY TO WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY CONVEYING SUBJECT PROPERTY.

NOTE: PURSUANT TO RESOLUTION OF THE MEMBERS AND MANAGERS OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE MANAGERS (MD MANAGEMENT, INC., A MISSOURI CORPORATION AND DILLARD STORE SERVICES, INC., AN ARIZONA CORPORATION) MAY EXECUTE SAID DEED ON BEHALF OF SAID PARTNERSHIP.

NOTE: PURSUANT TO RESOLUTION OF THE MEMBERS AND MANAGERS OF WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY, THOMAS S. MORGAN MAY EXECUTE SAID DEED AS MANAGER OF EACH LIMITED LIABILITY COMPANY.

5. CERTIFIED COPY OF RESOLUTION OF THE GOVERNING BOARD OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AUTHORIZING THE ACQUISITION OF THE LAND AND THE BORROWING OF MONEY AND EXECUTION OF NECESSARY DOCUMENTS AND RECITING THAT THE BOARD HAS BEEN DULY AUTHORIZED IN THE PREMISES. SAID RESOLUTION

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

MUST BE PROPERLY CERTIFIED. SAID RESOLUTION MUST BE SUBMITTED TO AND APPROVED BY LAND TITLE GUARANTEE COMPANY BUT NEED NOT BE RECORDED.

6. DEED OF TRUST FROM WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; THE HIGBEE COMPANY, A DELAWARE CORPORATION; MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY; AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY TO SECURE THE SUM OF \$3,500,000.00.

7. RELEASE OF DEED OF TRUST DATED DECEMBER 31, 2002 FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP; MERSCO REALTY CO., INC., AN OHIO CORPORATION; SHERMAN W. DREISESZUN, TRUSTEE UNDER A SELF-DECLARATION OF TRUST DATED FEBRUARY 29, 1988; THOMAS S. MORGAN AND MARILYN J. MORGAN, CO-TRUSTEES OF FRANK W. MORGAN CHARITABLE LEAD UNITRUST U.T.A. DATED OCTOBER 23, 1993; ROBERT J. O'HALLORAN, AS SUCCESSOR TRUSTEE OF MARILYN J. FEINGOLD TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF MICHAEL B. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF MARK A. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF THOMAS S. MORGAN TRUST #2 DATED APRIL 1, 1976; ROBERT J. O'HALLORAN, AS TRUSTEE OF TODD D. MORGAN TRUST #2 DATED APRIL 1, 1976; AND ROBERT J. O'HALLORAN, AS TRUSTEE OF THE DREISESZUN GRANDCHILDREN TRUST DATED OCTOBER 28, 1976 TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF GOLD BANK, A KANSAS BANKING ASSOCIATION TO SECURE THE SUM OF \$40,000,000.00 RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642585.

SAID DEED OF TRUST WAS FURTHER SECURED BY ASSIGNMENT OF LEASES AND RENTS RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642586.

8. TERMINATION OF FINANCING STATEMENT BY GOLD BANK, THE SECURED PARTY, RECORDED DECEMBER 31, 2002, UNDER RECEPTION NO. F1642587, F1642588, F1642589, F1642590, F1642591, F1642592, F1642593, F1642594, F1642594, F1642596.

9. RECORDATION OF THAT CERTAIN ASSIGNMENT OF DEED OF TRUST FROM M&I MARSHALL & ILSLEY BANK, SUCCESSOR TO GOLD BANK TO WESTMINSTER MALL COMPANY REGARDING DEED OF TRUST RECORDED DECEMBER 31, 2002 UNDER RECEPTION NO. F1642585.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

10. WRITTEN APPROVAL OF THIS TRANSACTION BY THE PARTNERS OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THAT OWN AT LEAST 51% OF THE "DISTRIBUTION PERCENTAGE INTERESTS" OF SAID PARTNERSHIP AS REQUIRED UNDER ARTICLE II OF THE PARTNERSHIP AGREEMENT.

NOTE: SAID APPROVAL MUST ALSO NAME THE "MANAGERS" WHO ARE AUTHORIZED TO EXECUTE DOCUMENTS ON BEHALF OF THE PARTNERSHIP.

11. WRITTEN APPROVAL OF THIS TRANSACTION BY THE MEMBERS OF MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY OWNING AT LEAST 55% OF THE "DISTRIBUTION PERCENTAGES" OF SAID LIMITED LIABILITY COMPANY, AS REQUIRED UNDER ARTICLE 6.3 OF THE OPERATING AGREEMENT FOR SAID LIMITED LIABILITY COMPANY.
12. WRITTEN APPROVAL OF THIS TRANSACTION BY THE MEMBERS OF MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY OWNING AT LEAST 55% OF THE "DISTRIBUTION PERCENTAGES" OF SAID LIMITED LIABILITY COMPANY, AS REQUIRED UNDER ARTICLE 6.3 OF THE OPERATING AGREEMENT FOR SAID LIMITED LIABILITY COMPANY.
13. NOTICE AND AFFIDAVIT OF LEASE TERMINATION EXECUTED BY WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP CONFIRMING THE TERMINATION OF THOSE CERTAIN LEASES RECORDED SEPTEMBER 15, 1977 IN BOOK 3070 AT PAGE 142, JUNE 6, 1978 UNDER RECEPTION NO. 78050335, JULY 26, 1988 UNDER RECEPTION NO. 88072446, DECEMBER 7, 1992 UNDER RECEPTION NO. 92158098 AND AUGUST 23, 1993 UNDER RECEPTION NO. 93128826 AND ALSO CONFIRMING THE RENT ROLL ATTACHED THERETO.

NOTE: (OWNER'S POLICY ONLY) UPON THE APPROVAL OF THE COMPANY AND THE RECEIPT OF A NOTARIZED FINAL LIEN AFFIDAVIT, ITEM NO. 4 OF THE GENERAL EXCEPTIONS WILL BE AMENDED AS FOLLOWS:

ITEM NO. 4 OF THE GENERAL EXCEPTIONS IS DELETED AS TO ANY LIENS OR FUTURE LIENS RESULTING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, THE HIGBEE COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER TO MERSCO REALTY CO., INC., AN OHIO CORPORATION, MD WESTMINSTER 1ST TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND MD WESTMINSTER 2ND TRACT, LLC, A MISSOURI LIMITED LIABILITY COMPANY ONLY.
FIRST AMERICAN TITLE INSURANCE COMPANY SHALL HAVE NO LIABILITY FOR ANY LIENS ARISING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF ANY OTHER

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABD70297803-10

Continued:

PARTY, INCLUDING, BUT NOT LIMITED TO WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY.

NOTE: ITEM 5 OF THE GENERAL EXCEPTIONS WILL BE DELETED IF LAND TITLE GUARANTEE COMPANY CONDUCTS THE CLOSING OF THE CONTEMPLATED TRANSACTION(S) AND RECORDS THE DOCUMENTS IN CONNECTION THEREWITH.

NOTE: UPON PROOF OF PAYMENT OF 2010 TAXES, ITEM 6 OF THE GENERAL EXCEPTIONS WILL BE AMENDED TO READ:

TAXES AND ASSESSMENTS FOR THE YEAR 2011 AND SUBSEQUENT YEARS, A LIEN, NOT YET DUE AND PAYABLE.

NOTE: ITEM 7 OF THE GENERAL EXCEPTIONS IS HEREBY DELETED.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
8. TERMS, CONDITIONS AND PROVISIONS OF EXISTING LEASES AS SET FORTH IN THE RENT ROLL.
9. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 10, 1885, IN BOOK 32 AT PAGE 107.

(AFFECTS LOTS 1, 3 THROUGH 7, 9, 10, 12, 14, 15, 16 AND 18)

10. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 22, 1905, IN BOOK 119 AT PAGE 54.

(AFFECTS LOTS 1, 2 AND 12)

11. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

WESTMINSTER MALL SUBDIVISION AGREEMENT RECORDED JANUARY 14, 1976 IN BOOK 2809 AT PAGE 337.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL RECORDED JANUARY 14, 1976 UNDER RECEPTION NO. 758563.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

13. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL AMENDED RECORDED APRIL 16, 1976 UNDER RECEPTION NO. 779637.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

14. LEASE BETWEEN MERSCO REALTY CO., INC., AN OHIO CORPORATION, LESSOR, AND WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED JULY 21, 1976, IN BOOK 2879 AT PAGE 852.

(AFFECTS PORTIONS OF LOTS 1 AND 10, AND ALL OF LOTS 9, 17, 18 AND 19)

15. EASEMENT GRANTED TO THE ALLEN DITCH COMPANY, FOR IRRIGATION CONDUIT, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 05, 1976, IN BOOK 2911 AT PAGE 261.

(AFFECTS LOT 15)

16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION AGREEMENT RECORDED OCTOBER 15, 1976 IN BOOK 2915 AT PAGE 453.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

17. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED OCTOBER 25, 1976, IN BOOK 2919 AT PAGE 34.

(AFFECTS LOTS 1, 10, 17 AND 19)

18. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 31, 1977, IN BOOK 2956 AT PAGE 777.

(AFFECTS LOT 16)

19. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN LEASE AND DECLARATION OF RESTRICTIONS RECORDED APRIL 07, 1977 IN BOOK 2985 AT PAGE 672, AND FIRST AMENDMENT THERETO RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016381.

(AFFECTS ALL LOTS)

20. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT BY AND BETWEEN MERSCO REALTY CO., INC., AN OHIO CORPORATION, DAVID HAHN, TRUSTEE, AND THE JOSLIN DRY GOODS COMPANY, A COLORADO CORPORATION RECORDED APRIL 07, 1977 IN BOOK 2985 AT PAGE 685, AND AMENDMENT THERETO RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016380.

(AFFECTS A PORTION OF LOTS 1, 10 AND 17)

21. EASEMENT GRANTED TO THE PUBLIC, FOR STORM AND SANITARY SEWER LINES, WATER LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 01, 1977, IN BOOK 3063 AT PAGE 242.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 10, 12 AND 14 THROUGH 19)

22. (ITEM INTENTIONALLY DELETED)

23. (ITEM INTENTIONALLY DELETED)

24. EASEMENT GRANTED TO THE PUBLIC , FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 18, 1978, UNDER RECEPTION NO. 78076109.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 10)

25. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF BRUNSWICK CENTER RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076112.

NOTE: PLAT RATIFICATION RECORDED SEPTEMBER 28, 1978 UNDER RECEPTION NO. 78089787.

(AFFECTS LOT 1)

26. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BRUNSWICK CENTER SUBDIVISION AGREEMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076110.

(AFFECTS LOT 1)

27. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN OFFICIAL DEVELOPMENT PLAN FOR BRUNSWICK SUBDIVISION PLANNED UNIT DEVELOPMENT RECORDED AUGUST 18, 1978 UNDER RECEPTION NO. 78076111,.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOT 1)

28. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 08, 1978, UNDER RECEPTION NO. 78082939.

(AFFECTS LOT 7)

29. EASEMENT GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED APRIL 03, 1979, UNDER RECEPTION NO. 79028820.

(AFFECTS LOTS 1, 15, 16, 18 AND 19)

30. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1979, UNDER RECEPTION NO. 79113496.

(AFFECTS LOT 12)

31. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN WESTMINSTER MALL OFFICIAL DEVELOPMENT PLAN RECORDED AUGUST 25, 1980 UNDER RECEPTION NO. 80062536, AND AMENDMENT THERETO RECORDED MARCH 5, 1981 UNDER RECEPTION NO. 81014999, AND AMENDMENT THERETO RECORDED JUNE 6, 1983, UNDER RECEPTION NO. 83051906 AND AMENDMENT THERETO RECORDED JUNE 14, 1993 UNDER RECEPTION NO. 93084172 AND AMENDMENT THERETO RECORDED FEBRUARY 8, 1985 UNDER RECEPTION NO. 85012857.

(AFFECTS LOTS 1, 9, 10, 12, 14, 15 AND 16)

32. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1980, UNDER RECEPTION NO. 80098451.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 18 AND 19)

33. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 18, 1980, UNDER RECEPTION NO. 80098452.

(AFFECTS LOTS 1, 15 AND 16)

34. EASEMENT GRANTED TO THE PUBLIC, FOR PUBLIC WALKWAY, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 20, 1981, UNDER RECEPTION NO. 81004595.

(AFFECTS LOTS 1, 15, 16, 18 AND 19)

35. EASEMENT GRANTED TO THE CITY OF WESTMINSTER, FOR STORM DRAINAGE, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 03, 1982, UNDER RECEPTION NO. 82061813.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 5)

36. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 16, 1984, UNDER RECEPTION NO. 84005094.

(AFFECTS LOTS 1, 18 AND 19)

37. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 16, 1984, UNDER RECEPTION NO. 84005095.

(AFFECTS LOTS 1 AND 16)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

38. LEASE BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSOR, AND CENTRAL BANCORPORATION, INC., A COLORADO CORPORATION, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED MARCH 27, 1985, UNDER RECEPTION NO. 85028159.

(AFFECTS LOTS 1, 9, 10, 12 AND 14 THROUGH 19)

39. AN EASEMENT FOR UTILITY PURPOSES AS RESERVED IN ORDINANCE #1488, SERIES OF 1985, VACATING A PORTION OF WEST 91ST AVENUE, RECORDED MAY 10, 1985 UNDER RECEPTION NO. 85044026.

NOTE: ORDINANCE ABANDONING AND TERMINATING CERTAIN UTILITY EASEMENTS RECORDED JULY 16, 1993 UNDER RECEPTION NO. 93104577.

(AFFECTS LOTS 1 AND 10)

40. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED MAY 16, 1985, UNDER RECEPTION NO. 85045599.

(AFFECTS LOTS 15 AND 16)

41. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN PRELIMINARY DEVELOPMENT PLAN AND OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL RECORDED SEPTEMBER 05, 1985 UNDER RECEPTION NO. 85084672, AND FIRST AMENDMENT THERETO RECORDED NOVEMBER 22, 1985 UNDER RECEPTION NO. 85113479, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710, AND AMENDMENT THERETO RECORDED OCTOBER 25, 1991 UNDER RECEPTION NO. 91098710 AND AMENDMENT THERETO RECORDED APRIL 28, 1993 UNDER RECEPTION NO. 93056877 AND AMENDMENT THERETO RECORDED MAY 11, 1994 UNDER RECEPTION NO. 94086564 AND AMENDMENT THERETO RECORDED JULY 12, 1996 UNDER RECEPTION NO. F0267601.

NOTE: RELEASE OF CERTAIN PROPERTY RECORDED DECEMBER 18, 1985 UNDER RECEPTION NO. 85122760.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS ALL LOTS)

42. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, ET AL., AND BRUNSWICK CORPORATION RECORDED DECEMBER 16, 1985 UNDER RECEPTION NO. 85121733.

(AFFECTS LOT 1)

43. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WESTMINSTER MALL 2ND AMENDED RECORDED FEBRUARY 14, 1986 UNDER RECEPTION NO. 86016236.

(AFFECTS ALL LOTS)

44. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AS GRANTED AND RESERVED IN SPECIAL WARRANTY DEED FROM FRANK S. MORGAN, ET AL., TO MERVYN'S, A CALIFORNIA CORPORATION, RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016383.

(AFFECTS LOTS 1 THROUGH 7 AND 10)

45. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT BY AND BETWEEN FRANK S. MORGAN, WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, ET AL., AND CARTER HAWLEY HALE STORES, INC., A DELAWARE CORPORATION RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016386.

(AFFECTS LOT 1)

46. EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND FOR SIDEWALK AND CURB AS GRANTED AND RESERVED IN SPECIAL WARRANTY DEED FROM WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, TO THE MAY DEPARTMENT STORES COMPANY, A NEW YORK CORPORATION RECORDED FEBRUARY 18,

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1986 UNDER RECEPTION NO. 86016384.

(AFFECTS LOT 1)

47. (ITEM INTENTIONALLY DELETED)

48. LEASE BETWEEN FRANK S. MORGAN, ET AL., LESSOR, AND WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSEE, AS SHOWN BY MEMORANDUM OF LEASE RECORDED FEBRUARY 18, 1986, UNDER RECEPTION NO. 86016387.

(AFFECTS LOTS 1 THROUGH 7 AND 10)

49. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN INDENTURE OF LEASE BY AND BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, AND JC PENNEY PROPERTIES, INC., A DELAWARE CORPORATION RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016388.

NOTE: TERM AGREEMENT RECORDED JULY 12, 1993 UNDER RECEPTION NO. 93101704 AND RECORDED JANUARY 10, 1994 UNDER RECEPTION NO. 94005874.

(AFFECTS ALL LOTS)

50. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN WESTMINSTER MALL RECIPROCAL CONSTRUCTION, OPERATION AND EASEMENT AGREEMENT RECORDED FEBRUARY 18, 1986 UNDER RECEPTION NO. 86016389.

NOTE: ASSIGNMENT AND ASSUMPTION OF AGREEMENTS RECORDED FEBRUARY 8, 1990 UNDER RECEPTION NO. 90011510.

REA ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED FEBRUARY 22, 1996 UNDER RECEPTION NO. F0189712.

NOTE: ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS RECORDED SEPTEMBER

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

27, 2004 UNDER RECEPTION NO. F2102228.

NOTE: ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED JANUARY 11, 2006 UNDER RECEPTION NO. 2006004250.

NOTE: ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT RECORDED MAY 18, 2009 UNDER RECEPTION NO. 2009045088.

(AFFECTS ALL LOTS)

51. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED APRIL 02, 1986, UNDER RECEPTION NO. 86033564.

(AFFECTS LOTS 3 THROUGH 7)

52. (ITEM INTENTIONALLY DELETED)

53. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 19, 1986, UNDER RECEPTION NO. 86096170.

(AFFECTS LOTS 1, 5, 6 AND 10)

54. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED SEPTEMBER 03, 1986, UNDER RECEPTION NO. 86103237.

(AFFECTS LOT 16)

55. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 05, 1987, UNDER RECEPTION NO. 87001381.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1 AND 10)

56. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT AND WAIVER BY AND BETWEEN THE CITY OF WESTMINSTER AND WESTMINSTER MALL COMPANY RECORDED FEBRUARY 12, 1987 UNDER RECEPTION NO. 87019125.

(AFFECTS LOT 1)

57. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE SHAW HEIGHTS BASIN SPECIAL IMPROVEMENT DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED AUGUST 07, 1987, UNDER RECEPTION NO. 87101964.

(AFFECTS LOT 1)

58. (ITEM INTENTIONALLY DELETED)

59. (ITEM INTENTIONALLY DELETED)

60. (ITEM INTENTIONALLY DELETED)

61. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004112.

(AFFECTS LOT 1)

62. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004113.

(AFFECTS LOT 1)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

63. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004114.

(AFFECTS LOT 12)

64. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004115.

(AFFECTS LOT 1)

65. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 15, 1991, UNDER RECEPTION NO. 91004116.

(AFFECTS LOTS 1, 3, 4 AND 5)

66. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED NOVEMBER 09, 1992, UNDER RECEPTION NO. 92144664.

(AFFECTS LOTS 1, 15 AND 16)

67. (ITEM INTENTIONALLY DELETED)

68. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 30, 1992, UNDER RECEPTION NO. 92169138.

(AFFECTS LOT 12)

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

69. LAND SURVEY PLAT RECORDED JANUARY 25, 1993 UNDER RECEPTION NO. 93011161.

(AFFECTS LOTS 1 AND 3 THROUGH 7)

70. EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, FOR UTILITY LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 27, 1993, UNDER RECEPTION NO. 93012257.

(AFFECTS LOT 16)

71. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN MEMORANDUM OF SUBLEASE WITH CONSENT OF LENDER AND GROUND LESSOR BY AND BETWEEN WESTMINSTER MALL COMPANY, A COLORADO GENERAL PARTNERSHIP, LESSOR, AND GENERAL MILLS RESTAURANTS, INC., A FLORIDA CORPORATION, LESSEE, RECORDED MAY 14, 1993 UNDER RECEPTION NO. 93067818 AND RECORDED OCTOBER 19, 1993 UNDER RECEPTION NO. 93167959.

NOTE: NON-DISTURBANCE AND ATTORNMENT AGREEMENT OF GROUND LEASE RECORDED MAY 14, 1993 UNDER RECEPTION NO. 93067819.

(AFFECTS ALL LOTS)

72. (ITEM INTENTIONALLY DELETED)

73. (ITEM INTENTIONALLY DELETED)

74. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CITY OF WESTMINSTER AGREEMENT FOR POSSESSION AND USE OF RIGHT-OF-WAY RECORDED AUGUST 14, 1997 UNDER RECEPTION NO. F0460650.

(AFFECTS LOTS 1, 6, 7, 15, 16, 18 AND 19)

75. ALTA/ACSM LAND TITLE SURVEY RECORDED DECEMBER 31, 1998 UNDER RECEPTION NO. F0769556.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABD70297803-10

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

(AFFECTS LOTS 1, 3, 4 AND 5)

76. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FIRST AMENDED OFFICIAL DEVELOPMENT PLAN WESTMINSTER MALL SUBDIVISION FOR SEARS AUTO CENTER RECORDED MARCH 29, 2001 UNDER RECEPTION NO. F1208340.

(AFFECTS LOTS 1, 4 AND 5)

77. LAND SURVEY PLAT RECORDED JULY 26, 2002 UNDER RECEPTION NO. F1531073.

(AFFECTS LOTS 1, 4 AND 5)

78. (THIS ITEM MOVED TO SCHEDULE B, SECTION 1.)

79. (THIS ITEM MOVED TO SCHEDULE B, SECTION 1.)

80. (ITEM INTENTIONALLY DELETED)

LAND TITLE GUARANTEE COMPANY and LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION
DISCLOSURE STATEMENTS

Note: Pursuant to CRS 10-11-122, notice is hereby given that:

- A) The subject real property may be located in a special taxing district.
- B) A Certificate of Taxes Due listing each taxing jurisdiction may be obtained from the County Treasurer's authorized agent.
- C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- D) The Company must receive payment of the appropriate premium.
- E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments containing a mineral severance instrument exception, or exceptions, in Schedule B, Section 2.

- A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, information to an insurance company for the purpose of defrauding or incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

First American Title Insurance Company

PRIVACY POLICY

We are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, the First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- * Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- * Information about your transactions with us, our affiliated companies, or others; and
- * Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested to us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information values. We currently maintain physical, electronic, and procedural safeguards that comply with referral regulations to guard your nonpublic personal information.

WEBSITE

Information on the calculation of premiums and other title related charges are listed at First American's website: www.firstam.com

NOTICE OF PRIVACY POLICY OF
LAND TITLE GUARANTEE COMPANY, INC., A COLORADO CORPORATION
AND
MERIDIAN LAND TITLE, L.L.C., A COLORADO LIMITED LIABILITY COMPANY, D/B/A
LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION

This Statement is provided to you as a customer of Land Title Guarantee Company, a Colorado corporation and Meridian Land Title, LLC, d/b/a Land Title Guarantee Company - Grand Junction.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- * applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
- * your transactions with, or from the services being performed by, us, our affiliates, or others;
- * a consumer reporting agency, if such information is provided to us in connection with your transaction; and
- * the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- * We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- * We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- * Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- * We regularly access security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows. Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured names in Schedule A, as owner or mortgage of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of the Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issued one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules as www.alta.org

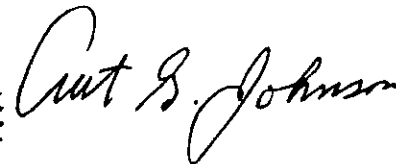

Issued by:

LAND TITLE GUARANTEE COMPANY
3033 EAST FIRST AVENUE
SUITE 600
PO BOX 5440 (80217)
DENVER, CO 80217


Authorized Officer or Agent

FIRST AMERICAN TITLE INSURANCE COMPANY



AMERICAN
LAND TITLE
ASSOCIATION



EXHIBIT P

Form of Dillard Modification Agreement

**FIRST AMENDMENT TO AMENDED AND RESTATED LEASE
AND DECLARATION OF RESTRICTIONS**

This FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AND DECLARATION OF RESTRICTIONS (this "Amendment") is dated _____ and made between the Westminster Economic Development Authority ("Lessor"), and HIGBEE LANCOMS, LP, a Delaware limited partnership ("Lessee").

RECITALS

In accordance with a Lease and Declaration of Restrictions (the "Original Lease") effective September 9, 1976 and made between Westminster Mall Company ("WMC"), as landlord, and The Joslin Dry Goods Company ("Joslin"), as tenant, Joslin leased from WMC certain property (the "Demised Premises") at Westminster Mall in Westminster, Jefferson County, Colorado. The legal description of the Demised Premises is attached to this Agreement as Exhibit A. A memorandum of the Original Lease was recorded in Deed Book 2985 at Page 672 among the records of Jefferson County, Colorado.

The Original Lease has been amended by First Lease Modification Agreement dated July 1, 1977; by Amendment No. 1 to Lease and Declaration of Restrictions dated February 1, 1979; by Amendment and Modification No. 2 to Lease and Declaration of Restrictions dated October 10, 1985; by First Amendment to Lease and Declaration of Restrictions dated February 13, 1986; and by Second Lease Modification Agreement dated February 13, 1986.

On December 6, 1987, the parties amended and restated the Original Lease by Amended and Restated Lease and Declaration of Restrictions. The Original Lease, as amended and restated to date, is referred to as the "Lease".

By merger effective January 28, 2006, Mercantile Operations, Inc. acquired Joslin's interest in the Lease. By merger dated February 4, 2007, The Higbee Company acquired Mercantile Operations, Inc.'s interest in the Lease. By Assignment of Assumption of Lease dated December 31, 2011, Lessee acquired The Higbee Company's interest in the Lease.

As part of the settlement of ongoing litigation between WMC and Lessor, WMC and Lessor entered a Settlement Agreement dated _____ (the "Settlement Agreement"). As a part of the Settlement Agreement, on _____ Lessor acquired the Demised Premises by Deed dated _____ and recorded at Rec. No. _____, and also acquired WMC's interest in the Lease by Assignment of Lease dated _____ and recorded at Rec. No. _____, both among the records of Jefferson County, Colorado.

As part of the Settlement Agreement and Lessor's acquisition of the Demised Premises, Lessor agreed to terminate the Lease. As such, Lessor and Lessee enter this Amendment to confirm their respective rights and obligations under the Lease after this Amendment takes effect.

AGREEMENT

NOW, THEREFORE, in consideration of \$10.00, the mutual promises and covenants contained in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Definitions. All capitalized terms not defined by this Amendment have the meaning provided by the Lease.

2. Article IV. Article IV of the Lease is hereby amended by adding the following as Section 4.5:

4.5 TERMINATION. (a) Notwithstanding anything to the contrary contained in this LEASE, this LEASE will be cancelled and terminated on a date (the "TERMINATION DATE") no more than 90 days after the date (the "ACQUISITION DATE") on which LESSOR acquires the lessor's interest in the LEASE.

(b) The period of time from the ACQUISITION DATE through the TERMINATION DATE is referred to as the "WINDING DOWN PERIOD."

(c) LESSEE shall notify LESSOR of the exact TERMINATION DATE no fewer than ten days before the TERMINATION DATE. This notice will be effective as of the date sent by LESSEE, and will be sent by overnight courier, to LESSOR'S attention, using the notice address provided in Section 15.12.

(d) If the ACQUISITION DATE is not the final day of a month, then LESSOR and LESSEE shall prorate as of the ACQUISITION DATE the final charges due under the Lease. All prorated amounts must be paid no more than 30 days after the Termination Date.

3. Article V. Article V of the Lease is hereby modified by adding the following as Section 5.6:

5.6 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING DOWN PERIOD, LESSEE shall not be required to make any payments under Article V of this LEASE.

4. Article XII. Article XII of the Lease is hereby modified by adding the following as Section 12.4:

12.4 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING-DOWN PERIOD, LESSEE shall not be required to make any payments under Article XII of this LEASE.

5. Article XIV Article XIV of the Lease is hereby modified by adding the following as Section 14.7:

14.7 PAYMENTS DURING WINDING-DOWN PERIOD. During the WINDING-DOWN PERIOD, LESSEE shall not be required to make any payments under Article XIV of this LEASE.

6. Article XV. Article XV of the Lease is hereby modified as follows:

(a) Section 15.3 is hereby modified by adding the following:

Notwithstanding any terms contained in the LEASE, LESSOR shall as of the TERMINATION DATE accept LESSEE'S surrender of the DEMISED PREMISES in its AS IS, WHERE IS, and WITH ALL FAULTS condition.

(b) Section 15.12 of the Lease is hereby deleted in its entirety and replaced with the following:

15.12 NOTICE. All notices, demands, or other communications given under this LEASE must be in writing and are to be deemed duly received:

(a) *When delivered personally to the addresses set forth below, or upon confirmed receipt by facsimile, provided if such confirmed receipt is after 5:00 p.m. EST., delivery shall be deemed to occur the next business day;*

(b) *one Business Day after deposit (for overnight delivery) with a national, overnight courier service; or*

(c) *upon delivery (or refused deliver) by U.S. Postal Service as certified mail, return receipt requested, postage prepaid.*

Notices must be sent to the following addresses:

*If to LESSOR: Westminster Economic Development Authority
Attn: Brent McFall, Executive Director
4800 West 92nd Avenue
Westminster, CO 80003*

*If to LESSEE: Higbee LANCOMS, LP
1600 Cantrell Road
Little Rock, AR 72201
Attn: James W. Cherry, Jr., Vice President
Facsimile: 501-399-7502*

or to such other address or to such other person as any party shall designate to the others for such purpose in the manner set forth above.

(c) Section 15.16 of the Lease is hereby modified by adding the following sentence:

During the WINDING-DOWN PERIOD, LESSEE shall not be required to make payments under this Section 15.16.

MISCELLANEOUS PROVISIONS

7. (a) Lessor represents that it is the owner of the lessor's interest in the Lease, and that Lessor has the authority to amend, terminate, and cancel the Lease without the consent of any person or entity other than Lessee and persons and entities from which consent has been obtained.

(b) Lessee represents that it is the owner of the lessee's interest in the Lease, and that Lessee has the authority to amend, terminate, and cancel the Lease without the consent of any person or entity other than Lessor and persons and entities from which consent has been obtained.

8. (a) Effective as of the Termination Date, Lessor shall release and discharge Lessee from any and all agreements, covenants, representations, obligations, and liability under or in connection with the Lease that first arise after the Termination Date.

(b) Effective as of the Termination Date, Lessee shall release and discharge Lessor from any and all agreements, covenants, representations, obligations, and liability under or in connection with the Lease that first arise after the Termination Date.

9. At Lessor's option, it may file in the appropriate records of Jefferson County, Colorado, a notice of termination of the Lease. Lessor shall pay all costs associated with this recordation and shall forward a duly recorded copy to Lessee.

10. Lessor hereby acknowledges that all amounts due under the Lease for periods prior to the Acquisition Date have been paid in full by Lessee. Lessor shall not seek reimbursement for any amounts due for periods before the Acquisition Date. The payments to be made in accordance with this Agreement are a complete and final settlement of all monetary obligations between Lessor and Lessee under the Lease.

11. This Agreement, in conjunction with the Settlement Agreement, contains the entire agreement of Lessor and Lessee with respect to the terms contained in this Amendment, and supersedes all prior agreements, understandings, or representations, whether written or oral.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be signed on the dates shown below.

LESSOR:

Westminster Economic Development Authority

By: _____
J. Brent McFall
Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk

LESSEE:

HIGBEE LANCOMS, LP,
a Delaware limited partnership

By: LANCOMS GP, LLC,
a Delaware limited liability company
its general partner

By: The Higbee Company,
a Delaware corporation
its sole member

By: _____
Name:
Title:

STATE OF ARKANSAS §
 §
COUNTY OF _____ §

This _____, 2011, personally came before me, _____
_____, a Notary Public in and for the said County and State, _____
_____, who being by me duly sworn, says that he/she is the
_____ of The Higbee Company, a Delaware corporation and ultimate
signatory for HIGBEE LANCOMS, LP, a Delaware limited partnership, and that this writing
was signed and sealed by him, on behalf of that entity, by its authority duly given, and he/she,
acknowledged this writing to be the act and deed of that entity.

WITNESS my hand and seal on _____, 2011.

Notary Public

(Notarial Seal)

My Commission Expires

ATTACHMENTS OF SCHEDULES TO PSA

Schedule 7(x)

All percentage or other rents payable by any tenant listed on Exhibit C in respect of such tenant's sales for March and April 2011

Schedule 10(b)(iv)

Unsettled Insurance Claims

None

Schedule 10(b)(v)

Service Contract and Lease Defaults

As set forth in that certain letter dated March 11, 2011 from Sears Holdings to WMC, a copy of which has been provided to Purchaser and which Purchaser acknowledges having received.

WEDA Agenda Item 2 B

Agenda Memorandum

Westminster Economic Development Authority Board Meeting
May 2, 2011



SUBJECT: Resolution No. 131 re Reimbursement Resolution for Westminster Center Urban Reinvestment Project Bond Financing

Prepared By: Marty McCullough, Authority Attorney
Tammy Hitchens, Finance Director

Recommended Board Action

Adopt Resolution No. 131 setting forth WEDA's intent to make certain capital expenditures associated with the acquisition of property in connection with the Westminster Center Urban Reinvestment Project, to issue bonds for financing the Project, and to use a portion of the proceeds of such bond financing for reimbursement of WEDA for those expenditures incurred prior to issuing the bonds, to the extent authorized by the Internal Revenue Code of 1986 and applicable Treasury Department Regulations.

Summary Statement

- WEDA may issue bonds to finance portions of the Westminster Center Urban Reinvestment Project ("Project"). Prior to issuing the bonds, WEDA will be incurring expenses related to the Project that are anticipated to be funded by bond proceeds.
- Federal law permits a municipal government to approve a resolution that allows it to finance capital projects from existing financial resources and reimburse itself from the proceeds of bonds issued in the future. The resolution will permit reimbursement of Project costs incurred by WEDA within 60 days prior to the approval of the reimbursement resolution and allocated thereto in writing. Additionally qualified preliminary expenditures (in amounts that do not exceed 20% of the issue price of the bond issue) with respect to a specific project can be reimbursed outside of the 60-day requirement. Qualified preliminary expenditures are defined as architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of the acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.
- The adoption of this resolution will give the Authority the option to reimburse the City for the purchase of the property needed for this redevelopment from revenues that are expected to be generated through the construction and build-out of this Project.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Should WEDA pass the reimbursement resolution to allow WEDA the option to reimburse itself for costs incurred prior to the debt proceeds being received?

Alternative

Do not pass the reimbursement resolution. This action is not recommended. Without the reimbursement resolution, WEDA would not be able to recover costs paid prior to the bonds being sold. Federal law requires that a reimbursement resolution be adopted in order for a municipality to pre-pay construction and other capital-related costs and subsequently reimburse itself from financing proceeds once the debt is issued.

Background Information

The redevelopment of the Westminster Mall site is the City's top strategic plan priority, as outlined in the City's five-year Strategic Plan. An urban renewal area designation that provides the ability to exercise the powers allowed for under urban renewal law was approved on April 13, 2009. A plan for the new urban renewal area, Westminster Center Urban Reinvestment Plan Area (WURP) was also approved shortly thereafter. Land assemblage and the installation of certain public infrastructure are key components of the redevelopment plans for this Project.

The goal of the Westminster Center Urban Reinvestment Project is to develop a high-density urban center of regional scope on the approximately 105-acre parcel currently occupied by the Westminster Mall. The property's central location between Denver and Boulder, along with easy access to U.S. 36, rail and bus service, makes it an ideal candidate for redevelopment. The Project will facilitate both a vertical and horizontal mixture of uses, including entertainment, office, residential and cultural, along with a strong retail component. The new development is intended to be a sustainable place, one that mixes uses, reuses existing anchor stores where appropriate, capitalizes on and encourages alternate modes of transportation, creates a strong pedestrian-friendly block layout, and will stand the test of time.

WEDA and the City have invested significant funds in furtherance of the WURP Project. These include planning, consulting, land assembly and other predevelopment costs. WEDA previously acquired the Mervyn's, Macy's and Trail Dust properties from their respective owners with the assistance of the City. WEDA and the City will likely incur further expenses related to this Project in advance of a bond issue.

Adopting the proposed reimbursement resolution will facilitate the future financing of the Project and provide the City and WEDA greater flexibility in structuring what is sure to be a relatively complex financing package for this Project.

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

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment - Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **131**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2011

**A RESOLUTION EXPRESSING THE INTENT OF THE
AUTHORITY TO BE REIMBURSED FOR CERTAIN EXPENSES
RELATING TO CERTAIN CAPITAL EXPENDITURES
ASSOCIATED WITH THE ACQUISITION OF PROPERTY IN
CONNECTION WITH THE WESTMINSTER CENTER URBAN
REINVESTMENT PROJECT**

WHEREAS, the Westminster Economic Development Authority (the “Authority”) is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, it is the current intent of the Authority to make certain capital expenditures associated with the acquisition of property in the vicinity of 88th Avenue and Sheridan Boulevard to redevelop the Westminster Mall (the “Project”); and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has determined that it is in the best interest of the Authority to finance the Project through the issuance of bonds (the “Bonds”); and

WHEREAS, the Board has determined that it is necessary to make capital expenditures in connection with the Project prior to the time that the Authority arranges for the specific financing of the Project; and

WHEREAS, it is the Board’s reasonable expectation that when such financing occurs, the capital expenditures will be reimbursed with the proceeds of the financing; and

WHEREAS, in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), it is the Board’s desire that this resolution shall constitute the “official intent” of the Board to reimburse such capital expenditures within the meaning of Treasury Regulation §1.150-2.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, COLORADO:

Section 1. All action (not inconsistent with the provisions of this resolution) heretofore taken by the Board and the officers, employees and agents of the Authority directed toward the issuance of the Bonds is hereby ratified, approved and confirmed.

Section 2. The Authority intends to finance approximately \$35 million dollars to pay the costs of the Project, including the reimbursement of certain costs incurred by the Authority prior to the receipt of any proceeds of a financing, upon terms acceptable to the Authority, as authorized in a resolution to be hereafter adopted and to take all further action which is necessary or desirable in connection therewith.

Section 3. The officers, employees and agents of the Authority shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the Project and to otherwise carry out the transactions contemplated by the resolution.

Section 4. The Authority shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h).

Section 5. This resolution is intended to be a declaration of “official intent” to reimburse expenditures within the meaning of Treasury Regulation §1.150-2

Section 6. If any section, paragraph, clause or provision of this resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 7. All acts, orders and resolutions of the Board, and parts thereof, inconsistent with this resolution be, and the same hereby are, repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

Section 8. The resolution shall be in full force and effect upon its passage and approval.

PASSED ADOPTED AND APPROVED this 2nd day of May, 2011.

Chair

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Attorney for the Authority

STATE OF COLORADO)
) SS.
 WESTMINSTER ECONOMIC)
 DEVELOPMENT AUTHORITY)

I, the Secretary of the Westminster Economic Development Authority (the "Authority"), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of Commissioners of the Authority (the "Board") at a regular meeting held on May 2, 2011.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of May 2, 2011, by an affirmative vote of a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chair or Vice Chairperson of the Board, sealed with the Authority seal, attested by the Secretary of the Board and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the meeting of May 2, 2011, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the Authority affixed _____, 2011.

 Secretary

(SEAL)

EXHIBIT A

(Attach Form of Notice of Meeting)