



**WESTMINSTER**  

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**COLORADO**

**AGENDA**

**SPECIAL CITY COUNCIL MEETING**

**MONDAY, NOVEMBER 7, 2005**

**AT 7:30 P.M.**

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Purpose of Special Council Meeting is to Conclude the Business of the Seated Council**
  - A. Consideration of Minutes of Preceding Meeting**
  - B. Consent Agenda**
    1. Special Legal Services Contract
    2. Purchase and Sale Agreement for Promenade Land
    3. Second Reading CB No. 65 re Purchase of the Metzger Farm Property for Open Space
    4. Second Reading CB No. 66 re Outstanding Loans Review and Recommendations
  - C. New Business**
    1. Councillor's Bill No. 67 re Metro North Chamber of Commerce BAP
    2. Resolution No. 48 re Cheyenne Ridge Park Recognition Tree
- 4. Adjournment**

**Meeting of the new City Council**



## W E S T M I N S T E R

City of Westminster

October 26, 2005

Office of the Mayor

4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado  
80031-6387

303-430-2400

FAX 303-428-4564

Linda Yeager, City Clerk  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

Dear Linda:

This is a revised request that you call a special meeting of the City Council for Monday, November 7, 2005 at 7:30 p.m. to be held at City Hall in the City Council Chambers, 4800 West 92<sup>nd</sup> Avenue, for the following purposes:

Conclude the business of the seated City Council beginning at 7:30 p.m.

Administer the Oath of Office to newly elected City Councillors at 8:00 p.m.

Elect a Mayor Pro Tem

Sincerely,

Nancy McNally  
Mayor

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
HELD ON MONDAY, NOVEMBER 7, 2005 AT 7:30 P.M.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Kauffman led Council, Staff and the audience in the Pledge of Allegiance.

ROLL CALL

Mayor Pro Tem Kauffman, Councillors Davia, Dittman, Dixon, Hicks, and Price were present at roll call. Mayor McNally was absent. Stephen P. Smithers, Acting City Manager; Martin McCullough, City Attorney; and Linda Yeager, City Clerk, also were present.

PURPOSE OF SPECIAL MEETING:

The Mayor Pro Tem announced that the purpose of this special meeting was to conclude the business of the seated City Council, to administer the Oath of Office to newly elected City Councillors at 8:00 p.m. in accordance with City Charter, and to elect a Mayor Pro Tem to serve the next two years.

CONSIDERATION OF MINUTES

It was moved by Councillor Davia, seconded by Dixon, to approve the minutes of the regular meeting of October 24, 2005, as distributed. The motion passed unanimously.

CITY COUNCIL COMMENTS

Mayor Pro Tem Kauffman reported that Mayor McNally and J. Brent McFall, City Manager, were in Spain with a team of staff members to promote the City in an international competition as one of four finalists for designation as the Most Livable City in the World.

The Mayor Pro Tem and Councillors Price and Dittman voiced their individual appreciation to outgoing Councillors Dixon, Hicks, and Davia for their devoted service on City Council. They noted individual contributions of each.

Outgoing Councillors bid farewell to their colleagues, staff, and constituents with gratitude for the confidence that had been placed in them and the privilege of serving.

CITY MANAGER COMMENTS

On behalf of the staff, Mr. Smithers extended appreciation for outgoing Council members' numerous contributions.

VIDEO PRESENTATION

The video presentation given at the international competition in Spain was shown to those in attendance.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: request to authorize the City Manager to sign a contract for legal services with Ferry, Joseph, & Pearce P.A., to serve as local special legal counsel in Delaware to assist with the defense of the City's claim for sales tax in connection with the Ultimate Electronics (Soundtrack) bankruptcy litigation; request to authorize the City Manager to sign a Purchase and Sale Agreement, in substantially the same form as that distributed to

Council, with Douglas and Rutha Wetter for the sale of 5.15 acres of City property; final passage of Councillor's Bill No. 65 authorizing creation of the Broomfield-Westminster Open Space Foundation to provide for the acquisition, financing, ownership, operation and maintenance of the Metzger Farm property; and final passage of Councillor's Bill No. 66 amending the budgets of the General, General Reserve, General Capital Improvement, and Utility Funds to reflect the write-offs of \$2,686,736, plus 2005 accrued interest, for the benefit of the Westminster Economic Development Authority Fund (WEDA); and \$2,452,568, plus 2005 accrued interest, for the benefit of the Golf Course Fund.

Mayor Pro Tem Kauffman asked if any member of Council wished to remove an item from the consent agenda for individual consideration or separate vote. There were no requests.

Upon a motion by Councillor Dixon, seconded by Councillor Hicks, the Council voted unanimously to approve the consent agenda as presented.

COUNCILLOR'S BILL NO. 67 RE METRO NORTH CHAMBER OF COMMERCE BAP

Councillor Dittman moved to pass Councillor's Bill No. 67 as an emergency ordinance, authorizing the City Manager to execute a Business Assistance Package (BAP) with Metro North Chamber of Commerce for approximately \$3,225. The BAP included approximately \$1,950 in permit fee rebates and approximately \$1,275 in construction use tax rebates.

Mayor Pro Tem Kauffman stated he would abstain from voting due to a conflicting business relationship.

At roll call, the motion passed by a 5:1 margin with the Mayor Pro Tem abstaining.

RESOLUTION NO. 48 RE CHEYENNE RIDGE PARK RECOGNITION TREE

Councillor Hicks moved to adopt Resolution No. 48 stating that upon construction of Cheyenne Ridge Park, the City would plant a tree to be dedicated in honor of Hunter Brown for his perseverance and dedication in coming to Council Budget Hearings requesting that the development of the Cheyenne Ridge Park be accelerated. Councillor Dittman seconded the motion.

Councillor Hicks introduced Hunter Brown and his family and thanked Hunter for his persistence.

On roll call vote, the motion passed unanimously.

ADJOURNMENT:

The meeting was adjourned at 7:59 P.M.

ATTEST:

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City Clerk

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Mayor Pro Tem



**Agenda Memorandum**

City Council Special Meeting  
November 7, 2005



**SUBJECT:** Special Legal Services Contract

**Prepared By:** Eugene Mei, Assistant City Attorney

**Recommended City Council Action**

Authorize the City Manager to sign a contract for legal services with Ferry, Joseph, & Pearce P.A., to serve as local special legal counsel in Delaware to assist with the defense of the City's claim for sales tax in connection with the Ultimate Electronics (Soundtrack) bankruptcy litigation.

**Summary Statement**

- On January 11, 2005, Ultimate Electronics, d/b/a Soundtrack, filed for Chapter 11 bankruptcy in Delaware bankruptcy court.
- On April 19, 2005, the City filed an amended estimated claim in the amount of \$811,338.31 for delinquent sales taxes for the period of January 1995 to November 2003.
- On October 21, 2005, Ultimate Electronics filed an objection to the City's claim and raised a number of legal and factual attacks, ultimately seeking to eliminate the claim or reduce it to approximately \$110,000. The City's response date to the objection is November 14, 2005, with a hearing scheduled for November 21, 2005.
- Given the specialized nature of bankruptcy law, an attorney who specializes in bankruptcy law should be retained.
- City Staff contacted Theodore J. Tacconelli at Ferry, Joseph, & Pearce P.A. in Wilmington, Delaware. Mr. Tacconelli has substantial experience in representing municipalities with secured tax claims in bankruptcy, and comes highly recommended.
- Mr. Tacconelli has agreed to represent the City in the matter, and his current hourly rate is \$240 (scheduled to increase to \$250 on January 1, 2006).
- The scope of Mr. Tacconelli's representation is uncertain at this time due to the unpredictability of litigation and ongoing settlement negotiations with Ultimate Electronics. However, the proposed expenditure of \$10,000.00 is intended cover legal services associated with drafting the response to Ultimate Electronics' objection to claim, representing Westminster at any hearings associated with such objection, and providing advice on potential objections to the bankruptcy Plan of Reorganization.

**Expenditure Required:** Not to exceed \$10,000

**Source of Funds:** Sales Tax Audit/Enforcement Contra Account

**Policy Issue**

Should the City retain local special legal counsel in Delaware to assist with the defense of the City's claim for sales tax in the Ultimate Electronics bankruptcy litigation?

**Alternative**

Not hire local special legal counsel. This alternative is not recommended given the need for specialized legal services to fully analyze and advise the City in the defense of its sales tax claim.

**Background Information**

On January 11, 2005, Ultimate Electronics, d/b/a Soundtrack, filed for Chapter 11 bankruptcy in Delaware bankruptcy court. On April 19, 2005, the City filed an amended estimated claim in the amount of \$811,338.31 for delinquent sales taxes for the period of January 1995 to November 2003. On October 21, 2005, Ultimate Electronics filed an objection to the City's claim and raised a number of legal and factual attacks, ultimately seeking to disallow the claim entirely or reduce it to approximately \$110,000. The City's response date to the objection is November 14, 2005, with a hearing scheduled for November 21, 2005. Ultimate Electronics' primary arguments are that the City's claim is inadequately documented, that the City does not have an enforceable pre-petition sales tax lien, that the City's sales tax claim is not entitled to priority status under the Bankruptcy Code, and that the City is entitled to no interest on its claim.

Given the complexities of the issues raised in Ultimate Electronics' objection, Staff believes it is in the best interest of the City to retain local special legal counsel in Delaware with an expertise in bankruptcy law regarding secured municipal taxes. Staff has contacted Theodore J. Tacconelli at Ferry, Joseph, & Pearce P.A. in Wilmington, Delaware, based on recommendations from other taxing authorities that have used Mr. Tacconelli on similar matters. Mr. Tacconelli has substantial experience in representing municipalities with secured tax claims in bankruptcy, and was admitted to practice in the U.S. District Court, District of Delaware, in 1989. Mr. Tacconelli's current hourly rate is \$240.00, which is scheduled to increase to \$250.00 on January 1, 2006.

At this point, it is difficult to estimate the scope of Mr. Tacconelli's representation given the unpredictable nature of litigation. There are several different paths that this case could take, and the requested expenditure is intended to cover the following: first, Staff is actively engaged in settlement negotiations with Ultimate Electronics, and believes that there may be common ground on which to resolve the City's claim. Mr. Tacconelli will provide analysis and advice in formulating the City's settlement strategy; second, should the settlement negotiations collapse and the City be forced to litigate its claim, the City will have to file a legal brief in response to the objection, as well as prepare for and attend an evidentiary hearing in Delaware. Should the City's claims progress to this stage, the assistance and experience of Mr. Tacconelli will be essential to provide legal advice and to ensure compliance with local bankruptcy rules of procedure. Finally, Ultimate Electronics has filed a Plan of Reorganization that may include collateral attacks on the City's claim. Mr. Tacconelli may assist the City in analyzing the Plan of Reorganization, and preparing an objection, if any, to that Plan.

In sum, the value of the City's claim and the complex legal issues posed by Ultimate Electronics' objection merit the investment in outside counsel who not only specializes in bankruptcy law, but who also regularly practices in the Delaware bankruptcy court.

Respectfully submitted,

Steve Smithers  
Acting City Manager

Attachment

**CONTRACT FOR LEGAL SERVICES**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between **FERRY, JOSEPH, & PEARCE P.A.**, 824 Market Street, Suite 904, P.O. Box 1351, Wilmington, Delaware 19899 (the "Firm") and the **CITY OF WESTMINSTER** (the "City").

**RECITALS**

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Delaware.

**AGREEMENT**

1. The Firm shall furnish special legal services in connection with the Ultimate Electronics bankruptcy litigation.
2. Theodore J. Tacconelli of the Firm shall be principally responsible for the Services.
3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.
4. The City shall pay for the Services at the hourly rate not to exceed \$240.00 per hour, and at an hourly rate of \$250.00 after January 1, 2006.
5. This Contract may be terminated by the City with or without cause.
6. The Westminster City Council authorized this contract on November 7, 2005.
7. Payments for legal services pursuant to this Contract shall not exceed \$10,000.00 without further written authorization by the City.

**FERRY, JOSEPH, & PEARCE P.A.**

By \_\_\_\_\_

**CITY OF WESTMINSTER**

By \_\_\_\_\_  
J. Brent McFall, City Manager



## Agenda Item B 2

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Special Meeting  
November 7, 2005



**SUBJECT:** Approval of Purchase and Sale Agreement for Promenade Land

**Prepared By:** Steve Smithers, Assistant City Manager

### Recommended City Council Action

Authorize the City Manager to sign a Purchase and Sale Agreement with Douglas and Rutha Wetter for the Sale of 5.15 acres of City Property in substantially the same form as the attached agreement.

### Summary Statement

- The City has been in negotiations with Tim O'Byrne for some time regarding the sale of two parcels of City land, approximately 6.2 acres, located on the Promenade adjacent to the Westin Hotel.
- Mr. O'Byrne and Westminster Promenade Development Company, LLC have been pursuing the development of a condominium project and multi family housing on these parcels.
- The Condominium Project was recently unveiled as Ananda, and will incorporate a Chopra Spa and Wellness Center.
- The proposed sale price on the land is \$3,740,000, or just over \$16 per square foot. As part of the overall development plan, a portion of these funds (\$1.59 million) are proposed to be allocated to Westminster Promenade Development Company in the purchase and sale agreement as development assistance for the Ananda project.

**Expenditure Required:** \$3,740,000 in Land Proceeds

**Source of Funds:** Sale of City Land on the Promenade



**SUBJECT:** Approval of Purchase and Sale Agreement for Promenade Land Page 2

## **Policy Issue**

Should the City sell this key parcel of land to allow residential and commercial development to proceed on the east end of the Promenade?

## **Alternative**

City Council could turn down this sale and direct Staff to pursue commercial development on this parcel. This is not recommended as the current development proposal is anticipated to result in significant additional traffic and customer base for Promenade and Shops at Walnut Creek businesses. In addition, the price offered for the City land is a good and fair offer. While an office development similar to what was originally proposed on this site might result in a higher net selling price for the land, current commercial office vacancy rates along the US 36 corridor make it very doubtful that such a development will occur anytime in the foreseeable future.

## **Background Information**

The City originally acquired this land in 1991 as part of a larger acquisition from the Resolution Trust Corporation. The land was purchased at a small fraction of the current land value, due to its status after the Savings and Loan crisis in the 1980s. Discussions of developing an office building on the site began in 1997 and resulted in the City signing an agreement with Tim O'Byrne in 2000 to proceed with the construction of an office building and parking garage on the two parcels of land shown on the attached site map.

The office building was designed and plans were underway to proceed when the events of September 11, 2001 and the recession of 2001/2002 struck. Office vacancy rates shot up over 40% in the US 36 corridor, eliminating the demand for additional new office buildings. Since that time, Tim O'Byrne has been exploring other development opportunities for this land. Working with Oz Architecture and other partners a concept was developed for a high end condominium development on lot 2B and multi family units on lot 2A. A spa and wellness center was incorporated into the loft project to add a valuable asset that will make the residential units significantly more marketable as well as improve the market position of the Westin Hotel.

Earlier this year, the Chopra Group was approached to determine their interest in opening a Chopra center at this location. After a series of meetings with Tim O'Byrne and the City, the Chopra Group selected this site for their expansion into the Rocky Mountain area. The site was selected because of its unique characteristics and beautiful surroundings. This will be the only Chopra Center developed in the State of Colorado, and is only one of several planned centers in North America.

The Purchase and Sale Agreement sets forth the following key business points:

- >The sale price of the approximate 5.15 acres of land is \$3,740,000
- >The buyers are Douglas and Retha M. Wetter
- >Earnest funds of \$40,000 will be paid
- >There are no broker commissions
- >The City agrees to provide development assistance to Westminster Promenade Development Company in the amount of \$1.59 million for the development of lot 2B
- >The closing on the land is scheduled to take place on November 21, 2005

**SUBJECT:** Approval of Purchase and Sale Agreement for Promenade Land Page 3

The assistance package recognizes the value of the enhancements to the condominium project and allows the development of a world class Chopra Spa and Wellness Center. The approach taken in the purchase and sale agreement is a good financial deal for the City that results in an excellent return on investment in this land both in the short and long term. The City's net gain is in excess of \$2.1 million.

The investors in this project have tax deadlines that require that the land transaction to be closed no later than November 21, 2005. City Council's authorization for Staff to finalize this land sale will allow this exciting project to move forward. The Ananda Project is expected to open in the fall of 2007, and the multifamily project is currently projected to open in 2008 or 2009.

Respectfully submitted,

Steve Smithers  
Acting City Manager

Attachments - Site Map  
Purchase and Sale Agreement

**CONTRACT TO BUY AND SELL REAL ESTATE  
(COMMERCIAL)**

Date: \_\_\_\_\_

**1. AGREEMENT.** Buyer agrees to buy and the Seller agrees to sell the Property defined below on the terms and conditions set forth in this contract.

**2. DEFINED TERMS.**

**a. Buyer.** Douglas S. Wetter and Retha M. Wetter, whose address is 1055 NE 25<sup>th</sup> Avenue, Suite A, Hillsboro, OR 97124, as tenants in common, and/or assigns.

**b. Seller.** City of Westminster, Colorado, a home-rule municipality, whose address is 4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031.

**c. Property.** The Property is the following legally described real estate in the County of Jefferson, Colorado: Lot 2A, containing 5.15<sup>±</sup> acres, and described in Exhibit “A-1,” attached hereto and incorporated herein by this reference.

**d. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1		Loan Application Deadline	N/A
2		Loan Commitment Deadline	N/A
3		Buyer’s Credit Information Deadline	N/A
4		Disapproval of Buyer’s Credit Deadline	N/A
5		Existing Loan Documents Deadline	N/A
6		Objection to Existing Loan Deadline	N/A
7		Approval of Loan Transfer Deadline	N/A
8		Appraisal Deadline	N/A
9	§ 7a	Title Deadline	11-10-05
10	§ 7a	Survey Deadline	11-10-05
11	§ 7b	Document Request Deadline	11-14-05
12	§ 8a	Title Objection Deadline	11-15-05
13	§ 8b	Off-Record Matters Deadline	11-14-05
14	§ 8b	Off-Record Matters Objection Deadline	11-15-05
15	§ 10	Seller’s Property Disclosure Deadline	N/A
16	§ 10a	Inspection Objection Deadline	11-15-05
17	§ 10b	Resolution Deadline	11-18-05
18	§ 11	<b>Closing Date</b>	11-21-05
19	§ 16	Possession Date	11-21-05
20	§ 16	Possession Time	11:59 pm MST
21	§ 28	<b>Acceptance Deadline Date</b>	11-8-05
22	§ 28	<b>Acceptance Deadline Time</b>	5:00 pm MST

**e. Attachments.** The following exhibits, attachments and addenda are a part of this contract: Exhibits A-1, A-2.

**f. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation “N/A” means not applicable.

**3. CONDITION OF SALE.** Subject only to the provisions of sections 12 and 24, below, the Property is being sold to Buyers “As Is” and “Where Is.”

**4. PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be payable in U. S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$ 5,440,000	
2	§ 4a	Earnest Money		\$ 40,000*
3	§ 4b	New Loan		\$
4	§ 4c	Assumption Balance		\$
5	§ 4d	Seller or Private Financing		\$ 2,450,000
6	§ 4e	Cash at Closing		\$ 1,250,000
7		<b>TOTAL</b>	\$ 5,440,000	\$ 3,740,000

\*Earnest money shall be held in escrow, subject to the terms and conditions of this Agreement, by First American Heritage Title Company, 1600 Stout Street, #800, Denver, CO 80202 (“Escrowee”), until the Closing or Termination of this Agreement.

**5. SELLER FINANCING.** At Closing, Douglas S. Wetter and Retha M. Wetter shall deliver to Escrowee (§ 4) a non-interest-bearing promissory note to Seller in the amount of \$2,450,000, payable on or before the date that is six months after the Closing Date, and secured by the Property, which promissory note shall be held in escrow subject to the provisions of § 24e.

**6. APPRAISAL PROVISIONS.** *Intentionally omitted.*

**7. EVIDENCE OF TITLE.**

**a. Evidence of Title; Survey.** On or before **Title Deadline** (§ 2d), Buyer shall obtain, at Buyer’s expense, a current commitment for owner’s title insurance policy in such form and amount as Buyer may deem appropriate or if this box is checked,  **An Abstract** of title certified to a current date.

If a title insurance commitment is furnished, it

**Shall**  **Shall Not** commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanics’ liens,
- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by  **Buyer**  **Seller**.

The cost of any improvement location certificate or survey shall be paid by  **Buyer**  **Seller**.

An ALTA improvement survey may be obtained by Buyer on or before **Survey Deadline** (§ 2d).

**b. Copies of Exceptions.** On or before **Title Deadline** (§ 2d), Buyer, at Buyer’s expense, shall obtain (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a title insurance commitment is required to be furnished, and if this box is checked  **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Buyer shall request and obtain any of these documents it may deem advisable any time on or before the **Document Request Deadline** (§ 2d). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder(s). The abstract or title insurance commitment, together with any copies or summaries of

such documents furnished pursuant to this Section, shall constitute the title documents (Title Documents).

## 8. TITLE.

**a. Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **Title Objection Deadline** (§ 2d), or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

**b. Matters not Shown by the Public Records.** On or before the **Off-Record Matters Deadline** (§ 2d), Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of unmerchantability of title disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **Off-Record Matters Objection Deadline** (§ 2d). If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

**c. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

In the event the Property is located within a special taxing district and Buyer desires to terminate this contract as a result, if written notice is received by Seller on or before **Off-Record Matters Objection Deadline** (§ 2d), this contract shall then terminate. If Seller does not receive Buyer's notice by such date, Buyer accepts the effect of the Property's inclusion in such special taxing district(s) and waives the right to so terminate.

**d. Right to Cure.** If Seller receives notice of unmerchantability of title as provided in § 8 a or b above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

**e. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **THE SURFACE ESTATE MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF**

**THE SURFACE ESTATE DOES NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL RIGHTS. THIRD PARTIES MAY HOLD INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE PROPERTY.** Such matters may be excluded from the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this contract (e.g., **Title Objection Deadline** [§ 2d] and **Off-Record Matters Objection Deadline** [§ 2d]).

**9. LEAD-BASED PAINT.** *Intentionally Omitted.*

**10. PROPERTY INSPECTION.**

**a. Inspection Objection Deadline.** Buyer shall have the right to have inspection(s) of the physical and environmental condition of the Property and Inclusions, at Buyer's expense. If the physical or environmental condition of the Property or Inclusions is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 2d):

(1) notify Seller in writing that this contract is terminated, or  
(2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct (Notice to Correct.)

If written notice is not received by Seller on or before **Inspection Objection Deadline** (§ 2d), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

**b. Resolution Deadline.** If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Resolution Deadline** (§ 2d), which agreement shall not be unreasonably withheld by Buyer or Seller with respect to deminimus matters, this contract shall terminate one calendar day following the **Resolution Deadline**, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

**c. Damage; Liens; Indemnity.** Buyer is responsible for payment for all environmental inspections and evaluations or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for such work performed on the Property at Buyer's request. To the extent permitted by law, Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this contract.

**11. CLOSING.** Delivery of deed(s) from Seller to Buyer shall be at Closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 2d) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by agreement.

**12. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

- a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted or waived by Buyer in accordance with § 8a [Title Review],
- b. distribution utility easements,
- c. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with § 8b [Matters Not Shown by the Public Records], and
- d. inclusion of the Property within any special taxing district.

**13. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

**14. CLOSING COSTS; DOCUMENTS AND SERVICES.** Buyer shall pay, in Good Funds-all Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

Fees for real estate Closing services shall be paid at Closing by  One-Half by Buyer and One-Half by Seller \_\_\_\_\_ Buyer \_\_\_\_\_ Seller \_\_\_\_\_ Other \_\_\_\_\_.

The local transfer tax, if any, shall be paid at Closing by  Buyer  Seller.

Any sales and use tax that may accrue because of this transaction shall be paid when due by  Buyer  Seller.

**15. PRORATIONS.** The following shall be prorated to **Closing Date**, except as otherwise provided:

a. **Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing, based on  **The Taxes for the Calendar Year Immediately Preceding Closing**  **The Most Recent Mill Levy and Most Recent Assessment**  **Other** \_\_\_\_

b. **Rents.** *Intentionally omitted.*

c. **Other Prorations.** *Intentionally omitted.*

d. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.

**16. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** and **Possession Time** (§ 2d), subject to the following lease(s) or tenancy(s):   NONE    
If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$300 per day from the **Possession Date** (§ 2d) until possession is delivered.

**17. NOT ASSIGNABLE.** Except as provided in §24d(1), this contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**18. CONDITION OF AND DAMAGE TO PROPERTY AND INCLUSIONS.** *Intentionally omitted.*

**19. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller acknowledge that the Selling Company or the Listing Company has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this contract.

**20. TIME OF ESSENCE AND REMEDIES.** Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

**a. If Buyer is in Default:**

Seller may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller. Seller expressly waives the remedies of specific performance and additional damages. A default by any individual constituent of "Buyer," named in Section 2a., above, shall constitute a default by "Buyer" within the meaning of this Agreement. It is the intent of the parties that the individually named constituents of Buyer shall be jointly liable for any defaults.

**b. If Seller is in Default:** Buyer may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned as Buyer's sole and exclusive remedy.

**c. Costs and Expenses.** In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

**21. MEDIATION.** If a dispute arises relating to this contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 calendar days from the date written notice requesting mediation is sent by one party to the other(s). This Section shall not alter any date in this contract, unless otherwise agreed.

**22. EARNEST MONEY DISPUTE.** Notwithstanding any termination of this contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money and things of value held by broker, if any, or Closing Company (unless mutual written instructions are received by the holder of the Earnest Money and things of value), broker or Closing Company shall not be required to take any action but may await any proceeding, or at broker's or Closing Company's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees.

**23. TERMINATION.** In the event this contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10c, 21 and 22.

**24. ADDITIONAL PROVISIONS.**

**a. Broker Commissions.** Buyer warrants to Seller that it has not dealt with any real estate brokers in connection with this transaction and shall not be liable for the payment of any brokerage commission. Buyer shall indemnify and hold Seller harmless from any brokerage or other commissions that may be payable in connection with this or any other transfer of the Property or any part thereof, unless such claims arise through the Buyer.

**b. Representations And Warranties.** Seller represents and warrants to Buyer both as of the date hereof and as of the date of Closing that:

(1) Seller is not a "foreign Person" but is a "United States person" as such terms are defined in Section 1445 and 7701 of the Internal Revenue Code of 1986 as amended.



(2) As of the date of Closing there shall be no parties in possession of any portion of the Property, except Seller.

(3) No work shall have been performed or shall be in progress by Seller, and no materials shall have been furnished to the Property or any portion thereof in connection with such work that might give rise to mechanic's liens against the Property or any portion thereof. At Closing, there will be no unpaid bills or claims in connection with any such work on the Property.

(4) No portion of the Property is subject to an earnest money contract, right of first refusal or similar contractual right.

(5) There is no suit, action, legal or other proceeding pending, or to Seller's best knowledge, threatened which affects the Property.

(6) Seller has received no notice from any governmental authority of zoning, building, fire, water, use, health, environmental or other statutory or regulatory violation issued in respect of the Property which has not been heretofore corrected.

**c. Time of Performance.** If any date for performance falls on a Saturday, Sunday or legal holiday, then the date for performance shall be extended to the next day which is not a Saturday, Sunday or holiday.

**d. Other Covenants.**

(1) Seller agrees to cooperate with any tax deferred exchange (whether under Internal Revenue Code section 1031 or Internal Revenue Code section 1033) that Buyer desires to complete with respect to this transaction, provided there is no additional expense to Seller. Such cooperation includes Seller's consent to Buyer's assignment of its interest under this Agreement, in whole, in part, or in multiple parts, to one or more persons facilitating a tax deferred exchange on Buyer's behalf. Buyer hereby represents and warrants that if Buyer elects to do the exchange, and either (a) there is a final determination by a court of competent jurisdiction that such exchange did not meet the applicable qualifications or requirements for a tax-deferred exchange or (b) Buyer agrees, in whole or in part, with the assertion by an applicable taxing authority that such exchange did not meet the applicable qualifications or requirements for a tax-deferred exchange, Buyer shall pay any such tax that is determined to be due and owing. Buyer further agrees that, in the event any taxing authority determines that such exchange did not meet the exchange qualifications or requirements, Buyer shall indemnify, defend, and hold harmless Seller from any and all claims, judgments, or expenses, related directly or indirectly to said exchange, including attorney fees and costs.

(2) Buyer and Seller represent to each other that all necessary steps have been taken to authorize this Contract and that each has the requisite authority to enter into and perform this Contract in accordance with its terms.

(3) Buyer reserves the right to assign its interest under this Agreement to any subsidiary, affiliate, or partner of Buyer, or any affiliate of Buyer, provided that any such permitted assignee is solely owned, directly or indirectly, by Buyer, its immediate family members, or any of them, and to provide for a Closing in which title to the Property is taken in the name of any such permitted assignee, provided that no such assignment shall release Buyer from any obligations to Seller hereunder. Seller shall not assign its interest under this Agreement without Buyer's prior written consent, which shall not be unreasonably withheld, provided that no such assignment shall release Seller from any obligations to Buyer hereunder. Subject to the preceding provisions of this paragraph, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto. If Seller or Buyer, as defined herein, consists of more than one person or entity, each of such persons and entities shall have joint and several liability hereunder.

(4) The performance and interpretation of this Agreement shall be controlled by the laws of the State of Colorado.

(5) The parties acknowledge that with respect to the transaction contemplated herein (a) each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto and (b) neither party has received from the other any accounting, tax, legal, or other advice.

**e. Development Assistance Agreement.** At Closing, Seller shall deliver to Escrowee (§ 4) the promissory note of Douglas S. Wetter and Retha M. Wetter in the amount of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000.00) (§ 5) (the “Wetter Note”). Payments of principal on the Wetter Note, which shall be made within six months after Closing, shall likewise be held in the Development Assistance Escrow. Funds held in the Development Assistance Escrow shall be paid to Seller immediately upon their deposit in such Escrow until the aggregate amounts paid to Seller pursuant to this § 24e equal Eight Hundred Sixty Thousand Dollars (\$860,000.00). All remaining funds held in the Development Assistance Escrow shall be paid to Westminster Promenade Development Company, LLC (“WPDC”), to reimburse WPDC for pre-development and infrastructure costs incurred and to be incurred by WPDC pursuant to the Preliminary Development Plan (PDP) and Official Development Plan (ODP) approved by Seller for Lot 2B, a real estate parcel in the County of Jefferson, Colorado, containing 1.05± acres, and described in Exhibit “A-2,” which is attached hereto and incorporated herein by this reference (“Lot 2B”), upon the delivery by WPDC to Escrowee (§ 4) of a request for reimbursement accompanied by invoices or other evidence of expenses incurred. Any funds remaining in the Development Assistance Escrow at the completion of the development pursuant to the PDP and ODP approved by Seller for Lot 2B shall be paid to Seller. WPDC and Seller are parties to a certain Amended and Restated Agreement for the Cooperative Development and Construction of the Westminster Promenade East Hotel, Conference Center and Commercial Building, dated May 15, 2001, as amended on September 10, 2004 (the “Restated Agreement”). Within sixty (60) days of closing this Agreement, WPDC and Seller agree to execute such further amendments to said Restated Agreement as may be necessary to reflect (1) WPDC’s fulfillment of its payment obligations for Lot 2B, (2) Seller’s clearance of Seller’s previously recorded right of reverter from WPDC’s title to Lot 2B, and (3) such additional amendments as may be reasonably required to reflect WPDC’s revised development plans for Lot 2B as set forth in the PDP and ODP for Lot 2B.

**25. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This contract constitutes the entire contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this contract. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this contract which, by its terms, is intended to be performed after termination or Closing shall survive the same.

**26. FACSIMILE.** Signatures  **May**  **May Not** be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

**27. NOTICE.** Except for the notice requesting mediation described in section 21, any notice to Buyer shall be effective when received by Buyer and any notice to Seller shall be effective when received by Seller. .

**28. NOTICE OF ACCEPTANCE; COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time** (§ 2d). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

**(END OF CONTRACT PROVISIONS)**

**SELLER:**

CITY OF WESTMINSTER, COLORADO, A Colorado home-rule municipality

By: \_\_\_\_\_

Its: \_\_\_\_\_

Authorized by City Council on \_\_\_\_\_, 2005.

Date of Seller's Signature: \_\_\_\_\_

Seller's Address: 4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031

Seller's Telephone No: 303-430-2400

Seller's Fax No: 303-650-0158

**BUYER:**

\_\_\_\_\_  
DOUGLAS S. WETTER

\_\_\_\_\_  
RETHA M. WETTER

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 1055 NE 25<sup>th</sup> Avenue, Suite A, Hillsboro, OR 97124

Buyer's Telephone No: \_\_\_\_\_

Buyer's Fax No: \_\_\_\_\_

ROBERT W. THOMAS AND ANNE McDONALD REVOCABLE TRUST

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 1055 NE 25<sup>th</sup> Avenue, Suite A, Hillsboro, OR 97124

Buyer's Telephone No: \_\_\_\_\_

Buyer's Fax No: \_\_\_\_\_

WESTMINSTER PROMENADE DEVELOPMENT COMPANY, LLC

By: \_\_\_\_\_

Timothy L. O'Byrne, Managing Member

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 10600 Westminster Boulevard, Westminster, CO 80020

Buyer's Telephone No: 303-410-5050

Buyer's Fax No: 303-410-5055

**EXHIBIT A-1**

Lot 2A, Second Replat of Westminster Promenade East (a Replat of Lot 2 of the First Replat of Westminster Promenade East), County of Jefferson, State of Colorado

**EXHIBIT A-2**

Lot 2B, Second Replat of Westminster Promenade East, County of Jefferson, State of Colorado

**CONTRACT TO BUY AND SELL REAL ESTATE  
(COMMERCIAL)**

Date: \_\_\_\_\_

**1. AGREEMENT.** Buyer agrees to buy and the Seller agrees to sell the Property defined below on the terms and conditions set forth in this contract.

**2. DEFINED TERMS.**

**a. Buyer.** Douglas S. Wetter and Retha M. Wetter, ~~as tenants in common, and/or assigns, as to an undivided 68.75% interest in Parcel 1, whose address is 1055 NE 25<sup>th</sup> Avenue, Suite A, Hillsboro, OR 97124, Robert W. Thomas and Anne McDonald Revocable Trust, and/or assigns, as to an undivided 31.25% interest in Parcel 1, whose address is 606 Wellington Avenue, Seattle, WA 98122, and Westminster Promenade Development Company, LLC, as to the fee simple interest in Parcel 2, whose address is 10600 Westminster Boulevard, Westminster, CO 80020,~~ as tenants in common, and/or assigns.

**b. Seller.** City of Westminster, Colorado, a home-rule municipality, whose address is 4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031.

**c. Property.** The Property is the following legally described real estate in the County of Jefferson, Colorado: Lot 2A, containing 5.15± acres, and described in Exhibit “A-1,” attached hereto and incorporated herein by this reference.

**d. Parcel 2, Lot 2B.** A real estate parcel in the County of Jefferson, Colorado, ~~known as Lot 2B,~~ containing 1.05± acres, and described in Exhibit “A-2,” which is attached hereto and incorporated herein by this reference.

**e. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1		Loan Application Deadline	N/A
2		Loan Commitment Deadline	N/A
3		Buyer’s Credit Information Deadline	N/A
4		Disapproval of Buyer’s Credit Deadline	N/A
5		Existing Loan Documents Deadline	N/A
6		Objection to Existing Loan Deadline	N/A
7		Approval of Loan Transfer Deadline	N/A
8		Appraisal Deadline	N/A
9	§ 7a	Title Deadline	11-10-05
10	§ 7a	Survey Deadline	11-10-05
11	§ 7b	Document Request Deadline	11-14-05
12	§ 8a	Title Objection Deadline	11-15-05
13	§ 8b	Off-Record Matters Deadline	11-14-05
14	§ 8b	Off-Record Matters Objection Deadline	11-15-05
15	§ 10	Seller’s Property Disclosure Deadline	N/A
16	§ 10a	Inspection Objection Deadline	11-15-05
17	§ 10b	Resolution Deadline	11-18-05
18	§ 11	<b>Closing Date</b>	11-21-05

19	§ 16	Possession Date	11-21-05
20	§ 16	Possession Time	11:59 pm MST
21	§ 28	<b>Acceptance Deadline Date</b>	11-8-05
22	§ 28	<b>Acceptance Deadline Time</b>	5:00 pm MST

**f. Attachments.** The following exhibits, attachments and addenda are a part of this contract: Exhibits A-1, A-2.

**g. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation “N/A” means not applicable.

**3. CONDITION OF SALE.** Subject only to the provisions of sections 12 and 24, below, the Property is being sold to Buyers “As Is” and “Where Is.”

**4. PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be payable in U. S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$ 5,440,000 <b>3,740,000</b>	
2	§ 4a	Earnest Money		\$ 40,000*
3	§ 4b	New Loan		\$
4	§ 4c	Assumption Balance		\$
5	§ 4d	Seller or Private Financing		\$ 2,450,000
6	§ 4e	Cash at Closing		\$ 2,950,000 <b>1,250,000</b>
7		TOTAL	\$ 5,440,000 <b>3,740,000</b>	\$ 5,440,000 <b>3,740,000</b>

\*Earnest money shall be held in escrow, subject to the terms and conditions of this Agreement, by First American Heritage Title Company, 1600 Stout Street, #800, Denver, CO ~~80202,80202~~ (“Escrowee”), until the Closing or Termination of this Agreement.

~~**5. FINANCING CONDITIONS AND OBLIGATIONS.** *Intentionally omitted.*~~

**5. SELLER FINANCING.** At Closing, Douglas S. Wetter and Retha M. Wetter shall deliver to Escrowee (§ 4) a non-interest-bearing promissory note to Seller in the amount of \$2,450,000, payable on or before the date that is six months after the Closing Date, and secured by the Property, which promissory note shall be held in escrow subject to the provisions of § 24e.

**6. APPRAISAL PROVISIONS.** *Intentionally omitted.*

**7. EVIDENCE OF TITLE.**

**a. Evidence of Title; Survey.** On or before **Title Deadline** (§ 2e), Buyer shall obtain, at Buyer’s expense, a current commitment for owner’s title insurance policy in such form and amount as Buyer may deem appropriate or if this box is checked,  **An Abstract** of title certified to a current date.

If a title insurance commitment is furnished, it

**Shall**  **Shall Not** commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,  
(2) unrecorded easements,  
(3) survey matters,  
(4) any unrecorded mechanics' liens,  
(5) gap period (effective date of commitment to date deed is recorded), and  
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by  **Buyer** \_\_\_  
 **Seller**.

The cost of any improvement location certificate or survey shall be paid by  **Buyer** \_\_\_  
 **Seller**.

An ALTA improvement survey may be obtained by Buyer on or before **Survey Deadline** (§ 2e).

**b. Copies of Exceptions.** On or before **Title Deadline** (§ 2e), Buyer, at Buyer's expense, shall obtain (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a title insurance commitment is required to be furnished, and if this box is checked  **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Buyer shall request and obtain any of these documents it may deem advisable any time on or before the **Document Request Deadline** (§ 2e). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder(s). The abstract or title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this Section, shall constitute the title documents (Title Documents).

## 8. TITLE.

**a. Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **Title Objection Deadline** (§ 2e), or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

**b. Matters not Shown by the Public Records.** On or before the **Off-Record Matters Deadline** (§ 2e), Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of unmerchantability of title disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **Off-Record Matters Objection Deadline** (§ 2e). If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

**c. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS**

**OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

In the event the Property is located within a special taxing district and Buyer desires to terminate this contract as a result, if written notice is received by Seller on or before **Off-Record Matters Objection Deadline** (§ 2e), this contract shall then terminate. If Seller does not receive Buyer's notice by such date, Buyer accepts the effect of the Property's inclusion in such special taxing district(s) and waives the right to so terminate.

**d. Right to Cure.** If Seller receives notice of unmerchantability of title as provided in § 8 a or b above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

**e. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **THE SURFACE ESTATE MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE DOES NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL RIGHTS. THIRD PARTIES MAY HOLD INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE PROPERTY.** Such matters may be excluded from the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this contract (e.g., **Title Objection Deadline** [§ 2e] and **Off-Record Matters Objection Deadline** [§ 2e]).

**9. LEAD-BASED PAINT.** *Intentionally Omitted.*

**10. PROPERTY INSPECTION.**

**a. Inspection Objection Deadline.** Buyer shall have the right to have inspection(s) of the physical and environmental condition of the Property and Inclusions, at Buyer's expense. If the physical or environmental condition of the Property or Inclusions is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 2e):

- (1) notify Seller in writing that this contract is terminated, or
- (2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct (Notice to Correct.)

If written notice is not received by Seller on or before **Inspection Objection Deadline** (§ 2e), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

**b. Resolution Deadline.** If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Resolution Deadline** (§ 2e), which agreement shall not be unreasonably withheld by Buyer or Seller with respect to de minimus matters, this contract shall terminate one calendar day following the **Resolution Deadline**, unless before such termination Seller receives Buyer's written withdrawal



of the Notice to Correct.

**c. Damage; Liens; Indemnity.** Buyer is responsible for payment for all environmental inspections and evaluations or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for such work performed on the Property at Buyer's request. To the extent permitted by law, Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this contract.

**11. CLOSING.** Delivery of deed(s) from Seller to Buyer shall be at Closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 2e) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by agreement.

**12. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

- a.** those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted or waived by Buyer in accordance with § 8a [Title Review],
- b.** distribution utility easements,
- c.** those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with § 8b [Matters Not Shown by the Public Records], and
- d.** inclusion of the Property within any special taxing district.

**13. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

**14. CLOSING COSTS; DOCUMENTS AND SERVICES.** Buyer shall pay, in Good Funds-all Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

Fees for real estate Closing services shall be paid at Closing by  One-Half by Buyer and One-Half by Seller \_\_\_\_\_ Buyer \_\_\_\_\_ Seller \_\_\_\_\_ Other \_\_\_\_\_.

The local transfer tax, if any, shall be paid at Closing by  Buyer  Seller.

Any sales and use tax that may accrue because of this transaction shall be paid when due by  Buyer  Seller.

**15. PRORATIONS.** The following shall be prorated to **Closing Date**, except as otherwise provided:

- a. Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing, based on  **The Taxes for the Calendar Year Immediately Preceding Closing**  **The Most Recent Mill Levy and Most Recent Assessment**  Other \_\_\_\_\_

**b. Rents.** *Intentionally omitted.*

**c. Other Prorations.** *Intentionally omitted.*

**d. Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.

**16. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** and **Possession Time** (§ 2e), subject to the following lease(s) or tenancy(s):   NONE    
If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$300 per day from the **Possession Date** (§ 2e) until possession is delivered.

**17. NOT ASSIGNABLE.** Except as provided in §24d(1), this contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**18. CONDITION OF AND DAMAGE TO PROPERTY AND INCLUSIONS.** *Intentionally omitted.*

**19. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller acknowledge that the Selling Company or the Listing Company has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this contract.

**20. TIME OF ESSENCE AND REMEDIES.** Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

**a. If Buyer is in Default:**

Seller may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller. Seller expressly waives the remedies of specific performance and additional damages. A default by any individual constituent of "Buyer," named in Section 2a., above, shall constitute a default by "Buyer" within the meaning of this Agreement. It is the intent of the parties that the individually named constituents of Buyer shall be jointly liable for any defaults.

**b. If Seller is in Default:** Buyer may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned as Buyer's sole and exclusive remedy.

**c. Costs and Expenses.** In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

**21. MEDIATION.** If a dispute arises relating to this contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 calendar days from the date written notice requesting mediation is sent by one party to the other(s). This Section shall not

alter any date in this contract, unless otherwise agreed.

**22. EARNEST MONEY DISPUTE.** Notwithstanding any termination of this contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money and things of value held by broker, if any, or Closing Company (unless mutual written instructions are received by the holder of the Earnest Money and things of value), broker or Closing Company shall not be required to take any action but may await any proceeding, or at broker's or Closing Company's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees.

**23. TERMINATION.** In the event this contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10c, 21 and 22.

**24. ADDITIONAL PROVISIONS.**

**a. Broker Commissions.** Buyer warrants to Seller that it has not dealt with any real estate brokers in connection with this transaction and shall not be liable for the payment of any brokerage commission. Buyer shall indemnify and hold Seller harmless from any brokerage or other commissions that may be payable in connection with this or any other transfer of the Property or any part thereof, unless such claims arise through the Buyer.

**b. Representations And Warranties.** Seller represents and warrants to Buyer both as of the date hereof and as of the date of Closing that:

(1) Seller is not a "foreign Person" but is a "United States person" as such terms are defined in Section 1445 and 7701 of the Internal Revenue Code of 1986 as amended.

(2) As of the date of Closing there shall be no parties in possession of any portion of the Property, except Seller.

(3) No work shall have been performed or shall be in progress by Seller, and no materials shall have been furnished to the Property or any portion thereof in connection with such work that might give rise to mechanic's liens against the Property or any portion thereof. At Closing, there will be no unpaid bills or claims in connection with any such work on the Property.

(4) No portion of the Property is subject to an earnest money contract, right of first refusal or similar contractual right.

(5) There is no suit, action, legal or other proceeding pending, or to Seller's best knowledge, threatened which affects the Property.

(6) Seller has received no notice from any governmental authority of zoning, building, fire, water, use, health, environmental or other statutory or regulatory violation issued in respect of the Property which has not been heretofore corrected.

**c. Time of Performance.** If any date for performance falls on a Saturday, Sunday or legal holiday, then the date for performance shall be extended to the next day which is not a Saturday, Sunday or holiday.

**d. Other Covenants.**

(1) Seller agrees to cooperate with any tax deferred exchange (whether under Internal Revenue Code section 1031 or Internal Revenue Code section 1033) that Buyer desires to

complete with respect to this transaction, provided there is no additional expense to Seller. Such cooperation includes Seller's consent to Buyer's assignment of its interest under this Agreement, in whole, in part, or in multiple parts, to one or more persons facilitating a tax deferred exchange on Buyer's behalf. Buyer hereby represents and warrants that if Buyer elects to do the exchange, and either (a) there is a final determination by a court of competent jurisdiction that such exchange did not meet the applicable qualifications or requirements for a tax-deferred exchange or (b) Buyer agrees, in whole or in part, with the assertion by an applicable taxing authority that such exchange did not meet the applicable qualifications or requirements for a tax-deferred exchange, Buyer shall pay any such tax that is determined to be due and owing. **Buyer further agrees that, in the event any taxing authority determines that such exchange did not meet the exchange qualifications or requirements, Buyer shall indemnify, defend, and hold harmless Seller from any and all claims, judgments, or expenses, related directly or indirectly to said exchange, including attorney fees and costs.**

(2) Buyer and Seller represent to each other that all necessary steps have been taken to authorize this Contract and that each has the requisite authority to enter into and perform this Contract in accordance with its terms.

(3) Buyer reserves the right to assign its interest under this Agreement to any subsidiary, affiliate, or partner of Buyer, or any affiliate of Buyer, provided that any such permitted assignee is solely owned, directly or indirectly, by Buyer, its immediate family members, or any of them, and to provide for a Closing in which title to the Property is taken in the name of any such permitted assignee, provided that no such assignment shall release Buyer from any obligations to Seller hereunder. Seller shall not assign its interest under this Agreement without Buyer's prior written consent, which shall not be unreasonably withheld, provided that no such assignment shall release Seller from any obligations to Buyer hereunder. Subject to the preceding provisions of this paragraph, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto. If Seller or Buyer, as defined herein, consists of more than one person or entity, each of such persons and entities shall have joint and several liability hereunder.

(4) The performance and interpretation of this Agreement shall be controlled by the laws of the State of Colorado.

(5) The parties acknowledge that with respect to the transaction contemplated herein (a) each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto and (b) neither party has received from the other any accounting, tax, legal, or other advice.

**e. Development Assistance Agreement.** At Closing, Seller shall ~~pay into escrow (the "Development Assistance Escrow") out of Seller's proceeds from the sale of the Property the excess of (i) Three Million Two Hundred Ninety Thousand Dollars (\$3,290,000.00) over (ii) the amount of the Seller Financing (§4d). Upon the receipt of each principal payment with respect to the Seller Financing, Seller shall deposit such payment into~~**deliver to Escrowee (§ 4) the promissory note of Douglas S. Wetter and Retha M. Wetter in the amount of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000.00) (§ 5) (the "Wetter Note"). Payments of principal on the Wetter Note, which shall be made within six months after Closing, shall likewise be held in** the Development Assistance Escrow. Funds held in the Development

Assistance Escrow shall be paid to Seller immediately upon their deposit in such Escrow until the aggregate amounts paid to Seller pursuant to this § 24e equal Eight Hundred Sixty Thousand Dollars (\$860,000.00). All remaining funds held in the Development Assistance Escrow shall be paid to Westminster Promenade Development Company, LLC (“WPDC”), to reimburse WPDC for pre-development and infrastructure costs incurred and to be incurred by WPDC pursuant to the Preliminary Development Plan (PDP) and Official Development Plan (ODP) approved by Seller for ~~Parcel 2~~. ~~The total amount paid into the Development Assistance Escrow shall not exceed Three Million Two Hundred Ninety Thousand Dollars (\$3,290,000.00), and any~~Lot 2B (§ 2d), upon the delivery by WPDC to Escrowee (§ 4) of a request for reimbursement accompanied by invoices or other evidence of expenses incurred. Any funds remaining in the Development Assistance Escrow at the completion of the development pursuant to the PDP and ODP approved by Seller for ~~Parcel~~Lot 2B shall be returned~~paid~~ to Seller. WPDC and Seller are parties to a certain Amended and Restated Agreement for the Cooperative Development and Construction of the Westminster Promenade East Hotel, Conference Center and Commercial Building, dated May 15, 2001, as amended on September 10, 2004 (the “Restated Agreement”). Within sixty (60) days of closing this Agreement, WPDC and Seller agree to execute such further amendments to said Restated Agreement as may be necessary to reflect (1) WPDC’s fulfillment of its payment obligations for ~~Parcel 2~~Lot 2B, (2) Seller’s clearance of Seller’s previously recorded right of reverter from WPDC’s title to ~~Parcel 2~~Lot 2B, and (3) such additional amendments as may be reasonably required to reflect WPDC’s revised development plans for ~~Parcel~~Lot 2B as set forth in the PDP and ODP for ~~Parcel 2~~Lot 2B.

**25. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This contract constitutes the entire contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this contract. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this contract which, by its terms, is intended to be performed after termination or Closing shall survive the same.

**26. FACSIMILE.** Signatures  **May**  **May Not** be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

**27. NOTICE.** Except for the notice requesting mediation described in section 21, any notice to Buyer shall be effective when received by Buyer and any notice to Seller shall be effective when received by Seller. .

**28. NOTICE OF ACCEPTANCE; COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time** (§ 2e). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

**(END OF CONTRACT PROVISIONS)**

**SELLER:**

CITY OF WESTMINSTER, COLORADO, A Colorado home-rule municipality

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

Authorized by City Council on \_\_\_\_\_, 2005.

Date of Seller's Signature: \_\_\_\_\_

Seller's Address: 4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031

Seller's Telephone No: 303-430-2400                      Seller's Fax No: 303-650-0158

**BUYER:**

\_\_\_\_\_  
DOUGLAS S. WETTER

\_\_\_\_\_  
RETHA M. WETTER

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 1055 NE 25<sup>th</sup> Avenue, Suite A, Hillsboro, OR 97124

Buyer's Telephone No: \_\_\_\_\_                      Buyer's Fax No: \_\_\_\_\_

ROBERT W. THOMAS AND ANNE McDONALD REVOCABLE TRUST

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

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 1055 NE 25<sup>th</sup> Avenue, Suite A, Hillsboro, OR 97124

Buyer's Telephone No: \_\_\_\_\_                      Buyer's Fax No: \_\_\_\_\_

WESTMINSTER PROMENADE DEVELOPMENT COMPANY, LLC

By: \_\_\_\_\_  
Timothy L. O'Byrne, Managing Member

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 10600 Westminster Boulevard, Westminster, CO 80020

Buyer's Telephone No: 303-410-5050

Buyer's Fax No: 303-410-5055

**EXHIBIT A-1**

Lot 2A, Second Replat of Westminster Promenade East (a Replat of Lot 2 of the First Replat of Westminster Promenade East), County of Jefferson, State of Colorado

**EXHIBIT A-2**

Lot 2B, Second Replat of Westminster Promenade East, County of Jefferson, State of Colorado

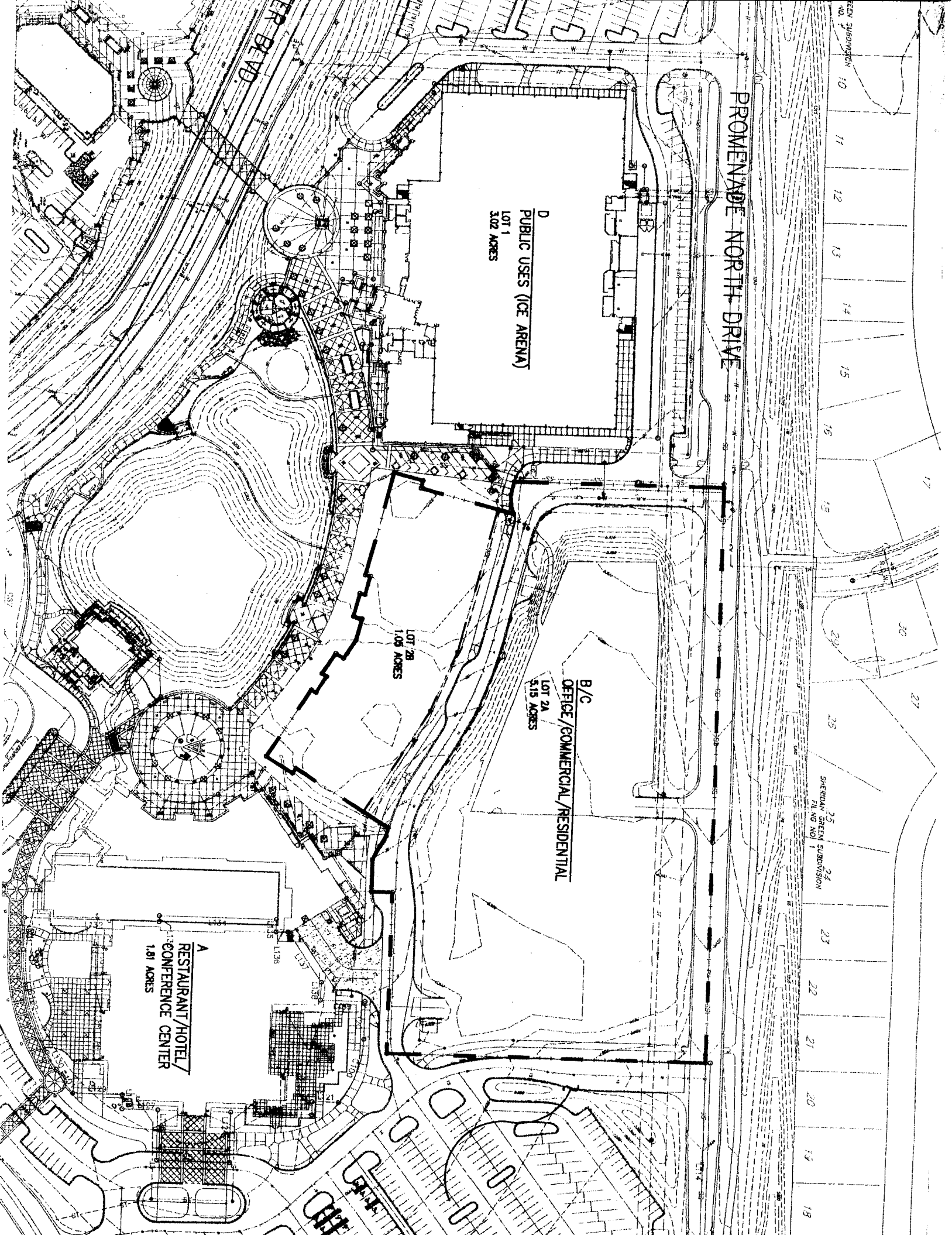


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Rendering set	LPSL Standard

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Padding cell	

<b>Statistics:</b>	
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Moved from	0
Moved to	0
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Format changed	0
Total changes	38



PROMENADE NORTH DRIVE

D  
PUBLIC USES (ICE ARENA)  
LOT 1  
302 ACRES

B/C  
OFFICE / COMMERCIAL / RESIDENTIAL  
LOT 2A  
5.15 ACRES

LOT 2B  
1.08 ACRES

A  
RESTAURANT / HOTEL /  
CONFERENCE CENTER  
1.81 ACRES

SHERIDAN GREEN SUBDIVISION

10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

SHERIDAN GREEN SUBDIVISION  
P.L. AND NO. 1

BER BVD.

THE 500



**WESTMINSTER**  
**COLORADO**  
Agenda Memorandum

City Council Special Meeting  
November 7, 2005



**SUBJECT:** Second Reading of Councillor’s Bill No. 65 re Purchase of the Metzger Farm Property through The Broomfield-Westminster Open Space Foundation.  
**Prepared By:** Ruth C. Becker, Open Space Coordinator

**Recommended City Council Action**

Pass Councillor’s Bill No. 65 on second reading authorizing the creation of the The Broomfield-Westminster Open Space Foundation (the “Foundation”) providing for the acquisition, financing, ownership, operation and maintenance of the Metzger Farm. Property.

**Summary Statement**

- City Council action is requested to pass the attached Councillor’s Bill on second reading.
- This Councillor’s Bill was passed on first reading on October 24, 2005.
- On October 24, 2005, the Council approved an ordinance authorizing the organization of the Broomfield-Westminster Open Space Foundation, Inc., a Colorado nonprofit corporation, for the purpose of financing and leasing the Metzger Farm property, to be used as open space for the City and County of Broomfield and the City of Westminster. Council also authorized the execution of Articles of Incorporation for the Foundation and approved the Bylaws of the Corporation. In addition, the Ordinance provided for the appointment of the Board of Directors of the Corporation and provided other details for the creation of the Foundation and acquisition of the Metzger Farm property.
- The Foundation will take title to the Metzger Farm property and will manage the Property.
- The Foundation will issue Certificates of Participation to finance the bulk of the acquisition. Westminster and Broomfield, as tenants in common, will lease the property from the Foundation, and the lease payments will provide the revenue stream for the Foundation’s financing. After the Certificates of Participation are retired, the Foundation will deed the Metzger Farm property to the City of Westminster and the City and County of Broomfield as tenants in common, with each jurisdiction owning an undivided 50% interest, provided the parties have made all their lease payments.

**Expenditure Required:** Creation of the Foundation will have nominal filing costs. The total purchase price for the Metzger Farm property and water rights is \$11,000,000 plus costs of issuance for the Certificates of Participation. The City of Westminster’s share will be approximately \$5,004,850 plus costs of issuance and due diligence investigation costs.

**Source of Funds:** \$37,500 from the Open Space Land Purchases Account for Westminster’s 50% share of the down payment, to be paid immediately after approval of the transaction by the Foundation, and an additional approximately \$35,000 for Westminster’s share of due diligence investigations;  
Approximately \$4,323,200 plus issuance costs, from the Open Space Land Purchases Account, to be applied to payment of the Certificates of Participation from 2006 through 2016.

Respectfully submitted,

Steve Smithers, Acting City Manager  
Attachment: Ordinance

BY AUTHORITY

ORDINANCE NO. **3250**

COUNCILLOR'S BILL NO. **65**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

**Dittman – Davia**

**A BILL**

**FOR AN ORDINANCE AUTHORIZING THE ORGANIZATION OF THE BROOMFIELD-WESTMINSTER OPEN SPACE FOUNDATION, INC., A COLORADO NONPROFIT CORPORATION, FOR THE PURPOSE OF FINANCING AND LEASING REAL PROPERTY TO BE USED AS OPEN SPACE FOR THE CITY AND COUNTY OF BROOMFIELD, COLORADO, AND THE CITY OF WESTMINSTER, COLORADO; AUTHORIZING THE EXECUTION OF ARTICLES OF INCORPORATION; PROVIDING FOR THE APPOINTMENT OF THE BOARD OF DIRECTORS OF THE CORPORATION; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.**

WHEREAS, the City of Westminster, Colorado (the "City "), is a political subdivision of the State, a body corporate and politic, a home-rule City pursuant to Article XX of the State Constitution (the "Constitutional Amendment"); and

WHEREAS, the Constitutional Amendment provides that the charter provisions and procedures shall supersede any constitutional or statutory limitations and procedures regarding financial obligations; and

WHEREAS, the Constitutional Amendment provides that it shall be construed so as to supersede any conflicting constitutional or statutory provision that would otherwise limit any of the provisions of the Constitutional Amendment; and

WHEREAS, the Constitutional Amendment provides that the City shall have the power within and without its territorial limits to purchase, acquire, lease and operate open space lands; and

WHEREAS, Section 2.1 of the Charter of the City of Westminster (the "Charter") provides that the City may purchase, receive, hold and enjoy or sell and dispose of real and personal property; and

WHEREAS, Chapter XI of the Charter provides that the City may borrow money for any municipal purpose as provided in the Charter and issue any legally recognized security which the City Council (the "Council") may provide; and

WHEREAS, Section 11.3 of the Charter provides that the City is authorized to enter into installment purchase contracts or lease option contracts in order to provide necessary land, buildings, equipment and other property for governmental purposes; and

WHEREAS, City and the City and County of Broomfield, Colorado, a Colorado home-rule city and county ("Broomfield") desire to acquire, finance, own, and operate approximately 150 acres, more or less, of undeveloped land, plus improvements located within the corporate boundaries of Westminster (the "Property"), which land is presently owned by The John W. Metzger Trust and Betty B. Metzger, an individual, as their interests may appear as tenants in common, (collectively the "Owner"); and

WHEREAS, in order to provide for the acquisition, financing, ownership and operation of the Property, it is necessary for Broomfield and Westminster to organize and create The Broomfield-Westminster Open Space Foundation, Inc., a Colorado nonprofit corporation (the "Corporation"); and

WHEREAS, the Corporation shall be a separate corporate entity, with its Board of Directors composed of an equal number of Directors from Westminster and Broomfield and one director selected by the City Managers of Broomfield and Westminster; and

WHEREAS, Broomfield and Westminster anticipate that the Corporation will acquire the Property in its name and enter into Lease Purchase Agreement (the "Lease") with Broomfield and Westminster to acquire, finance and lease the Property; and

WHEREAS, there have been presented to the Council of the City: (1) the proposed form of Articles of Incorporation(Articles) for the Corporation and (2) the proposed Bylaws (the "Bylaws") of the Corporation; and

WHEREAS, the Council has determined it necessary to authorize the execution of the Articles of Incorporation, approve the Bylaws and provide for the Board of Directions of the Corporation.

**THE CITY OF WESTMINSTER ORDAINS:**

**Section 1.** That the recitals hereto are hereby ratified, confirmed and incorporated herein by reference.

**Section 2.** That the Articles of Incorporation of The Broomfield-Westminster Open Space Foundation, Inc., a Colorado nonprofit corporation, are hereby approved, subject to the approval of the Articles of Incorporation by Broomfield. The City Attorney and the City Manager are authorized and directed to take all necessary or appropriate action toward the execution, delivery and filing of the Articles of Incorporation and the creation and organization of the Corporation.

**Section 3.** That the Bylaws of the Corporation are hereby approved, subject to the approval of the Bylaws by Broomfield.

**Section 4.** That the Board of Directors of the Corporation shall be composed of an equal number of directors from Broomfield and Westminster and one director selected by the City Managers of Broomfield and Westminster. The Directors shall include: the Mayor of Broomfield, the Mayor of Westminster, the City and County Manager of Broomfield, the City Manager of Westminster, one councilmember of Broomfield, and one councilmember of Westminster. Westminster and Broomfield shall select one alternate councilmember to serve during absences of its appointed councilmember. The terms of such Directors shall expire when such Directors are no longer elected or appointed to their respective offices and positions. Except for councilmembers appointed by Broomfield and Westminster in the discretion of their respective city councils, the successors to such offices and positions shall become Directors of the Corporation. In addition the City and County Manager of Broomfield and the City Manager of Westminster shall appoint one director not elected or employed or a resident of either Broomfield or Westminster. The term of such director shall be 3 years or until a successor is appointed. Such director may be removed by a majority vote of the entire Board of Directors. The mayors shall act as Co-Chairpersons of the Board of Directors and Co-Presidents of the Foundation.

**Section 5.** That should any one or more sections or provisions of this ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

**Section 6.** That this ordinance, as adopted by the City Council, shall be numbered and recorded in the official records of the City. Its adoption and publication shall be authenticated by the signature of the Mayor and the City Clerk, and by the certificate of publication.

**Section 7.** That this ordinance shall take effect upon the date that the City and County of Broomfield finally adopts this same form of ordinance, and after its passage on second reading.

**Section 8.** The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of October, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 7th day of November, 2005.

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Mayor

(S E A L)

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney



**Agenda Memorandum**

City Council Special Meeting  
November 7, 2005



**SUBJECT:** Second Reading of Councillor’s Bill No. 66 re Outstanding Loans Review and Recommendations

**Prepared By:** Tammy A. Hitchens, Finance Director

**Recommended City Council Action**

Pass Councillor’s Bill No. 66 on second reading amending the budgets of the General, General Reserve, General Capital Improvement, and Utility Funds to reflect the write-offs of \$2,686,736, plus 2005 accrued interest, for the benefit of the Westminster Economic Development Authority Fund (WEDA); and \$2,452,568, plus 2005 accrued interest, for the benefit of the Golf Course Fund.

**Summary Statement**

- During the audit of the 2004 financial statements, the City’s independent auditors, Clifton Gunderson, LLP, expressed some concerns about the ability of the Golf Course Fund and Westminster Economic Development Authority Fund to pay back some of the interfund borrowings that have occurred over the years. Staff agrees with those concerns and has analyzed the outstanding interfund loans that exist and reviewed recommendations with City Council at the August 15<sup>th</sup> study session.
- WEDA had \$8,723,783 outstanding at 12/31/04; an additional \$60,000 fee became due on January 1, 2005. If the above actions are taken, the outstanding amount will be \$4,511,535. This consists of \$3,100,000 loan balance from the Utility Fund, \$1,311,535 loaned to WEDA from the General Capital Improvement Fund (GCIF) for the condemnation case involving the Weigel property in the Mandalay Gardens (Mandalay) Urban Renewal Area (URA) and \$100,000 in the Westminster Center East Area URA.
- The Golf Course Fund had \$4,443,194 outstanding at 12/31/04. If the above actions are taken, the outstanding amount at 12/31/05 will become the amount of any negative cash balance in the Golf Course Fund at 12/31/2005. As Council will recall, Council budgeted \$880,000 and \$862,000 for 2005 and 2006, respectively to assist the golf courses maintain a positive cash flow. With this assistance and other cost saving strategies taken on by the golf courses, it is anticipated that the courses negative annual financial position will be improved.
- City Council action is requested to pass the attached Councillors Bill on second reading.
- This Councillor’s Bill was passed on first reading on October 24, 2005.

**Expenditure Required:** \$5,139,304 plus 2005 accrued interest (through loan and interest write offs)

**Source of Funds:** Fund Balance/Retained Earnings of the General, Utility, General Capital Improvement and General Reserve Funds

Respectfully submitted,

Steve Smithers  
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3251**

COUNCILLOR'S BILL NO. **66**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

**Davia - Dixon**

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL, GENERAL RESERVE, GENERAL CAPITAL IMPROVEMENT AND UTILITY FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$82,941,554 is hereby increased by \$1,073,428 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$92,808,644. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover funds to cover the write-off of the loans to Westminster Economic Development Authority.

Section 2. The \$1,073,428 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1000.40020.0000	\$7,863,725	<u>\$1,073,428</u>	\$8,937,153
Total Change to Revenues			<u>\$1,073,428</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	10010900.79400.0000	\$0	<u>\$1,073,428</u>	\$1,073,428
Total Change to Expenses			<u>\$1,073,428</u>	

Section 3. The 2005 appropriation for General Reserve Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,744,350 is hereby increased by \$990,858 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$9,335,208. The actual amount in the General Reserve Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover to cover the write-off of the loans to Heritage Golf Course.

Section 4. The \$990,858 increase in the General Reserve Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1100.40020.0000	\$7,572,500	<u>\$990,858</u>	\$8,563,358
Total Change to Revenue			<u>\$990,858</u>	



EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	11010900.79400.0000	\$0	\$990,858	\$990,858
Total Change to Expenses			<u>\$990,858</u>	

Section 5. The 2005 appropriation for General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$1,461,710 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$33,818,228. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover to offset the write-off of the loans to Legacy and Heritage Golf Courses.

Section 6. The \$1,461,710 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$25,373	<u>\$1,461,710</u>	\$1,487,083
Total Change to Revenue			<u>\$1,461,710</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	75010900.79400.0000	\$0	<u>\$1,461,710</u>	\$1,461,710
Total Change to Expenses			<u>\$1,461,710</u>	

Section 7. The 2005 appropriation for the Water Portion of the Utility Fund initially appropriated by Ordinance No. 3162 in the amount of \$28,394,843 is hereby increased by \$1,613,308 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$35,363,145. The actual amount in the Water Portion of the Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover to offset the write-off of the interest portion of the loan to the Westminster Economic Development Authority.

Section 8. The \$1,613,308 increase in the Water Portion of the Utility Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2000.40020.0000	\$5,351,548	<u>\$1,613,308</u>	\$6,964,856
Total Change to Revenue			<u>\$1,613,308</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	20010900.79400.0000	\$0	<u>\$1,613,308</u>	\$1,613,308
Total Change to Expenses			<u>\$1,613,308</u>	

Section 9. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 10. This ordinance shall take effect upon its passage after the second reading.

Section 11. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, TITLE AND PURPOSE ORDERED  
PUBLISHED this 24<sup>th</sup> day of October, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 7<sup>th</sup> day of November, 2005.

ATTEST:

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Mayor

---

City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Special Meeting  
November 7, 2005



**SUBJECT:** Councillor's Bill No. 67 re Metro North Chamber of Commerce Business Assistance Package

**Prepared By:** Susan Grafton, Economic Development Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 67 as an emergency ordinance, authorizing the City Manager to execute a Business Assistance Package (BAP) with Metro North Chamber of Commerce for approximately \$3,225. The BAP includes approximately \$1,950 in permit fee rebates and approximately \$1,275 in construction use tax rebates.

**Summary Statement**

- City Council action is requested to pass the attached Councillor's Bill that authorizes the execution of the attached business assistance package with Metro North Chamber of Commerce.
- The Metro North Chamber of Commerce is relocating from the City of Thornton to Country Club Village project located at the northeast corner of 120<sup>th</sup> Avenue and Federal Boulevard.

**Expenditure Required:** \$3,250 (Rebates of Permit Fees and Use Tax)

**Source of Funds:** The business assistance package with Metro North Chamber of Commerce will be funded through the rebate of permit fees and construction use tax directly generated from the construction of the tenant improvements for the chamber.

**Policy Issue**

Does Council desire to provide assistance to Metro North Chamber of Commerce for their relocation to Westminster?

**Alternatives**

Do Nothing: One alternative to offering the business assistance package is to offer no assistance to the chamber. Though the City may not lose the project if assistance is not provided, the result would be that the City's desire to support the Metro North Chamber of Commerce would not be supported.

Provide More: Another alternative would be to provide a greater amount of assistance than recommended. There is room for additional funding. However, it is staff's opinion that additional assistance is not needed.

**Background Information**

Metro North Chamber of Commerce is currently officed in the City of Thornton. It provides support to businesses throughout Adams County, all of Westminster and the north portion of metro Denver.

Metro North Chamber of Commerce plans to move their offices into the FirstTier Bank building in the Country Club Village development at the northeast corner of Federal Boulevard and 120<sup>th</sup> Avenue. Tenant improvements are scheduled to begin immediately.

It is anticipated that Metro North Chamber of Commerce will generate approximately \$7,200 in total building related permit fees and construction use tax. To aid the Metro North Chamber of Commerce ( a non-profit organization) with its relocation, staff recommends the following business assistance package:

<b>Proposed Assistance</b>	<b>Approximate Value</b>
<u>Building Permit-Fee Rebate</u> 50% of the building related fees (excluding water & sewer tap fees) will be rebated (\$3,900 x 50% = \$1,950)	\$1,950
<u>Building Use Tax Rebate</u> 50% of the General Use Tax (excludes the City's .25% open space tax and .6% public safety tax) on construction materials for this project will be rebated (\$170,000 x 50%= \$85,000 x 3%=\$2,550 x 50%= \$1,275)	\$1,275
<b>Total Proposed Assistance Package</b>	<b>\$3,225</b>

In order to meet the Metro North Chamber of Commerce construction and move in deadline, this ordinance is presented as an emergency ordinance.

Respectfully submitted,

Steve Smithers  
Acting City Manager

Attachments

**Exhibit A**

**BUSINESS ASSISTANCE PACKAGE FOR  
the METRO NORTH CHAMBER OF COMMERCE in the CITY OF WESTMINSTER**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, between the CITY OF WESTMINSTER (the "City"), and Metro North Chamber of Commerce.

WHEREAS, the City wishes to provide certain assistance to Metro North Chamber of Commerce to aid in the attracting of new primary jobs to the City; and

WHEREAS, Metro North Chamber of Commerce plans to locate their offices in the FirstTier Bank building in the Country Club Village development; and,

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and Metro North Chamber of Commerce agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to Metro North Chamber of Commerce 50% of the building related permit fees, required under W.M.C. Section 11-10-3 (E), excluding water and sewer tap fees, collected from Metro North Chamber of Commerce in connection with the construction of the tenant improvements in the FirstTier Bank office building in Country Club Village. The permit fee rebate is estimated to be \$1,950.

2. Use Tax Rebate- Construction. The City shall rebate to Metro North Chamber of Commerce 50% of the Building Use Tax on the construction materials (excluding the .25% Open Space Tax and the .6% Public Safety Tax), collected from Metro North Chamber of Commerce in connection with the tenant finish in the FirstTier Bank office building in Country Club Village, required under W.M.C. sections 4-2-9 and 4-2-3, to Metro North Chamber of Commerce. The rebate is estimated to be \$1,275.

3. Payments of Rebates. Rebates will be paid to Metro North Chamber of Commerce by the City from revenue actually collected and received by the City from Metro North Chamber of Commerce or its contractor. Payment will be issued within 60 days following the issuance of the Certificate of Occupancy.

4. Entire Agreement. This instrument shall constitute the entire agreement between the City and Metro North Chamber of Commerce and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

5. Termination. This Business Assistance Package shall terminate upon the earlier of (1) the payment by the City of the rebates provided for in paragraphs 1 and 2 of this Agreement; or, (2) April 15, 2006.

6. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales and use tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

7. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

18. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Adams County, Colorado.

**METRO NORTH CHAMBER OF COMMERCE**

**CITY OF WESTMINSTER**

\_\_\_\_\_  
Deborah Obermeyer  
Chief Executive Officer

\_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Linda Yeager  
City Clerk

**Adopted by Ordinance No. \_\_\_\_**

BY AUTHORITY

ORDINANCE NO. **3252**

COUNCILLOR'S BILL NO. **67**

SERIES OF 2005

INTRODUCED BY COUNCILLORS  
**DITTMAN – DAVIA**

**A BILL  
FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH  
METRO NORTH CHAMBER OF COMMERCE IN WESTMINSTER**

WHEREAS, the successful attraction of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, Metro North Chamber of Commerce plans to complete a tenant finish in the FirstTier Bank building at Country Club Village; and

WHEREAS, a proposed Business Assistance Package between the City and Metro North Chamber of Commerce is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

**THE CITY OF WESTMINSTER ORDAINS:**

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into a Business Assistance Package with Metro North Chamber of Commerce. in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

Section 2. Declaration of Emergency. In order to meet the Metro North Chamber of Commerce's construction and move-in deadline, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City.

Section 3. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon its adoption and passage.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on November 7, 2005.

ATTEST:

\_\_\_\_\_  
Mayor Pro Tem

\_\_\_\_\_  
City Clerk



## Agenda Item C 2

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Special Meeting  
November 7, 2005



**SUBJECT:** Resolution No. 48 re Cheyenne Ridge Park Recognition Tree

**Prepared By:** Becky Eades, Landscape Architect II

### Recommended City Council Action

Adopt Resolution No. 48 stating that upon construction of Cheyenne Ridge Park, the City will plant a tree to be dedicated in honor of Hunter Brown for his perseverance and dedication in coming to Council Budget Hearings requesting that the development of the Cheyenne Ridge Park be accelerated.

### Summary Statement

- Cheyenne Ridge Park is a five-acre park located near 145<sup>th</sup> Avenue and Huron Street in the Cheyenne Ridge Subdivision.
- Heather Brown, Hunter Brown's mother, came to the September 8, 2003, and June 14, 2004, Budget Hearings with her son, requesting that this park be developed in a timely fashion. The development of this park was not listed in the 5-year CIP Budget at that time.
- Following the 2004 Budget Hearings, Staff recommended placing the park development on the five-year CIP plan for 2007 at the amount of \$300,000.

**Expenditure Required:** \$500

**Source of Funds:** General Capital Improvement Fund – Cheyenne Ridge Park Project



**Policy Issue**

Does City Council wish to support the recognition of an individual's effort in accelerating development of a specific park, and wish to honor those efforts in this way?

**Alternative**

Council could choose to decline to recognize an individual's effort in this way. Landscaping will be done at this park during construction as at any other park without the installation of a recognition plaque.

**Background Information**

The Cheyenne Ridge park site was purchased in 1996. At the request of residents, Council approved \$24,000 in the 2000 Budget for minor site improvements contingent upon neighborhood contributions. Public meetings were held in late 2000 to introduce the project to residents. At the first meeting, it was decided to focus the available funding on construction of a soft trail that loops the park site and on tree plantings with a drip irrigation system. Through several conversations during the summer of 2000, Staff expressed to the HOA that some sort of letter of commitment was necessary for this project to move forward. A new president of the HOA was elected in the fall of 2000, and Staff received a letter of commitment on November 17, 2000. Improvements were completed in May of 2001 and included a drip irrigation system to serve 25 to 30 trees that were planted on the park's perimeter and a walking trail to loop the park site. The park's brick paver plaza was constructed by an Eagle Scout who resides in the neighborhood.

At the 2004 public budget hearings, Heather and Hunter Brown requested that the park be completed with a playground, a grass field and irrigation. Staff will hold neighborhood meetings prior to the start of the design process for the park development.

Respectfully submitted,

Steve Smithers  
Acting City Manager

Attachments

RESOLUTION

RESOLUTION NO. **48**

INTRODUCED BY COUNCILLORS

SERIES OF 2005

**HICKS - DITTMAN**

**RECOGNITION TREE DESIGNATION**

WHEREAS, The City of Westminster supports the development of Cheyenne Ridge Park, and

WHEREAS, The City of Westminster acknowledges the effort put forth by Hunter Brown in seeking to accelerate the development of the park.

NOW THEREFORE, be it resolved that the City Council of the City of Westminster does hereby make the following designation.

Section 1. The designation of a memorial tree to be planted in honor of Hunter Browns' efforts in accelerating the development of Cheyenne Ridge Park.

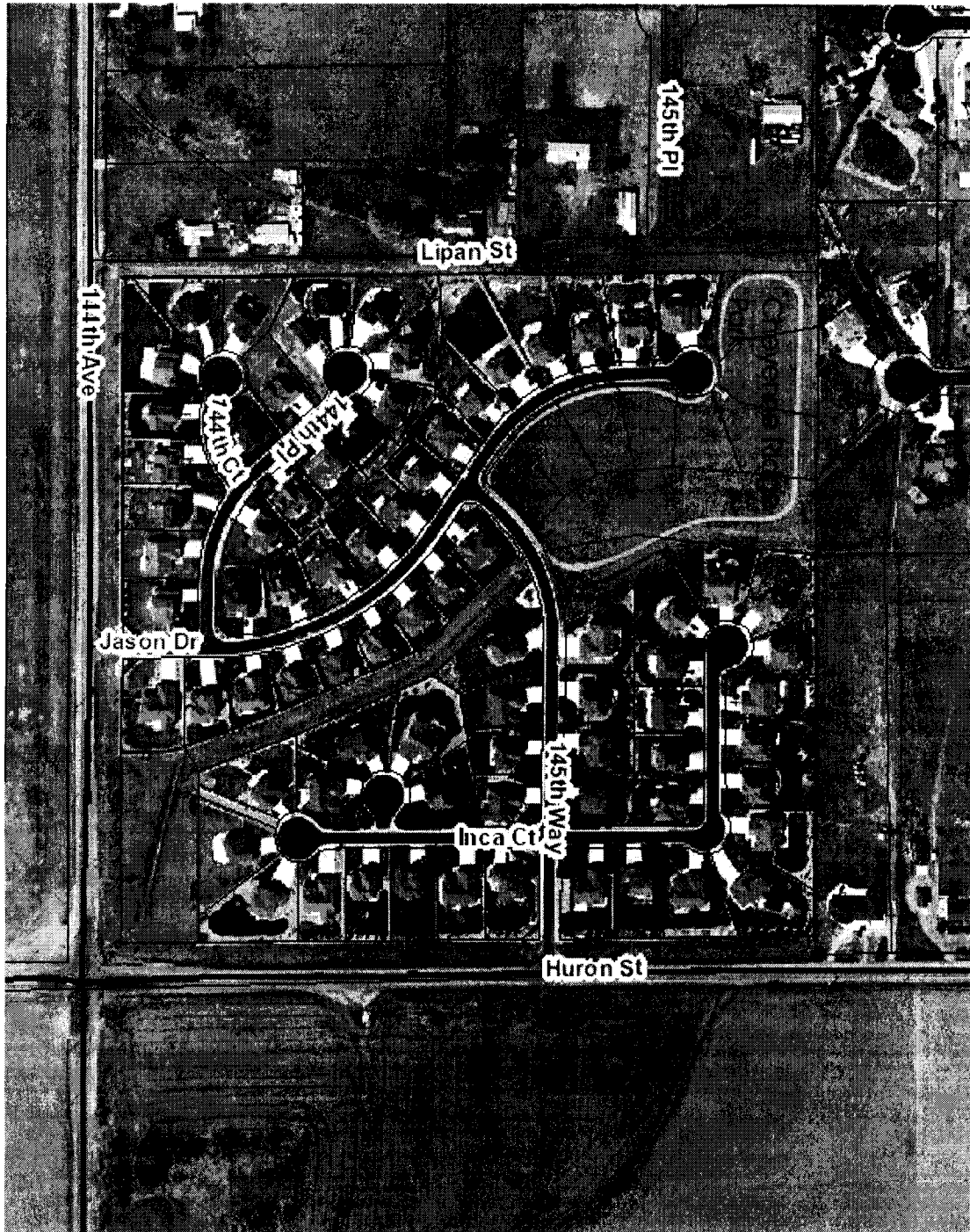
Section 2. The resolution shall be in effect from its passage and approval, the tree will be planted during the construction of the park.

PASSED AND ADOPTED this 7<sup>th</sup> day of November, 2005.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk





**WESTMINSTER**  

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**COLORADO**

**AGENDA**

**SPECIAL CITY COUNCIL MEETING**

**MONDAY, NOVEMBER 7, 2005**

**AT 8:00 P.M.**

- 1. Purpose of Special Council Meeting is to**
  - A. Swear in the New Councillors**
  - B. Select a Mayor Pro Tem**
  - C. Swear in the Mayor Pro Tem**
  
- 2. Adjournment**



W E S T M I N S T E R

City of Westminster

October 26, 2005

Office of the Mayor

4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado  
80031-6387

303-430-2400

FAX 303-428-4564

Linda Yeager, City Clerk  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

Dear Linda:

This is a revised request that you call a special meeting of the City Council for Monday, November 7, 2005 at 7:30 p.m. to be held at City Hall in the City Council Chambers, 4800 West 92<sup>nd</sup> Avenue, for the following purposes:

Conclude the business of the seated City Council beginning at 7:30 p.m.

Administer the Oath of Office to newly elected City Councillors at 8:00 p.m.

Elect a Mayor Pro Tem

Sincerely,

Nancy McNally  
Mayor

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, NOVEMBER 7, 2005 AT 8:00 P.M.

SWEARING IN OF NEW COUNCILLORS:

Mayor Pro Tem Kauffman called the meeting to order and introduced newly elected City Councillors Mary Lindsey, Mark Kaiser, and Scott Major. The Mayor Pro Tem called upon Municipal Court Judge John Stipech to administer the Oath of Office.

SELECTION OF MAYOR PRO TEM:

Mayor Pro Tem Kauffman called for written ballot for the selection of Mayor Pro Tem. The first ballot showed a majority vote for Tim Kauffman. Mayor Pro Tem Kauffman was sworn into office by Municipal Court Judge John Stipech.

ADJOURNMENT:

The meeting was adjourned at 8:15 P.M.

ATTEST:

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City Clerk

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Mayor Pro Tem

## Summary of Proceedings

Summary of proceedings of the City of Westminster City Council special meeting of Monday, November 7, 2005. Mayor Pro Tem Kauffman, and Councillors Davia, Dittman, Dixon, Hicks, and Price were present at roll call. Mayor McNally was absent.

The minutes of the October 24, 2005 regular meeting were approved.

Council approved the following: special legal services contract; purchase and sale agreement for Promenade Land; final passage of Councillor's Bill No. 65 re purchase of the Metzger Farm property through the Broomfield-Westminster Open Space Foundation; and final passage of Councillor's Bill No. 66 re write-off of outstanding loans.

Council adopted Resolution No. 48 re Cheyenne Ridge Park recognition tree honoring Hunter Brown.

The following Councillor's Bill was passed as an emergency ordinance:

**A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH METRO NORTH CHAMBER OF COMMERCE IN WESTMINSTER.** Purpose: assistance to offset cost of relocating Chamber of Commerce to Country Club Village at 120<sup>th</sup> Ave. & Federal Blvd.

At 7:59 p.m., the meeting of the seated City Council adjourned.

At 8:05 p.m., the meeting reconvened to swear in new City Councillors and elect a Mayor Pro Tem.

Municipal Judge John Stipech administered the Oath of Office to Mary Lindsey, Mark Kaiser, and Scott Major.

By ballot, Council elected Tim Kauffman the Mayor Pro Tem, and Judge Stipech administered the Oath of Office to him.

The meeting adjourned at 8:15 p.m.

By order of the Westminster City Council  
Linda Yeager, MMC, City Clerk

Published in the Westminster Window on November 17, 2005

**Dittman – Davia**

**A BILL FOR AN ORDINANCE AUTHORIZING THE ORGANIZATION OF THE BROOMFIELD-WESTMINSTER OPEN SPACE FOUNDATION, INC., A COLORADO NONPROFIT CORPORATION, FOR THE PURPOSE OF FINANCING AND LEASING REAL PROPERTY TO BE USED AS OPEN SPACE FOR THE CITY AND COUNTY OF BROOMFIELD, COLORADO, AND THE CITY OF WESTMINSTER, COLORADO; AUTHORIZING THE EXECUTION OF ARTICLES OF INCORPORATION; PROVIDING FOR THE APPOINTMENT OF THE BOARD OF DIRECTORS OF THE CORPORATION; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.**

WHEREAS, the City of Westminster, Colorado (the "City "), is a political subdivision of the State, a body corporate and politic, a home-rule City pursuant to Article XX of the State Constitution (the "Constitutional Amendment"); and

WHEREAS, the Constitutional Amendment provides that the charter provisions and procedures shall supersede any constitutional or statutory limitations and procedures regarding financial obligations; and

WHEREAS, the Constitutional Amendment provides that it shall be construed so as to supersede any conflicting constitutional or statutory provision that would otherwise limit any of the provisions of the Constitutional Amendment; and

WHEREAS, the Constitutional Amendment provides that the City shall have the power within and without its territorial limits to purchase, acquire, lease and operate open space lands; and

WHEREAS, Section 2.1 of the Charter of the City of Westminster (the "Charter") provides that the City may purchase, receive, hold and enjoy or sell and dispose of real and personal property; and

WHEREAS, Chapter XI of the Charter provides that the City may borrow money for any municipal purpose as provided in the Charter and issue any legally recognized security which the City Council (the "Council") may provide; and

WHEREAS, Section 11.3 of the Charter provides that the City is authorized to enter into installment purchase contracts or lease option contracts in order to provide necessary land, buildings, equipment and other property for governmental purposes; and

WHEREAS, City and the City and County of Broomfield, Colorado, a Colorado home-rule city and county ("Broomfield") desire to acquire, finance, own, and operate approximately 150 acres, more or less, of undeveloped land, plus improvements located within the corporate boundaries of Westminster (the "Property"), which land is presently owned by The John W. Metzger Trust and Betty B. Metzger, an individual, as their interests may appear as tenants in common, (collectively the "Owner"); and

WHEREAS, in order to provide for the acquisition, financing, ownership and operation of the Property, it is necessary for Broomfield and Westminster to organize and create The Broomfield-Westminster Open Space Foundation, Inc., a Colorado nonprofit corporation (the "Corporation"); and

WHEREAS, the Corporation shall be a separate corporate entity, with its Board of Directors composed of an equal number of Directors from Westminster and Broomfield and one director selected by the City Managers of Broomfield and Westminster; and

WHEREAS, Broomfield and Westminster anticipate that the Corporation will acquire the Property in its name and enter into Lease Purchase Agreement (the "Lease") with Broomfield and Westminster to acquire, finance and lease the Property; and

WHEREAS, there have been presented to the Council of the City: (1) the proposed form of Articles of Incorporation(Articles) for the Corporation and (2) the proposed Bylaws (the "Bylaws") of the Corporation; and

WHEREAS, the Council has determined it necessary to authorize the execution of the Articles of Incorporation, approve the Bylaws and provide for the Board of Directions of the Corporation.

**THE CITY OF WESTMINSTER ORDAINS:**

**Section 1.** That the recitals hereto are hereby ratified, confirmed and incorporated herein by reference.



**Section 2.** That the Articles of Incorporation of The Broomfield-Westminster Open Space Foundation, Inc., a Colorado nonprofit corporation, are hereby approved, subject to the approval of the Articles of Incorporation by Broomfield. The City Attorney and the City Manager are authorized and directed to take all necessary or appropriate action toward the execution, delivery and filing of the Articles of Incorporation and the creation and organization of the Corporation.

**Section 3.** That the Bylaws of the Corporation are hereby approved, subject to the approval of the Bylaws by Broomfield.

**Section 4.** That the Board of Directors of the Corporation shall be composed of an equal number of directors from Broomfield and Westminster and one director selected by the City Managers of Broomfield and Westminster. The Directors shall include: the Mayor of Broomfield, the Mayor of Westminster, the City and County Manager of Broomfield, the City Manager of Westminster, one councilmember of Broomfield, and one councilmember of Westminster. Westminster and Broomfield shall select one alternate councilmember to serve during absences of its appointed councilmember. The terms of such Directors shall expire when such Directors are no longer elected or appointed to their respective offices and positions. Except for councilmembers appointed by Broomfield and Westminster in the discretion of their respective city councils, the successors to such offices and positions shall become Directors of the Corporation. In addition the City and County Manager of Broomfield and the City Manager of Westminster shall appoint one director not elected or employed or a resident of either Broomfield or Westminster. The term of such director shall be 3 years or until a successor is appointed. Such director may be removed by a majority vote of the entire Board of Directors. The mayors shall act as Co-Chairpersons of the Board of Directors and Co-Presidents of the Foundation.

**Section 5.** That should any one or more sections or provisions of this ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

**Section 6.** That this ordinance, as adopted by the City Council, shall be numbered and recorded in the official records of the City. Its adoption and publication shall be authenticated by the signature of the Mayor and the City Clerk, and by the certificate of publication.

**Section 7.** That this ordinance shall take effect upon the date that the City and County of Broomfield finally adopts this same form of ordinance, and after its passage on second reading.

**Section 8.** The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of October, 2005. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 7th day of November, 2005.

**Davia - Dixon**

**A BILL FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL, GENERAL RESERVE, GENERAL CAPITAL IMPROVEMENT AND UTILITY FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$82,941,554 is hereby increased by \$1,073,428 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$92,808,644. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover funds to cover the write-off of the loans to Westminster Economic Development Authority.

Section 2. The \$1,073,428 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1000.40020.0000	\$7,863,725	<u>\$1,073,428</u>	\$8,937,153
Total Change to Revenues			<u>\$1,073,428</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	10010900.79400.0000	\$0	<u>\$1,073,428</u>	\$1,073,428
Total Change to Expenses			<u>\$1,073,428</u>	

Section 3. The 2005 appropriation for General Reserve Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,744,350 is hereby increased by \$990,858 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$9,335,208. The actual amount in the General Reserve Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover to cover the write-off of the loans to Heritage Golf Course.

Section 4. The \$990,858 increase in the General Reserve Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1100.40020.0000	\$7,572,500	<u>\$990,858</u>	\$8,563,358
Total Change to Revenue			<u>\$990,858</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	11010900.79400.0000	\$0	<u>\$990,858</u>	\$990,858
Total Change to Expenses			<u>\$990,858</u>	

Section 5. The 2005 appropriation for General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$1,461,710 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$33,818,228. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary

from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover to offset the write-off of the loans to Legacy and Heritage Golf Courses.

**Section 6.** The \$1,461,710 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$25,373	<u>\$1,461,710</u>	\$1,487,083
Total Change to Revenue			<u>\$1,461,710</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	75010900.79400.0000	\$0	<u>\$1,461,710</u>	\$1,461,710
Total Change to Expenses			<u>\$1,461,710</u>	

**Section 7.** The 2005 appropriation for the Water Portion of the Utility Fund initially appropriated by Ordinance No. 3162 in the amount of \$28,394,843 is hereby increased by \$1,613,308 which, when added to the fund balance as of the City Council action on November 14, 2005 will equal \$35,363,145. The actual amount in the Water Portion of the Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This change is due to the appropriation of carryover to offset the write-off of the interest portion of the loan to the Westminster Economic Development Authority.

**Section 8.** The \$1,613,308 increase in the Water Portion of the Utility Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2000.40020.0000	\$5,351,548	<u>\$1,613,308</u>	\$6,964,856
Total Change to Revenue			<u>\$1,613,308</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Exp – Misc	20010900.79400.0000	\$0	<u>\$1,613,308</u>	\$1,613,308
Total Change to Expenses			<u>\$1,613,308</u>	

**Section 9. – Severability.** The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

**Section 10.** This ordinance shall take effect upon its passage after the second reading.

**Section 11.** This ordinance shall be published in full within ten days after its enactment.

**INTRODUCED, PASSED ON FIRST READING, TITLE AND PURPOSE ORDERED PUBLISHED** this 24<sup>th</sup> day of October, 2005. **PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED** this 7<sup>th</sup> day of November, 2005.

ORDINANCE NO. 3252  
SERIES OF 2005

COUNCILLOR'S BILL NO. 67  
INTRODUCED BY COUNCILLORS  
DITTMAN – DAVIA

**A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH METRO NORTH CHAMBER OF COMMERCE IN WESTMINSTER**

WHEREAS, the successful attraction of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, Metro North Chamber of Commerce plans to complete a tenant finish in the First Tier Bank building at Country Club Village; and

WHEREAS, a proposed Business Assistance Package between the City and Metro North Chamber of Commerce is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

**THE CITY OF WESTMINSTER ORDAINS:**

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into a Business Assistance Package with Metro North Chamber of Commerce. in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

Section 2. Declaration of Emergency. In order to meet the Metro North Chamber of Commerce's construction and move-in deadline, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City.

Section 3. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon its adoption and passage.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on November 7, 2005.