



STUDY SESSION MEMORANDUM

TO: Mayor and Members of City Council

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DATE: August 10, 2023

SUBJECT: Study Session for August 10, 2023
Affordable Commercial Program Development

EXECUTIVE SUMMARY

The purpose of this study session is to provide context concerning existing city programs and efforts to address the cost of doing business in Boulder, including the cost of leasing commercial space, and receive Council feedback and direction on expanding these efforts to develop an Affordable Commercial Pilot Program.

KEY ISSUES IDENTIFIED

The City of Boulder is home to more than 7,500 businesses, the majority (96%) of which are small businesses with fewer than 50 employees. Boulder's community relies heavily on the success of our small businesses. Many small businesses serve as our neighborhood anchors; provide critical goods and services, provide jobs for local residents, and generate sales taxes to help fund city services. In addition, many of Boulder's small businesses add to Boulder's neighborhood character through the provision of unique shopping or dining experiences or arts and culture offerings that benefit residents, workers, and visitors across a broad spectrum of the community.

Despite the community's positive reputation as a business and entrepreneur-friendly locale, small businesses continue to report a myriad of pressures challenging their sustainability including commercial space availability and expense. Most of the city's small businesses lease commercial property on a triple-net (NNN) lease basis and operate on tight profit margins. NNN lease arrangements pass through property operating expenses, property taxes, and insurance to tenants. Concerns about the cost of commercial space in Boulder are frequently heard from small business owners and economic vitality partners and were expressed in the [2018 Downtown Boulder Retail Vibrancy Study](#), 2019 [Citywide Retail Study](#), and [Community Cultural Plan](#). These issues were highlighted in prior memos provided for City Council including the [2020 Report on Small Business Support](#) and two summaries reflecting the business impacts of the ongoing COVID-19 pandemic (April 2020 and December 2020).

The need for an affordable commercial program in Boulder has evolved. There have been previous efforts within the city to address the rising cost of commercial space. Given the now post-pandemic environment we live in, and the need to boost economic recovery and relieve pressures faced by small businesses, we see a key opportunity to leverage our partnerships and resources to formalize the development of an Affordable Commercial Pilot Program.

Questions for Council

1. Does council support staff's exploration into the development of an Affordable Commercial Pilot Program?
2. Does council have any questions about the proposed next steps?

BACKGROUND

Council has previously expressed support for initiatives that help the financial sustainability of small businesses and nonprofits in Boulder. Various city plans such as the Boulder Valley Comprehensive Plan, the Citywide Retail Study, the Transit Village Area Plan, and the East Boulder Subcommunity Plan, all outline visions for a more economically vital community. The [Boulder Valley Comprehensive Plan](#) (BVCP) calls for a balanced approach to a healthy economy, maintaining "the outstanding quality of life enjoyed by existing residents and businesses while supporting Boulder's diverse mix of small and mid-sized businesses, nonprofits, and several large employers." The plan points out "rising costs of commercial space and housing can affect businesses and their ability to recruit and retain new employees" and includes a policy to "further explore and identify methods to better support businesses and non-profits that provide direct services to residents and local businesses by addressing rising costs of doing business in the city, including the cost of commercial space."

A 2021 survey of local businesses conducted by RRC Associates on behalf of the city found that while 65% of businesses consider the cost of space for their business to be

“very important”, only 1% rated the cost of commercial space in Boulder as “excellent” and 35% rated it as “poor”. Additionally, the 2018 retailer study that was conducted as part of the Citywide Retail Study, updated in April 2020, noted that a majority of respondents to the Citywide Retail Study retailer survey (62%) indicated they feel it is becoming more challenging to do business in Boulder.

The Citywide Retail Strategy also highlights the cost burden of NNN lease arrangements. In October 2019, staff engaged a local economic consultant to understand cost factors that might be contributing to the perception among retailers that it is becoming more challenging to do business in Boulder. As part of its research, the consultant looked at four commercial districts in Boulder: those with high and low vacancy, and those with a general improvement district (GID) mill levy that contributes to occupancy Item 6A - Citywide Retail Strategy - Page 23 Attachment C - Strategy Development Analysis Summary costs and without a GID. The report calculated “triple-net” occupancy costs as a percentage of sales: a key factor for a retailer’s ability to sustain their business. An industry rule of thumb is to keep this figure at or below 10 percent. All four of Boulder commercial areas exceeded this target.

District	Vacancy Rate	Average Asking Rent/Sq. Ft.	Total Occupancy Cost/Sq. Ft.	Occupancy Cost as % of Sales
*CAGID	3%	\$31.25	\$43.25	11%
*BVRC/29 th St.	8%	\$45.75	\$63.75	15%
*UHGID	10%	\$27.50	\$40.50	18%
Basemar Center	13%	\$30.25	\$39.50	15%

**Central Area General Improvement District, Boulder Valley Regional Center, University Hill General Improvement District*

The consultant’s data supports the goals of the BVCP and prior direction from council to expand affordable commercial opportunities to retain small and independent retail in Boulder by implementing programs and efforts that bring down the high occupancy costs.

Current efforts to promote more affordable commercial spaces include the inclusion of below-market space for lease to eligible tenants at the 30Pearl project in the Boulder Junction area and the Macy’s redevelopment project at the Twenty Ninth Street outdoor shopping center in central Boulder. Shared coworking spaces such as Galvanize Boulder, Kiln Boulder, and Black Lab Sports Lab and spaces such as the one shared by Boxcar Coffee Roasters, Dedalus Wine Shop and Market, and Food Lab on Pearl Street are other examples of a growing interest in reimagining commercial space.

Additionally, the city has implemented several previous and current programming and initiatives to help address the rising cost of commercial space in Boulder. Some of those programs and efforts are outlined below:

- **Direct provision of affordable leases** – For over 50 years, the city has leased commercial space to small businesses, nonprofits, and arts organizations at below-market rates. A listing of city-owned spaces currently being offered at below-

market rates is provided in **Attachment B**. The spaces are managed respectively by the city's Office of Arts and Culture, Community Vitality Department, Facilities and Fleet Department, and Parks and Recreation Department. In downtown Boulder, Community Vitality manages 12 commercial spaces owned by the Central Area General Improvement District (CAGID), including commercial spaces on the ground floor of CAGID-owned parking structures.

- **Mobile Vending Cart Program** – The City issues a limited number of mobile vending cart (MVC) permits each year to enhance the vitality and visual appeal of the Pearl Street Mall. These annual permits are issued for both retail and fast-casual dining options, targeting the entrepreneurial small business startup at well below market rates (\$2,470 in annual fees collected in 2023). The city actively promotes this opportunity via our partnerships with the Latino Chamber, NAACP, Leeds Business, Boulder Chamber, and the Small Business Development Center. During the 2023 vendor season, the BIPOC community represented 40% of all owner/operators.
- **CCRS Funding** – The Community, Culture, and Safety Tax, now named the Community, Culture, Resilience, and Safety (CCRS) Tax, was originally approved by voters in 2014 and extended in 2017 through 2021. In November 2021, Boulder voters approved of a 15-year extension. The ballot language specifies that 10% of CCRS tax revenues are dedicated to support non-profit organization projects that support the community. Emphasis on this iteration of the tax is placed on the ability of the program to approach space affordability and sustainability challenges for non-profits. With that, three types of grants will be rolled out: 1) Capacity Building, Planning, and Investments with a third-party Technical Assistance to work with the non-profits towards a long-term sustainable space solution, 2) Direct Capital Investments for 'shovel ready' projects, and 3) Community Facilities and Capital Planning. Maintaining three distinct grant types enables several pathways for different sizes of organizations to address their capital planning and infrastructure needs.
- **30Pearl** – To help address concerns expressed by businesses regarding the high cost of leasing commercial space in Boulder, the city included a below market commercial pilot in one quadrant of the 30Pearl project being developed in partnership with Boulder Housing Partners (BHP). In addition to permanently affordable rental housing, mixed with market rate housing and public benefits such as public art and a pocket park, the project will include below market commercial space for small, local and independent businesses. The covenant for this project is included as **Attachment C**.

In September 2017, council authorized the City Manager to convey ownership of Quadrant 1 of the site to Morgan Creek Ventures, LLC to develop market rate residential units and ground floor commercial. A covenant requires that half of the commercial space, or 9,300 square feet, will be leased at below market rate rents

as a pilot administered by the city's Community Vitality Department. Key elements of the covenant include:

- *Below-Market Rent* – Lease rates for the affordable space are restricted to 75% of prevailing market rate, which may be adjusted annually by no more than 3% or the rate of inflation as measured by the Consumer Price Index and recalibrated every five years. Tenants will be responsible for improvement costs and operating costs such as property taxes, insurance and association fees, maintenance, utilities, property management, and janitorial services.
 - *Smaller Spaces* – Below-Market rate units will consist of individual units averaging no more than 3,000 square feet or a larger area available for coworking areas.
 - *Eligible Businesses* – To be eligible for leasing below-market rate space at 30Pearl, a business must be small (annual gross revenue under \$2 million) and either local (principal place of business in Boulder County and at least half of its employees work in Boulder County) or independent (at least 50% of business is owned by people whose principal residence is located within Boulder County).
- **Macy's Redevelopment Project** – Similar to the 30Pearl project, the city established another covenant at 1900 28th Street, the previous site of a Macy's department store within the Twenty Ninth Street mall, which requires no less than 7,500 square feet in gross leasable area of commercial space for which the owner will charge below-market rate rent. The covenant for this agreement is included as **Attachment D**.
 - **CU Real Estate Center Research Project and Report** – In Fall 2022, Community Vitality staff established a partnership with the CU Real Estate Center and a group of CU MBA candidates to explore options to enhance and implement affordable commercial policies and programs throughout the city. Throughout the academic year, the student team conducted extensive research and stakeholder interviews to ultimately develop a proposal aimed at identifying strategies to unify the City's approach to implementing affordable commercial policies and programs. They finalized their proposal in July 2023, which is included as an attachment to this memo, **Attachment A**. It is important to note that although the report proposes some creative and thoughtful ideas, the development of a formal pilot program would involve further research and analysis in helping to determine what is feasible given the local context, the resources available, and the community need.

The topic of affordable commercial has been a growing priority at the policy level in Boulder in recent years. While an ordinance to require affordable commercial for projects that requested bonus floor area and height was explored in 2021, it was not approved by council and further research and analysis by staff was recommended. Since then, discussions have continued about the potential for finding other ways to fund programs

for affordable commercial including using a similar construct to how the city funds permanently affordable housing. Other options that have been discussed and will likely be raised in the future include creating a capital program for affordable commercial space that would consist of a capital facility impact fee intended to defray the projected impacts of proposed developments on affordable commercial improvements. This would be imposed on developments seeking additional height, density or floor area in buildings and would include passing an excise tax on bonus floor area earmarked to support an affordable commercial fund.

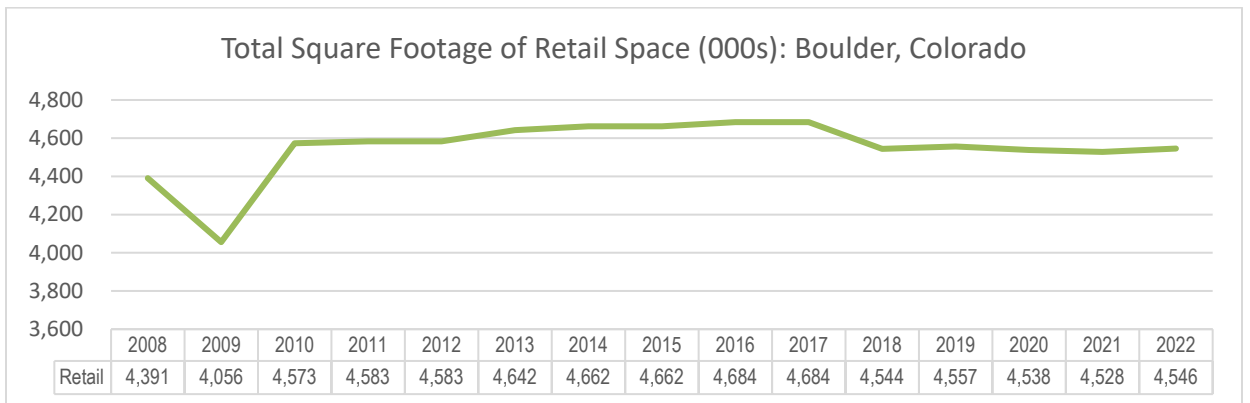
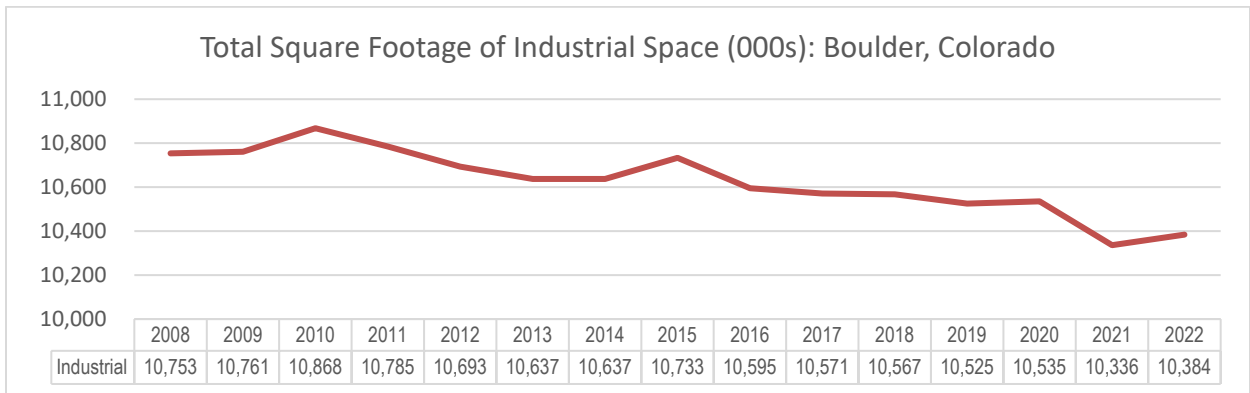
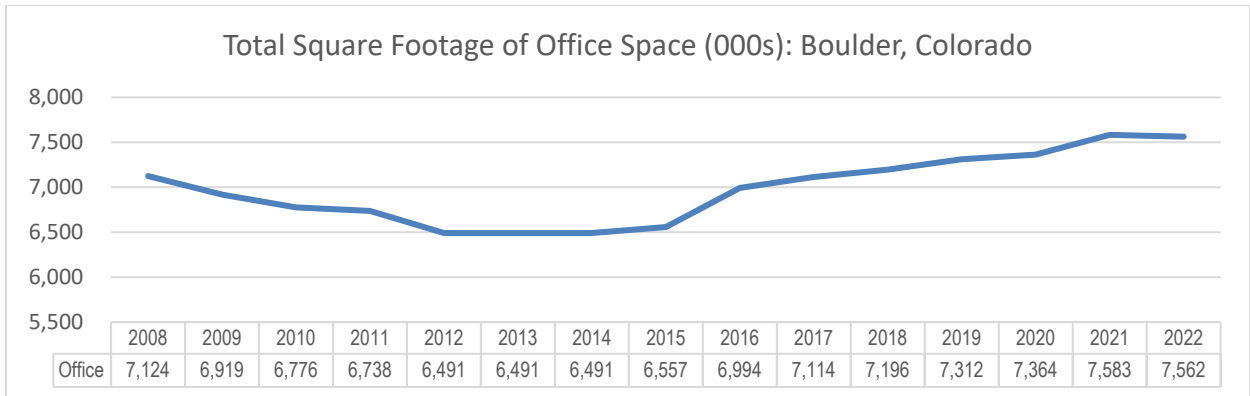
ANALYSIS

The city of Boulder covers 27.9 square miles. The city has a compact, interconnected form designed to help assure the community's environmental, social and economic sustainability while supporting cost-effective infrastructure and facility investments, high level of multimodal mobility and easier access to employment, recreation, shopping and other amenities, and Boulder's strong image as a distinct community. City policies related to its built environment help shape the form and quality of future growth, protect historic and environmental resources, and preserve neighborhood character.

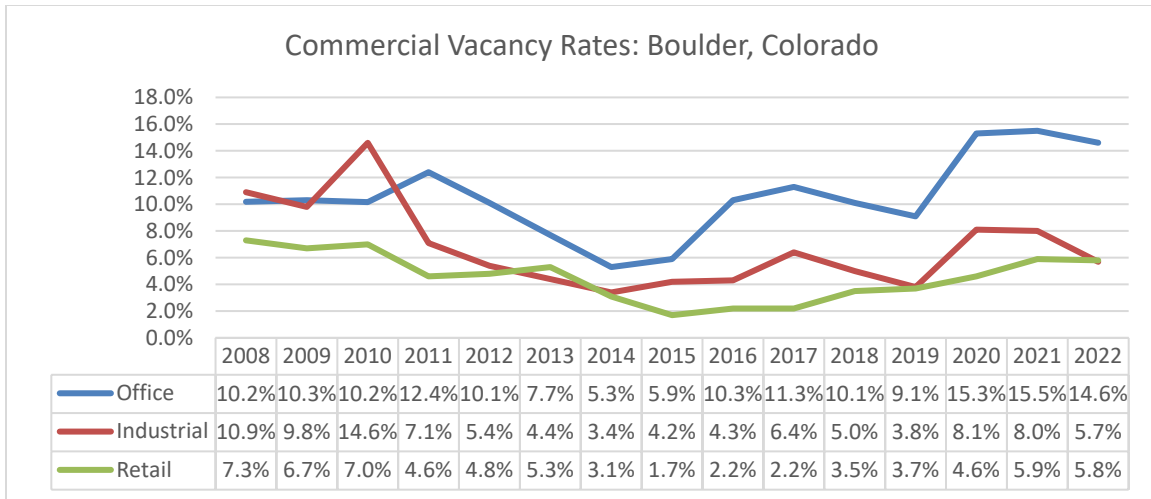
These policies are among the many factors that affect the availability and cost of commercial space in Boulder. Other factors include, but are not limited to:

- Demand for commercial space
- Commercial property values
- Property taxes assessed on commercial property
- Cost and time required to develop or redevelop commercial properties
- Construction and materials costs

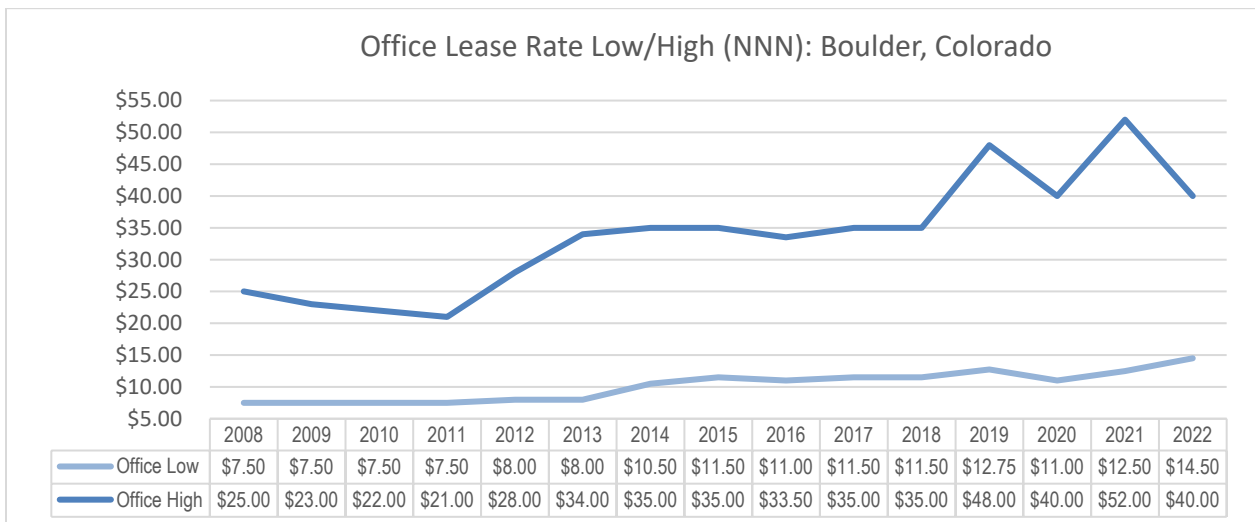
According to data published by Newmark Group's Denver office, the total commercial space available in the city of Boulder has remained mostly flat over the past fifteen years, increasing by only one percent from 22,268,565 square foot in 2008 to 22,491,676 square foot in 2022. During that time, the total square footage of office space increased 6%, industrial space decreased by 3%, and retail space increased 4%. Changes in the supply of office and industrial space reflect conversions of industrial spaces in some parts of the city into office uses.

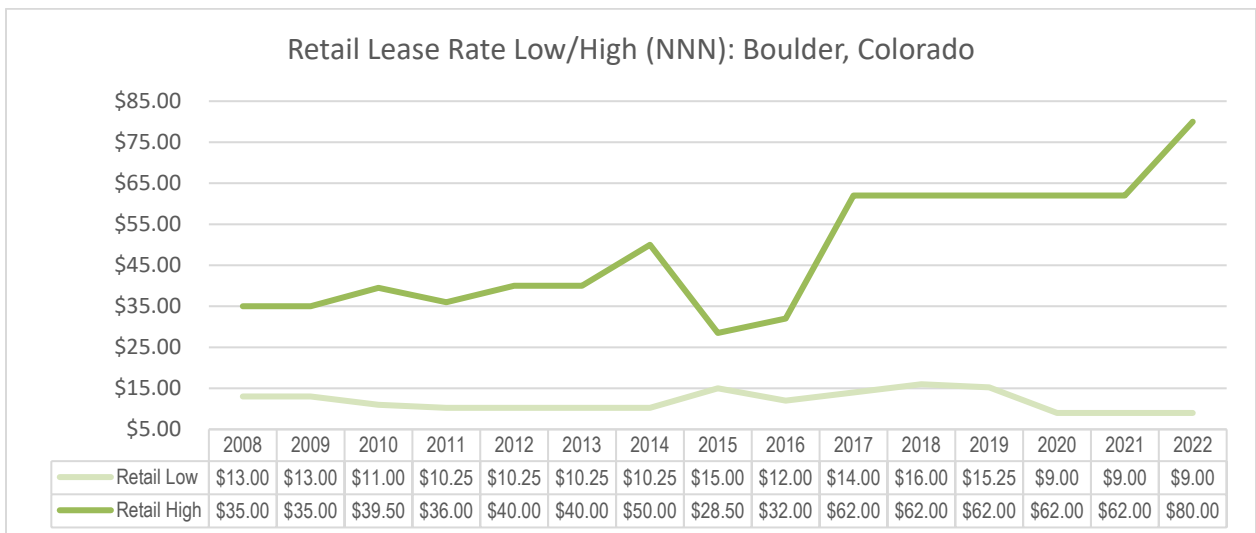
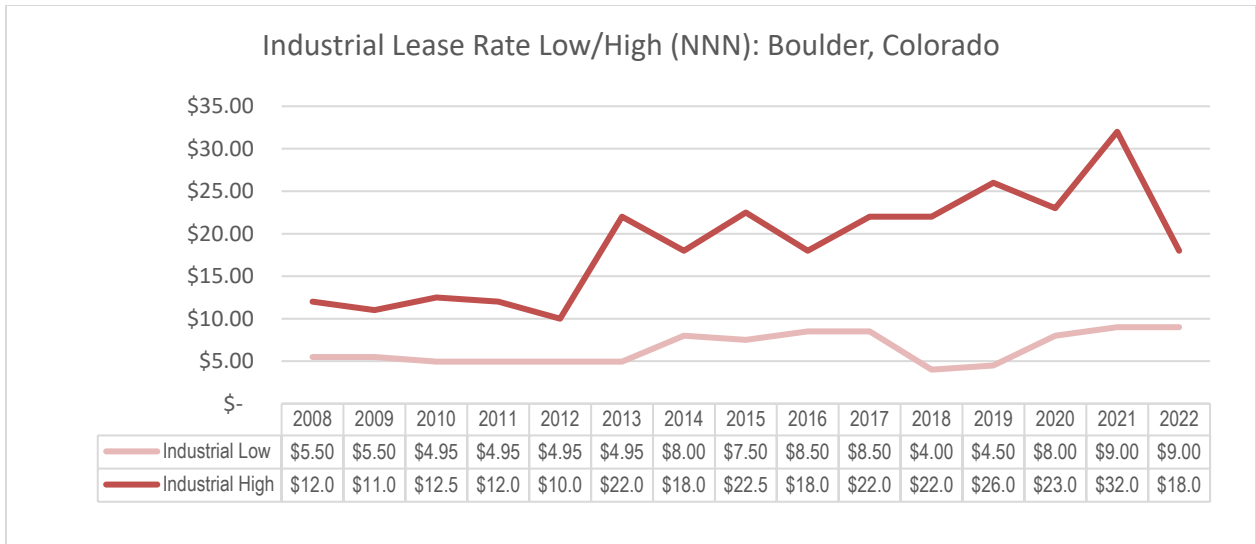


While the supply of commercial space has remained relatively constant, Newmark commercial real estate vacancy rate data indicates demand has fluctuated, as the table below shows. Most recently, vacancy rates decreased between 2021 and 2022 after increasing significantly in 2020. The office vacancy rate in Q4 2022 was 14.6% compared to 15.5% a year earlier. The vacancy rate for industrial space was 5.7% (down from 8% in 2021) and the retail vacancy rate was 5.8% (down slightly from 5.9% in 2021). Note: these figures do not include space available for sublease.



Commercial lease rates over the past fifteen years have also fluctuated and vary widely by submarket and type of space. Comparing Newmark data showing the low to high range of commercial lease rates from 2008 to 2022 show an overall increase in lease rates for office, industrial and retail spaces. In 2021, rates for office space were as high as \$52/square foot/year, \$32/SF/year for industrial space, and \$62/SF/year for retail space in Boulder. While the highest lease rate for office space and industrial space declined, the highest rate for retail space increased in 2022.





Efforts to find ways to decrease the cost of leasing commercial space is becoming a more common tool to make commercial real estate more accessible and affordable for small businesses. Several cities have implemented these strategies. In Portland, Oregon, an affordable commercial tenanting program, referred to as Prosper Portland, provides equitable access to space for emerging and small businesses. The program offers access and assistance to qualified businesses in the form of an application process, access to space, and in some cases additional incentives, such as reduced rent, tenant improvement contributions and technical assistance to lower barriers to entry for emerging and small businesses. The Urban Redevelopment Authority of Pittsburgh offers rent relief to small businesses through landlord grants, while Mainstreet Launch in Oakland, CA, offers more affordable capital and small business loans. Detroit's Motor City Match program connects businesses with landlords to further facilitate accessibility to commercial space.

After researching existing strategies and interviewing local stakeholders with expertise in commercial real estate and affordable commercial concepts, the CU student team

developed a proposal identifying specific strategies for the city to consider implementing. Their research suggests that Boulder is a promising environment for the implementation of an affordable commercial assistance program. Various city plans, such as the Boulder Valley Comprehensive Plan (BVCP), the Transit Village Area Plan, and the East Boulder Subcommunity Plan, outline visions for a more economically vital, accessible, and connected city. For example, the East Boulder Subcommunity Plan calls for adaptive reuse and redevelopment to provide affordable commercial space when possible and provide an interactive ground floor environment that contributes to neighborhood character. As outlined above, there are already several ongoing efforts to support small businesses particularly around affordable commercial space, such as the 30Pearl and Macy's projects. Shared co-working spaces and business accelerator and incubator programs that provide physical space are also part of the local commercial real estate landscape. These existing studies, efforts, and initiatives, all highlight a broader community interest in establishing strategies that aim to support our small business community. Formalizing our approach to this work through the development of an Affordable Commercial Pilot Program will help unify our goals and directly address many of the economic challenges many small businesses in Boulder are facing today.

The CU report identifies a program they called 'ThriveBoulder' (the name of this program, if implemented, would be subject to change), that suggests the city provide affordable commercial space by entering into an agreement to lease commercial space at the market rate and subleasing that space to multiple tenants. Rather than directly subsidizing the rent, this program would make the space more affordable through offering smaller spaces to tenants. Additionally, the city would cover operating costs such as common area maintenance and tenant improvements. These programmatic benefits would significantly decrease costs for small businesses in comparison to if they were renting space under regular market conditions. Through partnerships, the city would also offer education and training to tenants at no cost to them. The report suggests that these micro-tenants would be selected through a formal review and selection criteria process that would determine their eligibility for participation in the affordable commercial program. Examples of the selection criteria include businesses be based in Boulder, the cost of rent must equal 40% or more of applicants' gross revenue, and annual revenues must be of at least \$92,000 to minimize risk to the city. Additionally, the report calls out an array of programmatic elements, including education and training to help their business grow and succeed, with an overarching goal of participants successfully graduating from the program and moving on to rent spaces at market rates outside of this shared space model.

Findings from the CU report align with suggestions from the Citywide Retail Strategy, which indicated that one way to decrease the share of retailer revenues that go toward occupancy costs is to reduce the size of space being leased. This can be done either through relocation to a smaller retail space or through co-locating in a larger retail space with other business operators. Boulder retailers and commercial property owners have already established this type of model in creative ways and developed new best practices for creating affordable spaces, examples include businesses such as Boxcar, Avanti Food

& Beverage, and Rosetta Hall. These spaces allow individual merchants to enter a market without taking on the risk of a lease on a large space.

RECOMMENDATIONS

- i. *Contract with a Program Administrator* – Staff is recommending that, as a next step for this work, beginning in 2024, we partner with a community organization to assist us in program development and administration, particularly focusing on formalizing the program and administering it thereafter. This may include assisting staff in developing program goals and options as well as identifying which community partners will be involved, qualified businesses, duration, and leasing standards. If council supports staff's recommendations, this would be facilitated through a formal RFP process.

The affordability of commercial space is impacted by several factors and addressing the issue will require a multipronged approach. Given the nature of this type of work, staff sees partnering with a local community organization as an opportunity to increase staff capacity while providing additional expertise and perspective. Bringing in outside expertise with the support and knowledge of how to administer this type of program is a key next step.

- ii. *Funding* – The city's budget includes \$100,00 annually funding through the Central Area General Improvement District (CAGID) to support capital investments that would help address the affordability of commercial space in the district. The current balance of that funding \$400,000 (including \$300,000 carried over from previous years and \$100,000 from the 2023 budget).

Additionally, \$380,000 in American Rescue Plan Act (ARPA) Tranche 3 funds is available to help fund the development of pilot programs to address the increasing cost of space for businesses in Boulder and to enhance the affordability and availability of goods and services that support the needs of all community members.

NEXT STEPS

- i. **Recommended Near Term Strategy**
 - a. *Cross departmental coordination* – If council supports staff's recommendations to develop an Affordable Commercial Pilot Program, an immediate next step will include Community Vitality facilitating coordination among other departments to assess roles and responsibilities,

as well as coordinate on the development of a scope of work that would be used in an RFP to contract with a community partner for program administration.

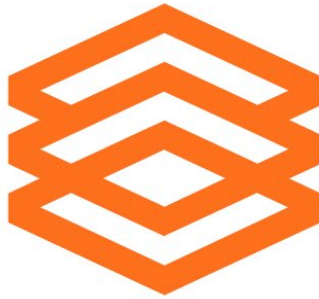
- b. *Develop and release RFP for community partner work* – As referenced above, a key next step will include bringing on a program administrator to develop a formal implementation and administration strategy for this type of program. The goal is to enter into an agreement with a community organization by the end of 2023 with work beginning in 2024. This effort would incorporate broad community engagement and the city's racial equity instrument in the development and implementation of the Affordable Commercial Pilot Program.
- c. *Outreach to potential partner organizations* – The success of an Affordable Commercial program will require building upon our key partnerships for support and guidance, such as the Small Business Development Center, Downtown Boulder Partnership, property managers, and more. Whether it be to provide potential education and training to program participants, recruit interested and qualified tenants, or property management, collaborating with the city's partner organizations, in addition to contracting with a primary community partner, is an important next step in the development of this program.
- d. *Stakeholder check-ins* – Once we engage with a community partner and staff begin to develop a detailed plan for what an Affordable Commercial Pilot Program will look like, staff will check in regularly with various Boards & Commissions as well as City Council for further feedback and direction on program development and implementation. It is anticipated that these check-ins will be facilitated beginning in the second quarter of 2024.

ATTACHMENTS

- A. CU Real Estate Center Affordable Commercial Research Report
- B. City-Owned Spaces Listing
- C. 30Pearl Covenant
- D. Macy's Covenant



University of Colorado
Boulder



ThriveBoulder

AFFORDABLE COMMERCIAL ASSISTANCE PROGRAM

Report by
Charles Biddle-Porter, John Ahlering, and Jesse Frazier

With Support from Ryan Wilk

Abstract

Commissioned by the City of Boulder, the CU Real Estate Center (CUREC) embarked on a mission to expand and improve affordable commercial policies and programs throughout the City. The term 'affordable commercial' as defined by the City, encompasses office, industrial, flex, and retail spaces, incorporating both private and non-profit applications. Under the guidance of community sustainability and equity principles, CUREC's research team has closely interacted with private market participants and City officials. Their aim has been to identify strategies to enhance the availability and affordability of commercial space for historically underrepresented segments within the Boulder community, including minority and female-owned businesses, as well as non-profits experiencing financial hardship in the existing market conditions. Collaborating closely with the City of Boulder's Community Vitality Department, the CUREC research team is poised to present their comprehensive findings, recommending a holistic macroeconomic approach for affordable commercial policies. Moreover, they propose unique microeconomic pilot solutions specifically designed for the Central Area General Improvement (CAGID) District.

Definition

"Affordable Commercial" refers to office, retail, industrial, and flex spaces that are financially accessible and sustainable for local, underserved businesses including minority and female-owned enterprises, startups, and non-profit organizations. These spaces should be priced at a rate that is below the prevailing market average, taking into account the unique constraints and needs of these businesses. The intent of affordable commercial is to nurture a diverse, vibrant, and inclusive local economy, fostering opportunities for businesses that contribute to the socio-economic equity and vitality of the community. This definition underscores the City's commitment to leveling the commercial playing field and providing a supportive environment for all businesses to thrive, regardless of their size, nature, or the socio-economic background of the owners. We have determined the best method for the City to help in this regard is to assist in the operating costs of a lease rather than directly subsidize the rent, such as property management and buildout costs.

Market Research and Analysis

Office

Boulder is an attractive market that boasts a high quality of life along with ample career opportunities. The University of Colorado Boulder has proved to be a boon for technology startups and has aided in creating a pool of skilled workers. Many big tech companies have entered the Boulder market with the acquisition of locally based startups. For example, Google purchased Boulder software company, Last, in 2006, which led to the tech giant building out a Boulder campus, and more expanding in the last decade.

Boulder derives an unusually large amount of its demand from tenants connected to the tech sector, which is reeling from the high interest rate environment. The vacancy rate peaked at 12.5% in 22Q1, the highest rate recorded dating back to 2006. However, recent move-ins have resulted in contracting the current vacancy rate to 11.7%.

The City has also become a landing spot for biotech companies with many occupying a mix of office and flex buildings. Boulder's high concentration of flex space, many of which are outfitted with high-end lab space, continues to attract tenants to the area.

Mixed-use developments have been particularly popular in the Boulder Submarket with added retail space complementing the main office and residential components. Developed in a qualified opportunity zone, RÊVE Boulder, a mixed-use development, delivered in 21Q4. The project includes office space, 242 apartment units, and ground floor retail space. Google purchased the 148,500-SF office component of the development in September as an extension of its existing Pearl Place campus, located directly across the street, and took occupancy of the space in 22Q2.

In addition to increasing concessions and offering shorter-term deals, Boulder landlords were quick to drop base rates at the onset of the pandemic amid significant absorption losses and rising vacancies. The drop in rates bottomed out in late 2020 and landlords are now slowly regaining pricing power, albeit marginally. Annual office rents in Boulder are now on the upswing, growing by 3.5%, slightly ahead of the national benchmark of 3.3%.

Boulder is still a relatively affordable market and has benefitted as some investors have been priced out of core gateway markets. Boulder has attracted investors in the pandemic era because it is less vulnerable to economic upheavals due to its diverse and highly skilled workforce, as well as the University of Colorado Boulder and government labs offering steady employment in the community.

Retail Summary

Strong absorption gains in the last six months compressed vacancies to 5.9% after peaking at 7.1% in 21Q3. Tenants including Ulta, DJ's Watering Hole, and 300 Prime have signed leases in the last year exceeding 5,000 SF. Positive absorption is projected through the next year, which will tighten vacancies further.

Grocery-anchored properties have remained in high demand. Whole Foods signed the largest lease in the pandemic era. The natural food provider opened a new location at the Table Mesa Shopping Center, signing on for 32,000 SF in July 2020. Whole Foods occupied the former

Lucky Market's location after the national chain closed due to bankruptcy. The site garnered significant tenant interest due to its central Boulder location, the size of the property, and the amount of surrounding complementary businesses that attract shoppers. The grocer joined roughly 60 other tenants at the 225,000-SF shopping center, including Wells Fargo and Great Clips. Lucky's Market in Longmont is also being replaced. Boulder-based grocery chain Alfalfa's will occupy 23,000 SF at the site located at 700 Ken Pratt Blvd.

Conditions have improved for Boulder's retail sector, driving asking rates higher. While the sector still faces challenges related to the rise of e-commerce, annual rents are up by 3.5%.

A moderate construction pipeline has helped to improve Boulder retail fundamentals. 110,000 SF is currently under construction.

High land values, the scarcity of open land in addition to zoning and planning rules can make the City of Boulder a difficult place to build in. Large-footprint tenants seeking to establish a presence in the core part of the City may need to demolish an existing building to find buildable land. A host of key demographic and economic metrics such as job, income, and population growth are behind a strong consumer base. Boulder has the highest median income in the Front Range and has posted stronger employment and population growth than the national average over the past five years.

Retail Sales

Boulder's thriving economy and strong demographic trends have kept investors bullish on the outlook of the local market. Based on CoStar's Market Pricing, retail values continued to steadily climb. Plenty of buyers are coming from out-of-state and have made some of the biggest splashes in recent transaction activity.

Arizona-based Kamby Real Estate purchased Lafayette Retail in December 2020 for \$5.6 million (\$621/SF) from Marino & Weiss, Inc. The 9,000-SF community center located at 1137 Diamond Cir. was 100% leased at the time of sale to tenants including Starbucks, Verizon Wireless, and MOD Pizza.

In the biggest trade in the past 12 months, Dunton Commercial LLC purchased The District, a 53,000-SF neighborhood center, from Flatirons Community Church for \$9.7 million (\$182/SF). When the deal closed in September, the center was fully leased to tenants including Flatirons Community Church, Button Rock Bakery, and Subway.

Research Summary

Our research into affordable commercial space and tenancing initiatives across the U.S. reveals diverse approaches and strategies to support small businesses and enhance economic vibrancy. From urban development to tenant selection, cities are using a variety of tools to make commercial real estate more accessible and affordable.

Several out-of-state implementations serve as excellent examples of these strategies. In Portland, an affordable commercial tenancing program provides equitable access to space for emerging and small businesses, often with incentives such as reduced rent and technical assistance. Insights from Prosper Portland reveal an investment focus on businesses owned by BIPOC (Black, Indigenous, and People of Color) under a master lease agreement. They offer an incubator program and technical assistance to help businesses thrive in a brick-and-mortar environment. Their model measures community benefit in terms of job creation, economic stimulation, and wealth creation for minority communities. The Urban Redevelopment Authority of Pittsburgh offers rent relief to small businesses through landlord grants, while Mainstreet Launch in Oakland, CA, offers affordable capital and small business loans. Detroit's Motor City Match program connects businesses with landlords to further facilitate accessibility to commercial space.

Key insights from interviews with local stakeholders such as Danica Powell, Scott Sternberg, John Tayer, and Molly Bayer have centered around community benefits, tenant selection, subsidy mechanisms, affordable housing, economic vitality, and the need for a more predictable and risk-reduced entitlement process. They suggest that the City of Boulder can be selective in choosing tenants, aiming for a vibrant downtown area with diverse retail. The City also has potential for further collaboration with small business groups and can leverage partnerships to fill vacancies. Mayor Brockett of Boulder provided further insights into challenges of establishing permanent affordability for commercial spaces. These include funding and target determination, defining "affordable" in a commercial context, and dealing with variable commercial space values across the City. Initiatives such as breaks on use tax and potential grants are being considered to incentivize businesses.

The local context of Boulder, Colorado, presents a promising environment for the implementation of an Affordable Commercial Assistance program. The City conducted a comprehensive citywide retail strategy that addresses small business costs, housing affordability, and unmet shopper needs, among others. Various City plans, such as the Boulder Valley Comprehensive Plan, the Transit Village Area Plan Phase II, and the East Boulder Subcommunity Plan, outline visions for a more economically vital, accessible, and connected City. There are ongoing efforts to develop affordable commercial space, such as the 30 & Pearl development and the Macy's project in the 29th St Mall. Shared and co-working spaces, including Salad Ground kitchens, Black Lab Sports warehouse, and Boxcar shared space, are also part of the local commercial landscape.

Given our research and the lessons learned from local and out-of-state programs, Boulder is in a unique position to implement an Affordable Commercial Assistance program. The substantial

foundation provided by these insights will guide the proposed program, its components, and how it could address the specific needs of Boulder's commercial landscape.

The Program - ThriveBoulder

ThriveBoulder can be broken into two core components, a shared workspace, and education and training. In the formation of this program we have looked to create a dynamic, minimum cost assistance package for small businesses and NGOs. There are many options to increase funding should funds become available.

Shared Workspace

ThriveBoulder's primary component is specifically targeted at providing affordable commercial space, without compromising market conditions. Under this program, the City will enter into a lease agreement for market rate space and sublease or license¹ that space to multiple small businesses or NGOs. Each micro-tenant will pay the market rate value of their portion of the unit, rent will not be subsidized by the City.² The micro-tenants will be able to use the space for 5 years at which point there will be a formal review (SEE BELOW). Businesses who have not graduated³ by the 5-year mark should be moved on so that a new small business or NGO can be afforded the opportunity. This master lease will protect landlords from the high risk of taking on affordable tenants and reduce the number of leases for one unit; both important points raised during our research. The two explored alternatives to a master-lease and sublease or license are offering under-utilized space in a City owned building and the purchase of a space for this program. Finding underutilized space may be advisable for the pilot program and will save the City from signing a master lease for a market rate unit. Purchasing a property would not be advised for the pilot program but could be explored after a successful pilot.

Formal Review

Participants in the shared space will be required to submit their financials alongside a community benefit document yearly. The community benefit document can be created looking at the City's Sustainability Resilience & Equity Framework and is intended to allow analysis of impact participants are having on their surrounding community. Both collections of documents should be reviewed by the City yearly to ensure participants are on track to a graduation at 5 years. All 5 of the submissions should be examined at the end of the program formal review.

¹ Licensing may give the City more control of the space and tenants.

² Rent subsidies were a red flag in much of our research, Prosper Portland went so far as to state they will never subsidize rent again due to the rabbit hole of spiraling costs it became on some of their properties.

³ We would like to see an organic departure at the 5 year mark or before and refer to this as a graduation. Ideally participants will grow to a point they can afford the market rate and need more space and therefore will move out of the shared space.

This review is intended to move on participants unless under extenuating circumstances such as if the business is providing a high degree of community benefit while not generating large revenues. The example given is a Shoe Repair shop who, by nature may not drive great returns or sales but its presence is a benefit to the community. Another scenario could be that all micro-tenants would like to stay in the space, this is acceptable but would see the financial support from the City cease, the tenants will take over the lease and the City will find a new unit to lease for new participants. In the event a Business or NGO has not grown to the point they are able to rent their own market rate space they should be moved on so the City can offer the unit to a new participant. This will ensure the City does not find themselves in a situation where they are spending limited resources on stagnating businesses. The City will additionally examine whether participants had been involved in the education and training courses provided and strong attendance would help the case of a participant wanting to remain. We expect participants to attend at least 3 of the quarterly seminars provided each year failure to do so would not help their case in the formal review. It is important the City be preparing the participants for the graduation and for this they can lean on the Education and Training component and partnerships formed.

Selection Criteria

The Shared workspace will only be available to Small Businesses and NGOs. While we feel the City should create a criteria for who they'd like to attract our recommendations are as follows:

- A requirement that cost of rent must equal 40% or more of applicants gross revenue
- Annual revenues of at least \$92,000
- Have been in business for at least two years
- Have at least one employee other than self
- Business should be located, or have originated in Boulder

The requirement of cost being above or equal to 40% of revenues is how we determine a business is in need of the space and not simply looking to take advantage of the program. Annual revenues of \$92,000 (USD) are the equivalent of the 40% metric when looking at \$24.55 psf for a 1500 sqft unit. The third and fourth criteria are to minimize risk of default of the participants. If a business were to enter the space and fail the City will be on the hook for their portion of the rent until a new participant is found, a scenario we'd like to avoid. Participants are required be from Boulder as we do not want outside businesses displacing those from Boulder. Once an applicant meets the above criteria they will be considered admissible. When there is available space the City should form a Selection Committee Board to handpick which tenants best fit the space. This committee should be a collection of public and private professionals. The committee should consider the highest and best use of the space. For example if there is a kitchen, restaurants should be the selected tenants, alternatively; if there is high foot traffic, retail would be best. While selecting tenants, the tenant mix should be considered. All selected tenants should be complementary to each other and the businesses neighboring them. Two competing tenants would be ill-advised, further our participants should be benefiting the community by their presence not competing directly with the neighboring businesses not enrolled in the program. When examining potential tenants, the zoning and permitted uses

should be looked at as this will make the permitting process more streamlined and reduce costs. Further the committee should consider the identity of Boulder. An original concern voiced by the City was maintaining part of what makes Boulder “Boulder” and this should therefore be a part of the committee's decision.

Provisions from the City

The City is required to provide assistance in this program. Beginning with oversight and management of the ThriveBoulder program but expanding to additional levels of support. For the pilot we recommend the City add staffing resources in planning and permitting to support this program and provide a higher level of service than what is provided to other applicants. This is because it is imperative to the success of the pilot that participants are able to operate as quickly as possible and expedited permits would greatly. Assistance could include but is not limited to exploring the potential of expediting permits for the shared workspace participants. With this we would like to see the City prepare a packet utilising existing or new templates instructing the participants how to complete their applications for permits or inspections. These templates can be included in a welcome packet. The welcome packet should additionally provide requirements of the participants, community benefit expectations, and the collection of educational and training resources offered. This packet should be provided to a business or NGO once they've been selected for the space. Resources collected that may be of benefit to others should be openly available to all interested parties. We recommend outsourcing the property management for the pilot.

Funding

The extent to which the City provides financial assistance will depend on available funding and success of a pilot. For the pilot we recommend the City uses existing funding to cover Application fees, Build-out costs, Common Area Maintenance, and Property Management fees. With these areas covered by the City the overall cost of the space to businesses will be reduced to approximately 80%, our initial metric for an affordable space. We have incorporated these funding recommendations in our model alongside a scenario analysis offering a dynamic model where the City can examine the impact of covering different areas of the overall costs. Under these recommendations we anticipate the total cost to a tenant for a 5 year pilot to be \$173,788 for a retail space and \$183,048 for an office space. The model is further examined on PAGE 10 of this memo. If the funding is available, the CU research team would recommend the City hire a dedicated employee to oversee this program and Affordable Commercial initiatives in Boulder, this we found to cost approximately \$150,000 per year. Due to the high cost we did not underwrite it in our model but believe it is worth considering.

Goals & Success Metrics

The primary goal of this program is to address the increasing cost of space faced by small businesses and NGOs in Boulder, this is what we initially set out to tackle and believe ThriveBoulder can achieve. The metric for this goal is the number of participants that successfully graduate from the program and move on to market-rate space. Our second goal is to increase the diversity and inclusion rates of Boulder's commercial businesses. This will be measured by the diversity of program participants. If the program is lacking in diversity, greater efforts should be made in marketing the program and in selecting participants. A third goal is to Teach new and useful skills to small business and NGO leaders. This is the goal of our education and training program and will use the metric of Attendance & Retention rate. If we are enjoying high rates we can be sure the courses are effective and of interest. In the case attendance and retention is lacking it is likely the case that provided material is not relevant and the content should be examined. Additional metrics that should be measured are the number of applicants to the program, the number of jobs created as a result of the program, and the community benefit provided through the program.

Education and Training

ThriveBoulder's educational component is a collection of resources and provision of training for all small businesses and NGOs in Boulder this should be non-excludable. We have looked to collect available online and local resources under one banner. The Small Business Administration offers hundreds of free courses for small businesses on their website. Local organizations in Boulder currently offering consulting services and assistance to our target audience should be contacted and their services could be incorporated. This component is an opportunity for partnerships and should not require funding beyond the time to collect the resources and present the packet to those in need. Further, following discussion with University of Colorado Boulder we have established the base of a partnership specific to the education and training. University of Colorado assist in through three different methods. First, the provision of students to assist small business owners and NGOs with topics such as Finance, Marketing, Strategy, and more. There exists several different student groups on campus presently offering services of a similar kind but no overarching body collecting these groups and linking them to the City, this is what we set to achieve. The second method the University can be of assistance if through quarterly seminars. For the cost of \$16000 (USD) per year the University can offer 4 seminars of 4 hours for 20-50 attendees. These seminars could be a great way to provide valuable and essential skills to our participants. The topics discussed in the seminars will be determined by surveys of participating businesses to ensure the content is relevant and useful but could include excel and financial planning for example. The third method discussed was the creation of a course for small businesses and NGOs, the curriculum would be developed from scratch and contain everything determined (by the City, university, and program participants) to be of value. It is important to note that this option would hold a much more significant price tag, one we were unable to obtain. While these three methods were specifically discussed, the University has expressed great interest in a partnership, the nature of which could exist outside of the three presented opportunities.

Partnerships

As discussed there are many opportunities for partnerships in this program. We feel the City should look at establishing and leaning on partners for support and guidance. This will lighten the workload on the City but will more importantly see the community more involved in the program. We have laid foundations to the partnership with the University of Colorado. We recommend looking for partners to support the education and training component of ThriveBoulder. Prosper Portland is partnered with the NGO MESO (Micro Enterprise Services of Oregon).

Financial Analysis

Thrive Boulder aims to take the typical lease of a commercial property and splits it up among sub-leased tenants. This process requires a little oversight from the City but ensures that the tenants can afford leasing space in Boulder. The City has the final say in which expenses they will cover and which expenses to pass down to the tenant. Thrive Boulder recommends that the City handles Common Area Maintenance (CAM), Tenant Improvements (TI), and the Management fee. Using this method, a 4,000 square foot retail property that leases out at \$28 per square foot Triple Net Lease (NNN) with these assumptions would cost the City \$165,000 over a 5-year period. Using these assumptions, we can save the tenants substantial costs on their lease. These savings are captured in the expense coverage from the city. The tenants are still paying Market Rates on their spaces, however the savings on operational expenses is what gets those tenants to be 80% of Market Rate. Like retail, Thrive Boulder recommends the same path forward for office. For a 4,000 SF office space at \$38 PSF NNN Lease, this would cost the City \$175,000 over the course of a 5-year period. The operational expense cost overruns to the City can be handled by funding meant for sustainability such as: The ARPA Fund, CCRS, and the CAGID Pilot fund. Through this financial plan, the City of Boulder is able to provide retail and office spaces to an underserved population of business owners at minimal expense to the City.

Key Assumptions

Retail

- Market Rent PSF: \$28
- Rent Growth Per Year: 3%
- Operating Expense Growth Per Year: 2%
- Commission Fees: 4%
- Capital Expenditures Reserve: 1%
- Common Area Maintenance: \$5 Per Square Foot Per Year
- Management Fee: 3%
- Insurance: \$2 Per Square Foot Per Year

Office

- Market Rent PSF: \$38
- Rent Growth Per Year: 3%
- Operating Expense Growth Per Year: 2%

- Commission Fees: 4%
- Capital Expenditures Reserve: 1%
- Common Area Maintenance: \$5 Per Square Foot Per Year
- Management Fee: 3%
- Insurance: \$2 Per Square Foot Per Year

These assumptions are based on market data from CoStar and can be adjusted to reflect more accurate market data if need be.

Scenario Overview

The CU Boulder Research team analyzed several scenarios to provide financial assistance to enrolled businesses/applicants for the City of Boulder to determine the most financially feasible strategy for the Thrive Affordable Commercial Pilot Program. This section will provide insight into anticipated cost projections for both Retail and Office Lease Applications.

Retail Lease Model: The Retail Lease model was developed using a 4,000 SF space split amongst three tenants which are labeled as AFC1, AFC 2, AFC 3. Each of these tenants will take a prorated portion of the total square footage to minimize the financial impacts of the proposed master lease.

Square Footage and and Price per Square Square Foot are listed below:

AFC 1: 1,200 SF Lease (30% of total square footage)

AFC 2: 2,000 SF Lease (50% of total square footage)

AFC 3: 800 SF Lease (20% of total square footage)

Total: 4,000 SF Lease (100% of total square footage)

Each of the proposed options for **Retail Leases** are listed below:

	<u>AFC 1</u>	<u>AFC 2</u>	<u>AFC 3</u>	<u>AFC 4</u>	<u>City % of Cost</u>
Retail Costs Savings for Sublease					
Reimburse All Expenses	70%	53%	81%		5%
Reimburse OPEX Only	71%	54%	82%		6%
Reimburse CAM, Mgmt, TI, Taxes	72%	56%	83%		10%
Reimburse CAM, Mgmt, and TI	75%	61%	85%		20%
Reimburse CAPEX Only	79%	67%	87%		32%

The financial model was prepared for a 5 year lease period and the total cost of the lease would be \$873,022 for the 4,000 Square foot retail space.

Retail Scenario 1:

This option provides the least amount of financial assistance for businesses enrolled within the Thrive Program. Leasees will be responsible for all triple net expenses throughout the five year lease period. Total savings over the 5 year period would be 70% of the total rental costs for AFC 1, 53% of the total rental cost for AFC 2, and 81% of the total rental cost for AFC 3.

Retail Scenario 2:

In Scenario 2, The City of Boulder increases financial assistance to tenants by removing reimbursement obligations for Capital Expenditures. Capital Expenditures include Tenant Improvements, Leasing Commissions and Capital Reserves. With increase financial assistance, tenants will have more financial flexibility and increase their financial viability within the Boulder Market. Projected savings over a 5 year period are: 71% of total market rent for AFC1, 54% for AFC 2 and 82% for AFC 3.

Retail Scenario 3:

In Scenario 3, tenants will reimburse the City of Boulder for Common Area Maintenance, Property Management Fees, Tenant Improvements, and Property Taxes. Tenants will not be reimbursed for capital reserve expenses, leasing commissions or insurance. This scenario increases financial assistance to each tenant slightly while ensuring the financial stability of the program throughout its duration. Projected savings over a 5 year period are: 72% of total market rent for AFC1, 56% for AFC 2 and 83% for AFC 3.

Retail Scenario 4:

In Scenario 4, tenants will reimburse the City of Boulder for Common area maintenance, management fees and tenant improvements. Scenario 4 is the proposed recommendation because it splits the cost of the master lease between the Thrive program tenants and the City of Boulder on an 80% - 20% basis. This allows each tenant to achieve significant savings while maintaining market rents in Boulder. Projected savings over a 5 year period are: 75% of total market rent for AFC1, 61% for AFC 2 and 85% for AFC 3.

Retail Scenario 5:

Scenario 5 will require tenants to only reimburse the City of Boulder for capital expenditures (Tenant Improvements and Leasing Commissions). This scenario offers the highest level of financial assistance to Thrive program participants and increases the financial obligations of the City. In this Scenario the City of Boulder will cover approximately 32% of the total master lease cost for the proposed 5 year period. Project savings for tenants over the same period are: 79% of the total market rent for AFC1, 67% of the total market rent for AFC2 and 87% of the total market rent for AFC3.

Office Model

Office Lease Model: The Retail Lease model was developed using a 4,000 SF space split amongst four tenants which are labeled as AFC1-A, AFC 1-B, AFC 2, AFC 3. Each of these tenants will take a prorated portion of the total square footage to minimize the financial impacts of the proposed master lease.

Square Footage and and Price per Square Square Foot are listed below:

AFC 1-A: 1,200 SF Lease (30% of total square footage)

AFC 1-B: 1,200 SF Lease (30% of total square footage)

AFC 2: 2,000 SF Lease (50% of total square footage)

AFC 3: 800 SF Lease (20% of total square footage)

Total: 4,000 SF Lease (100% of total square footage)

Each of the proposed options for **Office Leases** are listed below:

	<u>AFC 1 - A</u>	<u>AFC 1 - B</u>	<u>AFC 2</u>	<u>AFC 3</u>	<u>City % of Cost</u>
Retail Costs Savings for Sublease					
Reimburse All Expenses	77%	85%	41%	76%	4%
Reimburse OPEX Only	77%	86%	42%	76%	7%
Reimburse CAM, Mgmt, TI, Taxes	78%	86%	44%	77%	13%
Reimburse CAM, Mgmt, and TI	80%	87%	49%	79%	25%
Reimburse CAPEX Only	83%	89%	56%	82%	41%

The financial model was prepared for a 5 year lease period and the total cost of the lease would be \$ 742,971 for the 4,000 Square foot retail space.

Office Scenario 1:

This option provides the least amount of financial assistance for businesses enrolled within the Thrive Program. Leasees will be responsible for all triple net expenses throughout the five year lease period. Total savings over the 5 year period would be 77% of the total rental costs for AFC 1-A, 85% of AFC 1-B, 41% of the total rental cost for AFC 2, and 76% of the total rental cost for AFC 3.

Office Scenario 2:

In Scenario 2, The City of Boulder increases financial assistance to tenants by removing reimbursement obligations for Capital Expenditures. Capital Expenditures include Tenant Improvements, Leasing Commissions and Capital Reserves. With increased financial assistance, tenants will have more financial flexibility and increase their financial viability within the Boulder Market. Projected savings over a 5 year period are: 77% of total market rent for AFC 1-A, 85% of AFC 1-B, 42% for AFC 2 and 76% for AFC 3.

Office Scenario 3:

In Scenario 3, tenants will reimburse the City of Boulder for Common Area Maintenance, Property Management Fees, Tenant Improvements, and Property Taxes. Tenants will not be reimbursed for capital reserve expenses, leasing commissions or insurance. This scenario increases financial assistance to each tenant slightly while ensuring the financial stability of the program throughout its duration. Projected savings over a 5 year period are: 78% of total market rent for AFC 1-A, 86% of the total market rent for AFC 1-B, 44% for AFC 2 and 77% for AFC 3.

Office Scenario 4:

In Scenario 4, tenants will reimburse the City of Boulder for Common area maintenance, management fees and tenant improvements. Scenario 4 is the proposed recommendation because it splits the cost of the master lease between the Thrive program tenants and the City of Boulder on an 80% - 20% basis. This allows each tenant to achieve significant savings while maintaining market rents in Boulder. Projected savings over a 5 year period are: 80% of total market rent for AFC 1-A, 87% of the total rent for AFC 1-B, 49% for AFC 2 and 79% for AFC 3.

Office Scenario 5:

Scenario 5 will require tenants to only reimburse the City of Boulder for capital expenditures (Tenant Improvements and Leasing Commissions). This scenario offers the highest level of financial assistance to Thrive program participants and increases the financial obligations of the City. In this Scenario the City of Boulder will cover approximately 32% of the total master lease cost for the proposed 5 year period. Projected savings over a 5 year period are: 83% of total market rent for AFC 1-A, 89% of the total market rent for AFC 1-B, 56% for AFC 2 and 82% for AFC 3.

Next Steps & Conclusion

Following a successful pilot there is opportunity to grow this program beyond its initial scope. The pilot we have developed is focused on balancing success with mitigation of risk. Our suggestions toward selection criteria may exclude businesses in the gravest need for support but this was a calculated decision to give the program the greatest chance of success. A business that defaults during enrollment in the program increases the financial burden on the City considerably, threatening successful proof of concept in Boulder. After the success of the

pilot these criteria could be loosened in order to allow for more support to these businesses in desperate need, as the City sees fit. Additionally, our research shows that following a successful pilot large organizations may become willing to work with the City and offer services to participants at no cost, notably we have seen this with a number of major US banks offering free financial planning services. Alongside these banks, further support for partnerships may be garnered as it is an opportunity for large organizations to give back to their communities. Beyond these avenues, the City can scale the program to the size desired, increasing or reducing funding for individual units as they see fit and offered within the model and earlier analysis.

Bibliography

Sources:

CoStar Market Data for Retail and Office

<https://product.costar.com/search/all-properties/>

Boulder Valley Comprehensive Plan (see Economy Section)

<https://bouldercolorado.gov/media/3350/download?inline>

Pages 68-73

Transit Village Area Plan Phase II

<https://boulderjunction2.com>

<https://boulderjunction2.com/wp-content/uploads/2022/01/TVAP-Phase-1-Benefits-v3.pdf>

<https://boulderjunction2.com/wp-content/uploads/2022/01/TVAP-Phase-2-Benefits-v3.pdf>

Community Benefit Project

[https://bouldercolorado.gov/projects/community-benefit-](https://bouldercolorado.gov/projects/community-benefit-project#:~:text=Boulder's%20Community%20Benefit%20Project%20would,to%20the%20bonus%20amount%20requested)

[project#:~:text=Boulder's%20Community%20Benefit%20Project%20would,to%20the%20bonus%20amount%20requested](https://bouldercolorado.gov/projects/community-benefit-project#:~:text=Boulder's%20Community%20Benefit%20Project%20would,to%20the%20bonus%20amount%20requested)

<https://bouldercolorado.gov/projects/boulder-valley-comprehensive-plan>

East Boulder Subcommunity Plan

<https://bouldercolorado.gov/projects/east-boulder-subcommunity-plan>

Sustainability, Equity, and Resilience Framework

<https://bouldercolorado.gov/sites/default/files/2021-07/sustainability-and-resilience-framework.pdf>

Boulder Citywide Retail Strategy

<https://bouldercolorado.gov/projects/citywide-retail-project>

<https://youtu.be/OgfKXDFs4TQ>

(Retail plan starts at 1:55)

https://youtu.be/bXE_0oRupUs

(Retail plan update 3:00 - 3:15)

(Supporting Research used in their studies:)

<https://bouldercolorado.gov/media/1264/download?inline>

<https://bouldercolorado.gov/media/1261/download?inline>

<https://bouldercolorado.gov/media/1261/download?inline?inline>

Commercial Districts

<https://bouldercolorado.gov/services/commercial-districts>

Prosper Portland - Affordable Tennanting

<https://prosperportland.us/portfolio-items/affordable-commercial-tenanting/>

Urban Redevelopment Authority (URA) of Pittsburgh – Commercial Rent Relief Matching Program

<https://www.ura.org/pages/commercial-rent-relief-matching-program>

Mainstreet Launch of Oakland, CA – Affordable Capital and Small Business Loans

<https://mainstreetlaunch.org/oakland-launch/>

Key Interviews:

Sarah Wiebenson, Director of Economic Development, Downtown Denver Partnership

Karl Guiler, Policy Senior Advisor, City of Boulder Planning & Development Services

John Tayer, Executive Director, Boulder Chamber

Scott Sternberg, Executive Director, Boulder Economic Council

Danica Powell, Owner/Founder, Trestle Strategy Group

Kay Little, Prosper Portland

Councilmember Aaron Brockett, Mayor, Boulder City Council

Kathleen King, City Principal Planner, City of Boulder Planning & Development Services

Councilmember Mark Wallach, Boulder City Council

Molly Bayer, Senior Associate, CBRE

Jennifer Pinsonneault, Senior Program Manager of Economic Vitality, City of Boulder

Ben Myers, Leasing Director, Tebo Properties

Charlotte Huskey, Budget Analyst Principal, City of Boulder's Finance Department

Beneficiary	Location	Annual Lease Rate	Beneficiary	Managing Dept.	Term (years)
Dairy Center for the Arts	2590 Walnut Street	Free	Non-profit A+C	A+C, FAM, P&R, PW	20
BMOCA	1750 13th Street	Free	Non-profit A+C	A+C, FAM, PW	20
ReSource	6400 Arapahoe	Free	Non-profit CI	FAM, P&DS, PW	1
Echo House	925-933 Marine Street	Free	Non-profit HHS	HHS	3
Boulder Day Nursery	1518 Spruce (ground lease)	Free	Non-profit HHS	P&R	20
Growing Gardens	Hawthorne, Foothills Community	Free	Non-profit HHS	P&R	3
BCFM	13th Street	Below Market	Non-profit A+C	CV	1
Colorado Chautauqua	Chautauqua Auditorium, Dining Hall	Below Market	Non-profit A+C	P&R	20
Eco-Cycle	5048 Pearl Street	Below Market	Non-profit CI	P&DS/LEAD, PW, Util	Complicated
Harbeck House	1206 Euclid	Below Market	Non-profit HHS	P&R	3+ renewal option
Various	CAGID Commercial Spaces	Below Market	Small Business	CV	Various
Various	Pearl Street Mall - MVC	Below Market	Small Business	CV	Various
Various	Pearl Street Mall - Kiosks	Below Market	Small Business	CV	Various
Flatirons Golf Course C	5706 Arapahoe Ave	Market	City revenue	P&R	3
Flatirons Golf Course E	5707 Arapahoe Ave	Market	City revenue	P&R	1
AT&T	Fire Station #5, 4365 19th Street	Market	City revenue	Police & Fire	5
Various	Airport	Market	City revenue	PW	Various
Dushanbe Teahouse/H	1770 13th Street	Market	Small Business	FAM, P&DS, PW	5
Mustard's Last Stand	1715 Broadway	Market	Small Business	OSMP	5
Plump Glass Productio	4990 Pearl Street	Market	Small Business	PW, Utilities	

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

BELOW-MARKET RATE

COMMERCIAL COVENANT

This Covenant ("Covenant") is entered into as of the 22nd day of December, 2020 (the "Effective Date"), by and between 2360 30TH STREET OZ, LLC, and the City of Boulder, a Colorado home rule city, (the "City").

RECITALS

A. The Owner owns certain real property described on Exhibit A attached hereto (the "Property").

B. Consistent with the adopted Transit Village Area Plan ("TVAP"), the City desires that the Property be redeveloped as part of a vibrant mixed-use, pedestrian-oriented neighborhood. The Property will include no less than 9,300 square feet of below-market rate commercial space to provide a public benefit to non-profit entities and small, local and independent business owners as well as the community.

C. The parties agree that having such commercial space set aside for below-market rate rents will encourage the development of small local business and will preserve small local independent businesses and non-profits which are being priced out of Boulder as locations redevelop and commercial rents escalate.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

- A. "Below-Market Rate Rent" means rent up to a maximum of 85 percent of the Market Rate; provided that the Below-Market Rate Rent, on average for the initial year, does not exceed 75 percent of the Market Rate.
- B. "Eligible" means a business that is eligible to lease a Below-Market Rate Commercial Space unit under Section 6 hereof.
- C. "Independent" means that the business or non-profit with at least 50 percent of the business owned by people whose principal residence is within Boulder County and decision-making authority is vested in the local owners and not subject to conditions dictated remotely.

- D. “Local” means a business which has its principal place of business in Boulder County and at least half of the business’ employees must work in Boulder County.
- E. “Market Rent” means the average Rent paid for comparable commercial space within the City of Boulder. In calculating the Market Rent, factors such as size and condition of comparable properties, lease terms (tenant improvement allowances, leasing incentives, etc.) will be considered to make a reasonable determination.
- F. “Minority- and women-owned business” means a for-profit corporation, limited liability partnership or enterprise which is owned and operated by a woman or an ethnic minority certified as such by a federal, state or local agency or for which the business owner/operator can provide proof of qualification and majority ownership interest in the enterprise, its assets and stock.
- G. “Non-profit” means an organization with 501(c)3 status which is headquartered in Boulder County and has a service area including the City of Boulder and its residents.
- H. “Owner” means 2360 30TH STREET OZ, LLC, and any subsequent buyer, devisee, transferee, grantee, owner, or holder of title of the Property or any portion of the Property.
- I. “Rent” means the Below-Market Rate Rent for the Below-Market Rent Commercial Space, together with 100 percent of all operating costs for the Below-Market Rate Commercial Space, including but not limited to: improvement costs, property taxes, insurance and association fees, maintenance, utilities, property management and janitorial services.
- J. “Small” means gross revenue under \$2,000,000 when this Covenant is signed and as adjusted annually for inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average or as the Parties mutually agree thereafter.

COVENANTS

- 1. The Recitals are incorporated into this Covenant by this reference as if more fully set forth herein.
- 2. Below-Market Rent Commercial Space Required: Owner agrees that the Property will include no less than 9,300 square feet of commercial space with below-market rents (“Below-Market Rent Commercial Space”), consisting of individual rental units (“units”) that either (i) average no more than 3,000 square feet, or (ii) such larger area available for co-working areas by an Eligible tenant.
- 3. Maximum Below-Market Rate Rent and Improvement Costs:
 - a. Below-Market Rate Rent shall be determined based on CoStar or similar actual leasing data including the market-rate commercial space on the Property to

- identify potential comparable properties in the Boulder Junction/mid-market area, which initial rental rates will be jointly agreed upon by the Parties.
- b. The maximum Below-Market Rate Rent may be increased annually by the Owner at the greater of (i) 3 percent, or (ii) the rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average. Pass-through expenses for operating costs shall be as actually incurred and not subject to the CPI-U limit.
 - c. Below-market rate and market rate tenants will be responsible for all improvement costs and actual triple net operating expenses including but not limited to property taxes, insurance and association fees, maintenance, utilities, property management and janitorial services.
 - d. Every five years, the Owner shall recalibrate the Below-Market Rate Rent determination for each new lease, lease renewal or lease extension thereafter by analyzing comparable properties based on CoStar or similar actual leasing data including the Market Rent commercial space on the Property to identify potential comparable properties in the Boulder Junction/mid-market area ("Recalibration Rate").
 - e. Owner shall give notice and copies of the recalibration study to the City prior to any change in the Below-Market Rate Rent.
 - f. In the event the City and the Owner are unable to agree on the Recalibration Rate within 30 days after delivery thereof by the Owner, either (i) they will jointly select a qualified real estate professional, or (ii) each select a qualified real estate professional and the two professionals shall select a third qualified real estate professional, to review both analyses and make a final determination of the Recalibration Rate, with the cost of this additional service to be shared equally by the Owner and the City.

4. Subdivision Provisions:

- a. If the Below-Market Rent Commercial Space is divided into commercial condominium units through subdivision, these Covenant restrictions shall apply to each subdivided Below-Market Rent Commercial Space condominium unit.
- b. For each Below-Market Rent Commercial Space condominium unit, such unit shall be a separate unit within the building and the condominium sub-declaration shall include reference to the restrictions set forth herein.
- c. Subject to requirements of the Colorado Common Interest Community Act ("CCIOA") or any successor statute, provisions in the sub-declaration shall not burden the Below-Market Rent Commercial Space condominium unit(s) with more assessment costs and expenses than the other commercial uses located in the same building. The sub-declaration will give the each owner of a Below-Market Rent Commercial Space condominium unit the right to further condominiumize the Below-Market Rent Commercial Space condominium unit in order to subdivide it in the future, if the unit owner so chooses, for the purpose of selling commercial spaces at an affordable price if so desired, in which event the Below-Market Rent Commercial Space condominium unit owner may

record its own secondary sub-declaration and map under applicable CCIOA requirements or exceptions thereto, which Below-Market Rent Commercial Space condominium unit sub-declaration shall remain subject to the master declaration and any sub-declaration for the building. In either event, the Below-Market Rent Commercial Space condominium unit shall be divided into rentable or co-occupancy spaces for rent (or sale if so subdivided) to individual businesses.

5. Marketing: The Owner and the City will work together in good faith to promote the availability of the Below-Market Rent Commercial Space to potential Eligible tenants.

6. Tenant Eligibility and Preferences:

- a. To be Eligible to lease any portion of the Below-Market Rent Commercial Space, an applicant must meet the following criteria: (1) a Small, Local, and Independent business; or (2) a Minority- or women-owned business; or (3) a Non-profit.
- b. The Owner may require applicants to demonstrate their financial capability to rent the Below-Market Rent Commercial Space using standard industry practices in Boulder County, including, without limitation, requesting such applicant's tax returns.
- c. Concurrent with the execution of a lease for a portion of the Below-Market Rent Commercial Space, each Eligible tenant shall execute, notarize and deliver to Owner an eligibility estoppel certificate confirming such tenant's Eligible status, in form mutually acceptable to the Owner and the City ("Eligibility Estoppel Certificate"). Owner shall deliver a copy of the Eligibility Estoppel Certificate for each Below-Market Rate Rent lease to the City.
- d. Notwithstanding Section 6.a, above, if there are no Eligible applicants within 60 days after the commencement of marketing of any available portion of the Below-Market Rent Commercial Space, the Owner may rent to any tenant.

7. Lease Terms and Renewal:

- a. No Below-Market Rent Commercial Space lease shall be for a term of not less than three years or more than five years.
- b. Below-Market Rent Commercial Space leases may be renewed for a term of not less than one year or more than five years as long as all eligibility criteria are still met.
- c. If at renewal of a Below-Market Rent Commercial Space lease the tenant no longer satisfies the eligibility criteria under Section 6.a, above, the tenant may renew for one year to give the tenant time to relocate the business. After that one-year period, the tenant must vacate the Below-Market Rent Commercial Space unless the City finds community benefit in allowing the tenant to continue leasing.

- d. The Owner may allow a Below-Market Rent Commercial Space tenant to sublet some or all of its unit if the tenant sublets to an Eligible subtenant and the rental rate per square foot is no greater than that paid by the tenant under the Below-Market Rent Commercial Space lease. If no qualifying sublessee can be found after 21 days, the tenant may apply to the City to lease the space to any subtenant for up to one year at no more than the tenant's rental rate under the Below-Market Rent Commercial Space lease.
- e. The City shall have the right to audit all Below-Market Rate Rent leases and Eligible tenants thereunder for substantial compliance with the requirements of this Covenant.
- f. The Owner shall submit to the City's Housing Department copies of the then existing Below-Market Rate Rent leases, and the City shall have 15 days thereafter to confirm compliance thereof with this Covenant. If the City's Housing Department fails to confirm compliance or give written notice of non-compliance of any such Below-Market Rate Rent lease with such 15-day period, such lease shall be deemed approved.

8. Defaults and Penalties:

- a. If the City becomes aware that any Owner is charging more than the maximum allowed rent under this Covenant, the City shall deliver written notice to such Owner.
- b. Such Owner will have 30 days to cure the violation and provide impacted tenants with a refund of over-charged rent. If the default is not cured within 30 days, any impacted tenant shall be a third-party beneficiary with standing to enforce the terms of this Covenant against such Owner.

9. Enforcement Actions: This Covenant may be specifically enforced against the then-current Owner(s) of the Below-Market Rent Commercial Space. Venue for such action shall be proper in Boulder County. Enforcement actions may include, without limitation, repayment of overcharges to tenants or lawsuit for actual damages. Notwithstanding the foregoing, the City shall take no enforcement action against the Owner in connection with any Below-Market Rate Rent lease for which the Owner has delivered to the City an executed Eligibility Estoppel Certificate from such tenant.

10. Indemnification: The then-current Owner(s) of the Below-Market Rent Commercial Space shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgments or liabilities incurred as a result of such Owner's actions or failures to act in connection with this Covenant, and as part of such indemnification obligation shall pay all costs and reasonable attorney's fees, if any, incurred by the City as a result of any such claims or suits; provided, however, that the then-current Owner(s) shall not be required to indemnify the City from any losses, claims, suits, judgments or liabilities arising from the gross negligence or intentional misconduct of the City or its agents or employees. The time of attorneys and legal assistants in the Boulder City Attorney's Office spent on any

such claims or suits shall be paid for in accordance with generally prevailing attorney's fees charged in Boulder County for similar services.

11. The Owner(s) of the Below-Market Rent Commercial Space shall maintain such space in a manner comparable to similar commercial space in the City of Boulder. The Owner shall only permit the Below-Market Rent Commercial Space to be used in compliance with all applicable laws and regulations of the United States, State of Colorado and City of Boulder.
12. Annually, the Owner shall submit a written report to the City with the following information for the Below-Market Rent Commercial Space:
 - a. Rent roll including tenant names, Below-Market Rate Rent commercial unit square footage, rents charged, remaining lease terms;
 - b. Summary of leasing activity including lease renewals and turnover;
 - c. Projected leasing activity for the next year; and
 - d. Acknowledgment of the requirements for leasing the Property.
13. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive, and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.
14. Nothing in this Covenant shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Owner.
15. The Owner hereby acknowledges, affirmatively states, and agrees that this Covenant is a bargained for deed restriction that limits commercial rent on the Below-Market Rent Commercial Space of the Property.
16. By mutual written agreement, the parties may make changes or exceptions to the terms of this Covenant.
17. This Covenant shall run with the land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Covenant shall be unlawful or void for violation of:
 - a. the rule against perpetuities or some other analogous statutory provision;
 - b. the rule restricting restraints on alienation; or
 - c. any other statutory or common law rules imposing like or similar time limits

then such provision shall continue only for the period of the lives of current duly elected and seated Boulder City Council members, their now living descendants, if any, and the survivor of them, plus 21 years.

18. Any buyer or transferee of the Below-Market Rent Commercial Space of the Property or of any portion thereof or interest therein, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

(signature page follows)

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the Effective Date.

Owner:

2360 30th Street OZ, LLC,
a Delaware limited liability company

By: 30 PEARL OZ JV I LLC,
Sole Member

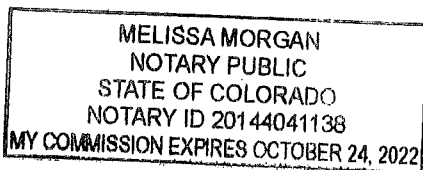
By: MCI 30 Pearl 1, LLC,
Managing Member

By: Andrew Bush
Andrew Bush, Manager

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 13 day of January, 20 21, by Andrew Bush, as Manager of MCI 30 Pearl 1, LLC, the Managing Member of 30 PEARL OZ JV I LLC, the sole Member of 2360 30th Street OZ, LLC, a Delaware limited liability company.

Witness my hand and official seal.



Morgan

Notary Public

My commission expires: October 24, 2022

City:

CITY OF BOULDER

By: _____

Name: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____, 20____

Exhibit A
Property Legal Description

LOT 1, BOULDER TRANSIT VILLAGE SUBDIVISION REPLAT B,
ACCORDING TO THE CORRECTION AND REPLACEMENT PLAT
THEREOF RECORDED OCTOBER 30, 2019 UNDER RECEPTION NO.
03745852, COUNTY OF BOULDER, STATE OF COLORADO

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Charles J. Smith, Esq.

BELOW-MARKET RATE COMMERCIAL COVENANT

This Below-Market Rate Commercial Covenant (“Covenant”) is entered into as of the ____ day of, February 9, 2021 (the “Effective Date”), by and between MACY’S RETAIL HOLDINGS, LLC, an Ohio limited liability company (“Owner”), and the City of Boulder, a Colorado home rule city (“City”).

RECITALS

A. The Owner owns certain real property described on Exhibit A attached hereto (the “Property”).

B. The City desires that the Property be adaptively reused in accordance with Site Review Amendment to the Twenty Ninth Street Shopping Center having File No. LUR2018-00075, which was approved by the City on January 5, 2021. Consistent with the Site Review Amendment, the Property will include no less than 7,500 square feet of gross leasable area of Below-Market Rent Commercial Space to provide a public benefit to non-profit entities and small, local and independent business owners as well as the community.

C. The parties agree that having such commercial space set aside for Below-Market Rate Rent will encourage the development of small local business and will preserve Small, Local, and Independent businesses and Non-profits which are being priced out of Boulder as locations redevelop and commercial rents escalate.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

A. “Below-Market Rate Rent” means base net rent up to a maximum of 80% of the Market Rate.

- B. "Eligible" means a business that is eligible to lease a Below-Market Rate Commercial Space unit under Section 6 hereof.
- C. "Independent" means a business with at least 50 percent of the business owned by people whose principal residence is within Boulder County and decision-making authority regarding day-to-day operations is vested in such owners, subject to customary major decisions in the business's bylaws, operating agreement, franchise agreements, loan documents, or other governing documents or agreements. If the subject business is a franchise, the foregoing criteria shall apply to the franchise entity only and not the franchisor business or brand.
- D. "Local" means a business that has its headquarters, is based in, or has its principal place of business in Boulder County. If the subject business is a franchise, the foregoing criteria shall apply to the franchise entity only and not the franchisor business or brand.
- E. "Market Rent" means the average base net rent paid for commercial retail and restaurant spaces within the City of Boulder that are comparable to the Below-Market Rent Commercial Space. In calculating the Market Rent, factors such as the location, size, age, use, and condition of the comparable properties, lease terms (including without limitation, the term of the lease, tenant improvement allowances, rent abatements, leasing incentives, etc.), and other factors customarily taken into account when calculating market rent for commercial retail and restaurant spaces will be considered to make a reasonable determination.
- F. "Minority- or women-owned business" means a for-profit corporation, limited liability partnership or other enterprise which is owned and operated by one or more women or one or more ethnic minorities certified as such by a federal, state or local agency or for which the business owner/operator can provide proof of qualification and majority ownership interest in the enterprise.
- G. "Non-profit" means an organization with 501(c)3 status which is headquartered, based, or has its principal place of business in Boulder County and has a service area including the City of Boulder and its residents.
- H. "Operating Expenses" means common area maintenance charges, charges for taxes, fees, insurance, maintenance, utilities, property management, and janitorial services, or any other operating expenses customary for a commercial retail or restaurant lease.
- I. "Small" means that the business has seven (7) or fewer independent locations. If the subject business is a franchise, the foregoing criteria shall apply to the franchisee entity only and not the franchisor business or brand.

COVENANTS

1. Recitals: The Recitals are incorporated into this Covenant by this reference as if more fully set forth herein.

2. Below-Market Rent Commercial Space Required: Owner agrees that the Property will include no less than 7,500 square feet in gross leasable area of commercial space for which Owner will charge Below-Market Rate Rent ("Below-Market Rent Commercial Space"), consisting of one or more individual rental units ("units") leased directly to Eligible tenants or to one or more intermediary tenants for co-working or marketplace/market-hall areas that then subleases or licenses units to one or more Eligible tenants.
3. Maximum Below-Market Rate Rent:
 - a. Below-Market Rate Rent shall be determined based on the Owner's calculation of Market Rent, and the Owner shall send written notice to the City of Owner's calculation of Below-Market Rate Rent. The City shall have fifteen (15) days thereafter to approve or disapprove of the Below-Market Rate Rent by written notice to Owner. If the City fails to approve or disapprove of the Below-Market Rate Rent within such 15-day period, the proposed Below-Market Rate Rent shall be deemed approved.
 - b. The maximum Below-Market Rate Rent may be increased annually by the Owner at the greater of (i) 3%, or (ii) the rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average. Notwithstanding anything to the contrary in this Covenant, this Covenant shall not apply to or restrict Owner from charging Operating Expenses or percentage rent in addition to Below-Market Rate Rent, regardless of whether rent under the applicable lease is charged on a gross or net basis. For purposes of clarification, if rent is charged on a gross basis, then the base net rent component of such gross rent shall be the Below-Market Rate Rent and the Operating Expenses component of such gross rent shall be in addition to the Below-Market Rate Rent.
 - c. Every five years commencing on the date of this Covenant, the Owner shall recalibrate the Below-Market Rate Rent determination to apply to each new lease, lease renewal or lease extension that Owner executes thereafter by analyzing then then-current Market Rent ("Recalibration Rate").
 - d. Owner shall give notice and copies of the Recalibration Rate to the City prior to executing any leases, lease renewals, or lease extensions that include the Recalibration Rent. The City shall have fifteen (15) days thereafter to approve or disapprove of the Recalibration Rent by written notice to Owner. If the City fails to approve or disapprove of the Recalibration Rent within such 15-day period, the proposed Recalibration Rent shall be deemed approved.
 - e. In the event the City timely disapproves of the Below-Market Rate Rent or Recalibration Rate, its notice shall set forth the specific basis for such disapproval to be effective. If the City and Owner are unable to agree on the Below-Market Rate Rent or Recalibration Rate within 30 days after delivery of such disapproval notice to Owner, either (i) within 10 days after notice from either party to the other, they will jointly select a qualified real estate professional with at least 10 years' experience in calculating Market Rent, who will make a final determination within 10 business days after being

selected, with the cost of this additional service to be shared equally by Owner and the City, or (ii) if they are unable to agree upon such a qualified real estate professional, then within 10 days after notice from either party to the other, each shall select a qualified real estate professional (the Owner and City to pay the costs of their respective professional) with at least 10 years' experience in calculating Market Rent and, within 10 days after being selected, the two professionals shall calculate the Below-Market Rate Rent or Recalibration Rate and select a third qualified real estate professional with at least 10 years' experience in calculating Market Rent, to review both analyses and make a final determination of the Below-Market Rate Rent or Recalibration Rate within 10 business days after being selected, which shall be the Below-Market Rate Rent or Recalibration Rate proposed by one of the professionals selected by the Owner and the City, with the cost of this additional service to be shared equally by Owner and the City.

4. Subdivision Provisions. If the Below-Market Rent Commercial Space is divided into commercial condominium units through subdivision, this Covenant shall run with and burden each subdivided Below-Market Rent Commercial Space condominium unit; provided, however, that the requirement that the Property include 7,500 square feet in Below-Market Rent Commercial Space shall continue to apply to the Property as a whole and not separately to each condominium unit. The owner of each such condominium unit shall be deemed to be the Owner for such condominium unit and shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant for such condominium.
5. Marketing. The Owner and the City will work together in good faith to promote the availability of the Below-Market Rent Commercial Space to potential Eligible tenants, in accordance with the Owner's marketing strategy.
6. Tenant Eligibility and Preferences.
 - a. To be eligible to lease any portion of the Below-Market Rent Commercial Space, at the time of lease execution, an applicant must be a: (1) a Small, Local, and Independent business; or (2) a Minority- or women-owned business; or (3) a Non-profit (each an "Eligible" tenant). Notwithstanding anything to the contrary in this Covenant, in the event that any unit within the Below-Market Rent Commercial Space is to be used for a co-working or marketplace/market-hall use, and the lease with such tenant requires the tenant to sublease or license such unit (or portions thereof) only to Eligible subtenants or licensees for Below-Market Rate Rent (based on Market Rent for units in a co-working or marketplace/market-hall use) in accordance with this Covenant, then this Covenant shall not apply to the lease of such unit to such tenant, Owner may lease such unit to any tenant on terms and conditions acceptable to Owner, such tenant shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant for such unit and its subtenants and licensees, and the

- square footage of the unit subleased or licensed by such tenant shall be deemed included as Below-Market Rent Commercial Space.
- b. The Owner may require applicants to demonstrate their financial capability to rent the Below-Market Rent Commercial Space using standard industry practices in Boulder County, including without limitation requesting such applicant's tax returns, financial statements, references, and personal or corporate guarantees. Owner shall not be required to execute a lease with any specific applicant and shall have the right to select specific tenants in its sole and absolute discretion, subject to Sections 6.a, 6.d, and 12.
 - c. Concurrent with the execution of a lease for a portion of the Below-Market Rent Commercial Space, each Eligible tenant shall execute, notarize and deliver to Owner an eligibility estoppel certificate confirming such tenant's Eligible status, in form mutually and reasonably acceptable to Owner and the City ("Eligibility Estoppel Certificate"). Owner shall deliver a copy of the Eligibility Estoppel Certificate for each Below-Market Rate Rent lease to the City. Owner shall have the right to rely upon the Eligibility Estoppel Certificate, shall have no liability or responsibility under this Covenant or otherwise for any untruth or misrepresentation contained in any Eligibility Estoppel Certificate, and shall have no obligation to terminate any lease with a tenant that submitted a false Eligibility Estoppel Certificate, but shall not agree to any discretionary renewal or extension of its lease with such tenant.
 - d. Owner shall engage in commercially reasonable leasing efforts to lease available units within the Below-Market Rent Commercial Space to one or more Eligible tenants, including without limitation by retaining a commercial real estate broker to market the available units. Notwithstanding anything to the contrary in this Covenant, if no Eligible tenant that satisfies Owner's underwriting qualifications signs a lease for a Below-Market Rent Commercial Space unit within 120 days after the commencement of marketing of such Below-Market Rent Commercial Space unit despite Owner's commercially reasonable leasing efforts, this Covenant shall not apply to such unit and the Owner may rent such unit to any tenant on terms and conditions acceptable to Owner, in its sole and absolute discretion; provided, however, that the initial term of the lease with such non-Eligible tenant shall not exceed 10 years.

7. Lease Renewal.

- a. If at renewal of a Below-Market Rent Commercial Space lease the Eligible tenant no longer satisfies the eligibility criteria under Section 6.a above, the tenant may renew for one-year to give the tenant time to relocate the business, subject to Section 6.d. After that one-year period, the tenant must vacate the Below-Market Rent Commercial Space unless the City finds community benefit in allowing the tenant to continue leasing, subject to Section 6.d.
- b. The Owner may allow a Below-Market Rent Commercial Space tenant to sublet some or all of its unit if the tenant sublets to one or more Eligible

subtenants and the average base gross or net rental rate per square foot for such subleases is no greater than that paid by the tenant under the Below-Market Rent Commercial Space lease. The sublandlord shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant with respect to its subtenants. If no Eligible subtenant that satisfies such tenant's underwriting qualifications and is approved by Owner can be found within 21 days, the tenant may, after notice to the City, lease the space to any subtenant for the balance of the tenant's term at no more than the tenant's rental rate under the Below-Market Rent Commercial Space lease.

- c. The City shall have the right to audit all Below-Market Rate Rent leases with Eligible tenants for substantial compliance with the requirements of this Covenant, provided that the City acknowledges that such leases and the terms and conditions therein constitute confidential, proprietary business information, not subject to disclosure under the Colorado Open Records Act ("CORA"), C.R.S. 24-72-201 et seq., and the City shall keep such leases confidential.
- d. Upon written request from the City for such an audit, the Owner shall submit to the City copies of the then existing Below-Market Rate Rent leases with Eligible tenants, and the City shall have fifteen (15) days thereafter to confirm compliance thereof with this Covenant. If the City fails to confirm compliance or give written notice of non-compliance of any such Below-Market Rate Rent lease with such 15-day period, such lease shall be deemed compliant with this Covenant.

8. Defaults and Penalties.

- a. If the City becomes aware that any Owner is charging more than the maximum allowed Below-Market Rate Rent in violation of this Covenant or is otherwise in violation of this Covenant, the City shall deliver written notice to such Owner, which notice shall describe the specific basis for the alleged violation in reasonable detail to be effective.
- b. Such Owner will have 30 days to cure the violation and provide impacted tenants with a refund of over-charged rent.

9. Enforcement Actions. This Covenant may be specifically enforced against the then-current Owner(s) of the Below-Market Rent Commercial Space. Venue for such action shall be proper in Boulder County. Enforcement actions may include, without limitation, repayment of overcharges to tenants or lawsuit for actual damages. Notwithstanding the foregoing, the City shall take no enforcement action against Owner in connection with any Below-Market Rate Rent lease for which Owner has delivered to the City an executed Eligibility Estoppel Certificate from such tenant. Notwithstanding anything to the contrary in this Covenant or at law or in equity, in no event shall Owner be liable for consequential, punitive, special, incidental, lost profits, or other damages, except actual damages, for any violation of this Covenant, and all such remedies are hereby waived.

10. Indemnification. The then-current Owner(s) of the Below-Market Rent Commercial Space shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgments or liabilities alleged by third-parties and incurred as a result of such Owner's violation of this Covenant or the gross negligence or intentional misconduct of such Owner or its agents or employees in the performance of the Owner's obligations under this Covenant, and as part of such indemnification obligation shall pay all costs and reasonable attorney's fees, if any, incurred by the City as a result of any such claims or suits; provided, however, that the Owner shall not be required to indemnify the City from any losses, claims, suits, judgments or liabilities arising from the negligence, intentional misconduct, or illegal or unconstitutional acts of the City or its agents or employees or the actions or inactions of any tenants.
11. The Owner(s) of the Below-Market Rent Commercial Space shall maintain (or cause the tenants to maintain) such space in a manner comparable to similar commercial space in the City of Boulder.
12. The Owner shall only permit the Below-Market Rent Commercial Space to be used in compliance with all applicable laws and regulations of the United States, State of Colorado and City of Boulder.
13. Either the City or Owner, by written notice to the other party, but not more than once in any 12-month period, may request a meeting with the other party to review in good faith the leasing performance of the Below-Market Rent Commercial Space (including without limitation, vacancy rates, rental rates, and other relevant leasing information) and the terms and conditions of this Covenant, in which event the two parties shall meet to discuss the same within 30 days after delivery of such notice.
14. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, to the extent that the original intent of this Covenant can still be effected, the remaining provisions shall survive, and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.
15. Nothing in this Covenant shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Owner.
16. The Owner hereby acknowledges, affirmatively states, and agrees that this Covenant is a bargained for deed restriction that limits commercial rent on the Below-Market Rent Commercial Space of the Property in accordance with the terms and conditions herein.
17. By mutual written agreement, the parties may make changes or exceptions to the terms of this Covenant.
18. This Covenant shall run with the land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. If any of the terms, covenants,

conditions, restrictions, uses, limitations, obligations or options set forth in this Covenant shall be unlawful or void for violation of:

- a. the rule against perpetuities or some other analogous statutory provision;
- b. the rule restricting restraints on alienation; or
- c. any other statutory or common law rules imposing like or similar time limits,

then such provision shall continue only for the period of the lives of current duly elected and seated Boulder City Council members, their now living descendants, if any, and the survivor of them, plus 21 years, or until the Termination Date, whichever is earlier in time.

19. Any buyer or transferee of the Below-Market Rent Commercial Space of the Property or of any portion thereof or interest therein, by acceptance of a deed therefor, shall, by acceptance of such deed, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
20. Term. This Covenant shall continue to run with the land and burden the Property into perpetuity unless and until (a) the improvements on the Property approved in the Site Review Amendment to the Twenty Ninth Street Shopping Center under File No. LUR2018-00075 are redeveloped, adaptively reused, or repurposed, (b) the primary use of the building containing the Below-Market Rent Commercial Space is no longer general office use, (c) a casualty or condemnation (or transaction in lieu of a condemnation) destroys or takes a material portion of the improvements on the Property, or (d) the structures that are within 500' of the lot line of the Property are no longer used primarily for retail or restaurant uses or for parking for adjacent retail or restaurant uses (each, a "Termination Event"). Upon the occurrence of a Termination Event, this Covenant shall automatically and forever terminate and be of no force or effect, without need for any notice or further action of the Owner, City, or any other person or party, effective on the date of such Termination Event ("Termination Date"). Without affecting the self-effectuating provisions of the immediately preceding sentence, in the event of a Termination Event, the Owner shall send the City written notice of the same, and if the Owner requests that the City execute a written termination of this Covenant, then the City shall execute the same and deliver the executed termination to the Owner within 30 days after receipt of such request for Owner to record in the real property records for the Property.
21. Notices. Any notice or other communication provided for or permitted by this Covenant to be made or accepted by either party must be in writing and shall be given or served by depositing the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested; by depositing the same with a nationally-known overnight courier service to such party; or by hand delivering the same to such party, or an agent of such party, all to the applicable addresses set forth below. Notice deposited in the mail shall be deemed received two (2) business days after such deposit and notice given in any other manner shall be deemed delivered when actually sent for delivery to the party to be notified. The parties

shall have the right from time to time to change their respective contact information as stated below by written notice to the other party.

If to Owner
(prior to March 1, 2021): Macy's Retail Holdings, LLC – CO
7 West Seventh Street
Cincinnati, Ohio 45202
Attn: Real Estate Dept

with a copy to:

Macy's Retail Holdings, LLC – CO
7 West Seventh Street
Cincinnati, Ohio 45202
Attn: Law Dept – Real Estate Law

If to Owner
(on/after March 1, 2021): Macy's Retail Holdings, LLC – CO
175 Progress Place
Springdale, Ohio 45246
Attn: Real Estate Dept

with a copy to:

Macy's Retail Holdings, LLC – CO
175 Progress Place
Springdale, Ohio 45246
Attn: Law Dept – Real Estate Group

With a copy to:

Brownstein Hyatt Farber Schreck
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Attn: Charlie J. Smith

To the City:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Manager

With copy to:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Attorney

(signature pages follow)

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the Effective Date.

Owner:

MACY'S RETAIL HOLDINGS, LLC,
an Ohio limited liability company

By: [Signature]
Name: Paul Griscorn
Its: SVP

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this day of February, 2021, by Paul Griscorn, as SVP of MACY'S RETAIL HOLDINGS, LLC, an Ohio limited liability company.

Witness my hand and official seal.

My commission expires:

MATTHEW A. WHITLOW, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C. [SEAL]

[Signature]
Notary Public

City:

CITY OF BOULDER

By: Chris J. Meschuk
Chris Meschuk, Interim City Manager

ATTEST:

Elaine DeFazio
City Clerk

Approved as to form:

Helen Pomeroy
City Attorney's Office

02/08/2021
Date

Exhibit A
Property Legal Description

LOT 5, TWENTY NINTH STREET, ACCORDING TO THE PLAT THEREOF RECORDED
MARCH 21, 2005, IN PLAN FILE P-63, NO.'S 18 THROUGH 24, UNDER RECEPTION NO.
2673341, COUNTY OF BOULDER, STATE OF COLORADO.