

ORDINANCE NO. 12**Series 2012**

August 18, 2012: Introduced as Council Bill 12, Series 2012 by Councilor VanderWerf, seconded by Councilor Griffin and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

November 20, 2012: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO,
AUTHORIZING THE ISSUANCE OF A SPECIAL ASSESSMENT REVENUE
REFUNDING NOTE, SERIES 2012 IN AN AGGREGATE PRINCIPAL AMOUNT
NOT TO EXCEED \$675,000; PRESCRIBING THE FORM OF THE NOTE;
PROVIDING FOR THE PAYMENT OF THE NOTE FROM SPECIAL
ASSESSMENTS IMPOSED UPON PROPERTY WITHIN THE CITY OF
CHERRY HILLS VILLAGE SPECIAL IMPROVEMENT DISTRICT NO. 7 AND
MAKING CERTAIN COVENANTS IN CONNECTION THEREWITH;
PROVIDING OTHER DETAILS AND APPROVING VARIOUS DOCUMENTS
IN CONNECTION WITH THE NOTE.

WHEREAS, the City of Cherry Hills Village, Arapahoe County, Colorado (the "City"), is a home rule municipality and political subdivision of the State of Colorado (the "State"), duly organized and operating under the Charter of the City (the "Charter") and the Constitution and laws of the State; and

WHEREAS, pursuant to Ordinance No. 6, Series of 1998 of the City, the City has created the Cherry Hills Village Special Improvement District No. 7 (the "District") for the purpose of constructing, installing and acquiring water system improvements consisting of water mains and service lines, control valves, fire hydrants and other infrastructure necessary to provide a permanent water supply to the property located within the District boundary (the "Project") and assessing the costs thereof against the real property included in the District; and

WHEREAS, in accordance with the requirements of Section 20 of Article X of the State Constitution, at an election duly held on April 4, 2000, a majority of the votes cast by the registered electors who were owners of property within or residents of the District approved the following ballot question:

SHALL THE CITY OF CHERRY HILLS VILLAGE DEBT (FOR THE CITY OF CHERRY HILLS VILLAGE SPECIAL IMPROVEMENT DISTRICT NO. 7) BE INCREASED BY UP TO \$1,800,000, WITH A MAXIMUM REPAYMENT COST OF \$3,800,000, FOR THE PURPOSE OF FINANCING WATER SYSTEM IMPROVEMENTS CONSISTING OF WATER MAINS AND SERVICE LINES, CONTROL VALVES, FIRE HYDRANTS AND OTHER INFRASTRUCTURE NECESSARY TO PROVIDE A PERMANENT WATER SUPPLY TO THE CHARLOU PARK ADDITION AND THE CHARLOU PARK SECOND ADDITION, INCLUDING FEES AND COSTS ANCILLARY THERETO, BY THE ISSUANCE OF SPECIAL ASSESSMENT BONDS PAYABLE FROM SPECIAL ASSESSMENTS IMPOSED AGAINST BENEFITED PROPERTIES LOCATED WITHIN THE DISTRICT AND FROM OTHER FUNDS WHICH MAY BE LAWFULLY PLEDGED TO THE PAYMENT OF SUCH BONDS, WHICH BONDS SHALL BE ISSUED, DATED, AND SOLD AT SUCH TIME OR TIMES AND IN SUCH MANNER AND CONTAINING SUCH TERMS, NOT INCONSISTENT HERewith, AS THE CITY COUNCIL MAY DETERMINE; SHALL THE AUTHORIZATION ESTABLISHED PURSUANT TO THIS BALLOT ISSUE, IF APPROVED BY ELECTORS WITHIN THE DISTRICT, SUPERSEDE AND REPLACE THE BALLOT ISSUE APPROVED BY ELECTORS WITHIN THE DISTRICT AT THE ELECTION HELD ON NOVEMBER 3, 1998 (PROVIDED, HOWEVER, THIS BALLOT ISSUE, IF NOT APPROVED BY ELECTORS WITHIN THE DISTRICT, SHALL NOT RESCIND THE NOVEMBER 3, 1998 BORROWING AUTHORITY); AND SHALL THE REVENUES FROM SUCH SPECIAL ASSESSMENTS AND ANY EARNINGS THEREON AND FROM THE INVESTMENT OF THE PROCEEDS OF SUCH BONDS CONSTITUTE A VOTER-APPROVED REVENUE CHANGE?

WHEREAS, pursuant to such electoral authorization, the City has heretofore issued \$595,000 aggregate principal amount of its Special Assessment Bonds, Taxable Series 2000A (the "Series 2000A Bonds") and \$930,000 aggregate principal amount of its Special Assessment Bonds, Tax-Exempt Series 2000B (the "Series 2000B Bonds") for the purpose of financing the construction, installation and acquisition of water system improvements benefitting the properties located in the District; and

WHEREAS, such improvements were completed and assessments were duly imposed upon such benefitted properties by Ordinance No. 10, Series of 2000 (the "Assessment Ordinance"); and

WHEREAS, the Series 2000A Bonds were duly and timely paid and discharged and are no longer outstanding as of the date of final adoption of this Ordinance; and

WHEREAS, the Series 2000B Bonds have been partially paid and a portion of such issue remains outstanding; and

WHEREAS, the remaining Series 2000B Bonds bear interest at rates greater than those obtainable under current market conditions; and

WHEREAS, pursuant to Article X of the Charter, the City is authorized to borrow money and evidence such borrowings by issuing such obligations as determined by Council; and

WHEREAS, the City Council of the City (the "Council") has heretofore determined and does hereby determine that it is necessary and in the best interests of the residents and property owners of the District to refund the Series 2000B Bonds at a lower interest rate (the "Refunding Project") through the issuance by the City of its Special Assessment Revenue Refunding Note, Series 2012 (the "Series 2012 Note") in an aggregate principal amount not to exceed \$675,000, such amount to be determined by Final Terms Certificate (defined herein); and

WHEREAS, none of the members of the Council have any potential conflicting interests in connection with the authorization, issuance, or sale of the note authorized by this Ordinance, or the use of the proceeds thereof; and

WHEREAS, obligations such as the Series 2012 Note may properly be termed either "bonds" or "notes"; and

WHEREAS, the Council desires to authorize the execution of the Series 2012 Note and any necessary and appropriate documents required for the issuance thereof;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

ARTICLE I DEFINITIONS AND CONSTRUCTION

Section 1.01. Definitions. The following terms shall have the following meanings as used in this Ordinance:

"*Assessment Ordinance*" means Ordinance No. 10, Series of 2000.

"*Bond Counsel*" means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, of Denver, Colorado, and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the City with nationally recognized expertise in the issuance of municipal bonds.

"*Business Day*" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed for business.

"*Charter*" means the Charter of the City of Cherry Hills Village, Colorado.

"*City*" means the City of Cherry Hills Village, Colorado.

"*Code*" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, unless the context clearly requires otherwise.

“Commercial Bank” means a state or national bank or trust company which is a member of the Federal Deposit Insurance Corporation and of the Federal Reserve System, which has capital and surplus of \$100,000,000 or more and which is located within the United States of America.

“Council” means the City Council of the City.

“C.R.S.” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“Debt Service Requirements” means the principal of, interest on, and premium, if any, due in connection with the redemption, in whole or in part, of the Series 2012 Note, excluding any amounts provided for with capitalized interest or other funds actually on hand and irrevocably committed to the payment of Debt Service Requirements.

“District” means The City of Cherry Hills Village Special Improvement District No. 7, created pursuant to Ordinance No. 6, Series of 1998 of the City.

“Escrow Account” means the special account created and referred to in Section 3.01 hereof.

“Escrow Agreement” means an agreement, substantially in the form filed with the City Clerk prior to the final adoption of this Ordinance, between the City and a Commercial Bank with trust powers to be identified by Final Terms Certificate.

“Event of Default” means any of the events specified in Section 8.01 hereof.

“Excess Investment Earnings Account” means the special account which may be created by the Finance Director, referred to in Section 3.07 hereof.

“Federal Securities” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct non-callable obligations of the United States of America or which are fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America.

“Final Terms Certificate” or *“Final Terms Certificates”* means a Certificate or Certificates, not inconsistent with this Ordinance, signed by the Finance Director, approving the final terms of the Series 2012 Note and its award to the Lender, and determining any details reasonably necessary or appropriate in connection therewith in order to effectuate or clarify the provisions of this Ordinance and consummate the transactions contemplated hereby.

“Finance Director” means the Director of Finance and Administration of the City or any successor.

“Fiscal Year” means the 12 months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other 12 month period as may from time to time be designated by the Council or by State statute as the Fiscal Year of the City. *“Note Account”* means the “Special Improvement District No. 7 Note Account” created in the section hereof entitled “Creation of Accounts.”

“Income” means all income and revenue derived from the Assessments, including investment earnings thereon.

“Income Account” means the special account created and required to be maintained pursuant to Section 3.02 hereof.

“Independent Accountant” means any certified public accountant, or any firm of such accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City, who (a) is, in fact, independent and not under the domination of the City or the Council; (b) does not have any substantial interest, direct or indirect, in any of the affairs of the City; and (c) is not connected with the City as a member, officer or employee of the Council, but who may be regularly retained to make annual or similar audits of any books or records of the City.

“Interest Payment Date” means a date designated by Final Terms Certificate for the payment of interest on the Series 2012 Note or any other designated Obligations.

“Lender” means CoBiz Bank, a Colorado corporation d/b/a Colorado Business Bank, or its successors and permitted assigns.

"*Obligations*" means all obligations, however named or designated, payable from the Pledged Revenues, regardless of their priority.

"*Ordinance*" means this Ordinance, including any amendment hereto, together with the Final Terms Certificate.

"*Outstanding*" means as of any particular date, all the Obligations payable in whole or in part from the Pledged Revenues which have been authorized, executed and delivered, except the following:

(a) any Obligation cancelled by the Paying Agent or otherwise on behalf of the City on or before such date;

(b) any Obligation held by or on behalf of the City;

(c) any Obligation for the payment or the redemption of which moneys or Federal Securities sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all of the Debt Service Requirements of such Obligation to the maturity date or specified Redemption Date thereof shall have theretofore been deposited in escrow or in trust with a Trust Bank for that purpose; and

(d) any lost, destroyed or wrongfully taken Obligation in lieu of or in substitution for which another bond or other security shall have been executed and delivered.

"*Paying Agent*" means a suitable Commercial Bank or City official designated by Final Terms Certificate to perform the duties of Paying Agent hereunder.

"*Permitted Investments*" means any investment which, as of the time made, is permitted by the laws of the State or the ordinances of the City pertaining to City investments to be made with City funds.

"*Person*" means any individual, firm, partnership, corporation, company, association, joint stock association, limited liability company or body politic or any trustee, receiver, assignee or similar representative thereof.

"*Pledged Revenues*" means the Income together with any other amounts deposited in or credited to the Income Account.

"*Principal and Interest Account*" means the special account created and referred to in Section 3.03 hereof.

"*Record Date*" means the last day of the calendar month next preceding each interest payment date.

"*Redemption Date*" means the date fixed for the redemption prior to maturity of any Obligations or other designated Obligations payable from the Pledged Revenues in any notice of prior redemption given by or on behalf of the City.

"*Redemption Funds*" means, as of a particular date, the amount reasonably estimated to be available in the Income Account for redemptions of principal of the Series 2012 Note on the next ensuing Interest Payment Date, determined as follows: the amount of Redemption Funds shall be (a) as of a date forty-five days prior to the first *Interest Payment Date* of each year in which the Series 2012 Note is Outstanding, the reasonably estimated amount to the credit of the Income Account less the amount of interest to accrue with respect to the then Outstanding principal of the Series 2012 Note on such *Interest Payment Date*; and (b) as of a date forty-five days prior to the second *Interest Payment Date* of each year in which the Series 2012 Note is Outstanding, the reasonably estimated amount to the credit of the Income Account less the amount of interest to accrue with respect to the then Outstanding principal of the Series 2012 Note on such *Interest Payment Date* and the next succeeding *Interest Payment Date*.

"*Refunded Bonds*" means the Series 2000B Bonds outstanding immediately prior to the issuance of the Series 2012 Note.

"*Refunded Bond Requirements*" means the principal of and interest on the Refunded Bonds through the last date upon which they are to be redeemed with proceeds of the Series 2012 Note.

"*Refunding Project*" means the refunding, payment and discharge of the Refunded Bonds.

"*Registrar*" means a suitable Commercial Bank or City official designated by Final Terms Certificate to perform the duties of Registrar hereunder.

"*Regular Record Date*" means the fifteenth day of the calendar month next preceding an Interest Payment Date for the Series 2012 Note.

"*Security*" or "*Securities*" means any bond or note issued by the City or any other evidence of the advancement of money to the City.

"*Series 2000B Bonds*" means the Special Improvement District No. 7 Special Assessment Bonds, Tax-Exempt Series 2000B, dated June 1, 2000.

"*Series 2012 Note*" means the Special Improvement District Refunding Revenue Note, Series 2012, authorized hereby;

"*Special Record Date*" means the date fixed by the Paying Agent for the determination of ownership of the Series 2012 Note for the purpose of paying interest not paid when due or interest accruing after maturity.

"*State*" means the State of Colorado.

"*Supplemental Public Securities Act*" means Part 2 of Article 57, Title 11, C.R.S.

"*Tax Code*" means the Internal Revenue Code of 1986, as amended.

"*Transfer Agent*" means a suitable Commercial Bank or City official designated by Final Terms Certificate to perform the duties of Transfer Agent hereunder.

"*Trust Bank*" means a Commercial Bank which is authorized to exercise and is exercising trust powers.

ARTICLE II THE SERIES 2012 NOTE

Section 2.01. Authorization; Election to Apply Supplemental Public Securities Act. The Series 2012 Note, payable as to all Debt Service Requirements solely out of Pledged Revenues, is hereby authorized to be issued in a private placement transaction in an aggregate principal amount not to exceed \$675,000, the actual amount of the Series 2012 Note to be determined by Final Terms Certificate. The City hereby elects to apply all provisions of the Supplemental Public Securities Act to the Series 2012 Note to the extent not inconsistent with the express provisions of this Ordinance. Any delegation of authority hereunder to approve the final terms of the Series 2012 Note shall be effective through December 31, 2012.

Section 2.02. Series 2012 Note Details.

(a) **Generally.** The Series 2012 Note shall be issued as a single fully registered Note, with no provision for the partial transfer of ownership thereof.

Principal of the Series 2012 Note shall mature on the date and in the year provided by Final Terms Certificate; provided that the final maturity of the Series 2012 Note may not be in any event later than December 15, 2021. The Series 2012 Note shall bear interest from the date as of which it is dated or the Interest Payment Date to which interest has been paid next preceding its date, whichever is later, to its maturity date, except if redeemed prior thereto, at a rate or rates not exceeding 2.60% per annum, as determined by Final Terms Certificate.

Said interest shall be payable commencing not later than December 1, 2013, and semiannually thereafter on such dates as designated by Final Terms Certificate. If upon presentation at maturity the principal of the Series 2012 Note is not paid as provided therein, interest shall continue thereon at the same interest rate until the principal thereof is paid in full.

The Debt Service Requirements of the Series 2012 Note shall be payable to the Lender in lawful money of the United States of America by the Paying Agent. Principal

and the final installment of interest on the Series 2012 Note shall be payable to the Lender upon presentation and surrender thereof at maturity or upon prior redemption. Except as hereinbefore and hereinafter provided, the interest and any payment of principal other than the final installment shall be payable to the Lender determined as of the close of business on the Regular Record Date irrespective of any transfer of ownership of the Series 2012 Note subsequent to the Regular Record Date and prior to such Interest Payment Date, by check or draft mailed to the Lender at the address appearing on the registration books of the City maintained by the Registrar. Any interest or principal not paid when due and any interest accruing after maturity shall be payable to the Lender determined as of the close of business on the Special Record Date irrespective of any transfer of ownership of the Series 2012 Note subsequent to the Special Record Date and prior to the date fixed by the Paying Agent for the payment of such interest or principal, by check or draft mailed as aforesaid. Notice of the Special Record Date and of the date fixed for the payment of such principal or interest shall be given by sending a copy thereof by certified or registered first-class, postage prepaid mail, at least 10 days prior to the special record date, to the Lender at the address then appearing on the registration books of the City. Any premium shall be payable to the Lender upon presentation and surrender thereof upon prior redemption. If the date for making or giving any payment, determination or notice described herein is a Saturday, Sunday, legal holiday or any other day on which the Paying Agent or Registrar is authorized or required by law to remain closed, such payment, determination or notice shall be made or given on the next succeeding day which is not a Saturday, Sunday, legal holiday or other day on which the Paying Agent or Registrar is authorized or required by law to remain closed. For so long as the Lender is the registered owner of the Series 2012 Note, nothing herein prevents the City and the Lender from agreeing to alternate arrangements for making principal or interest payments on the Series 2012 Note, including, without limitation, wire or other electronic transfers or intrabank transfers.

(b) **Redemption.** In addition to any other redemption provisions required by this Ordinance, the Series 2012 Note may be made subject to optional redemption prior to maturity, in whole but not in part, on any Interest Payment Date, at a price equal to the principal amount so redeemed plus accrued interest to the date of redemption, in such manner as provided by Final Terms Certificate.

The Series 2012 Note shall be subject to redemption in whole or in part, and shall be redeemed, on any Interest Payment Date to the extent that the City has determined that Redemption Funds in excess of \$25,000 are available in the Income Account. In the event that, not less than forty-five days prior to any Interest Payment Date, the City shall determine that there is such minimum amount of Redemption Funds available in the Income Account, the City shall give notice of the redemption of an amount of principal in an integral multiple of \$5,000 that is as nearly equal to but no greater than the amount of Redemption Funds available, and shall redeem, but solely from and to the extent of funds in the Principal and Interest Account, the amount of principal identified in the notice of redemption on such Interest Payment Date at a redemption price equal to the principal amount of the Series 2012 Note redeemed plus accrued interest only to the redemption date.

Notice of redemption shall be given by the Paying Agent in the name of the City by sending a copy thereof by certified or registered first-class postage prepaid mail, or by electronic means promptly confirmed by the City by mail or telephone or acknowledged electronically by the recipient, at least 30 days prior to the Redemption Date, to the Lender at the address appearing on the registration books of the City. Such notice, which may be made contingent upon the availability of funds in the Income Account to effect the redemption, shall specify the principal amount to be redeemed and the date fixed for redemption, and shall further state that on the Redemption Date there will be due and payable the principal amount redeemed plus accrued interest thereon to the Redemption Date plus any premium due and that from and after such date interest will cease to accrue, and shall be in substantially the following form:

[Form of Notice of Redemption]
City of Cherry Hills Village, Colorado
Special Improvement District Revenue Refunding Note
(Special Improvement District No. 7)
Series 2012

NOTICE IS HEREBY GIVEN, that \$_____ principal amount of the above Series 2012 Note is called for redemption on _____, 20____, (the "Redemption Date")

at a redemption price of 100% of the principal amount so redeemed plus accrued interest thereon to the Redemption Date. On the Redemption Date, if sufficient funds have been deposited in the Principal and Interest Account established in connection with the Series 2012 Note to effect such redemption, there will be due and payable the principal amount redeemed plus accrued interest to the Redemption Date, and from and after that date interest shall cease to accrue on the principal amount redeemed. This notice is expressly contingent upon the availability of sufficient funds in the Income Account established in connection with the Series 2012 Note to effect such redemption.

CITY OF CHERRY HILLS VILLAGE,
COLORADO

By: _____
Director of Finance

[End of Form of Notice of Redemption]

(c) **Interest Rates.** The maximum net effective interest rate authorized for the Series 2012 Note is 3% per annum. The actual net effective interest rate for the Series 2012 Note shall be determined by Final Terms Certificate.

(d) **Execution and Authentication.** The Series 2012 Note shall be executed by and on behalf of the Council, with the facsimile signature of the Mayor, shall bear a facsimile of the seal of the City, shall be attested with the facsimile signature of the City Clerk, and shall be authenticated with the manual signature of a duly authorized signatory of the Registrar. Should any officer whose facsimile signature appears on the Series 2012 Note cease to be such officer before delivery of the Series 2012 Note to the Lender, such facsimile signature shall nevertheless be valid and sufficient for all purposes. The Series 2012 Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until the certificate of authentication on such Series 2012 Note shall have been duly executed by the Registrar, and such executed certificate upon any such Series 2012 Note shall be conclusive evidence that such Series 2012 Note has been authenticated and delivered under this Ordinance. The certificate of authentication on the Series 2012 Note shall be deemed to have been duly executed by the Registrar if signed by an authorized signatory thereof.

(e) **Registration, Transfer and Exchange.** Upon its execution and authentication and prior to its delivery, the Series 2012 Note shall be registered for the purpose of payment of principal and interest by the Registrar. Thereafter, the Series 2012 Note shall be transferable only as a whole, and not in part, and only upon the registration books of the City by the Transfer Agent at the request of the Lender or its duly authorized attorney-in-fact or legal representative and subject to the restrictions and limitations or transferability stated in this paragraph and the form of the Series 2012 Note appearing in Section 2.03 hereof. Neither the Series 2012 Note nor any interest therein may be transferred or resold except to an "Accredited Investor" as defined in Regulation D under the Securities Act of 1933, as amended (the "1933 Act"), or a bank or trust company acting as trustee for holders of certificates representing interests in one or more obligations, which bank or trust company agrees to (i) maintain, or cause to be maintained, a book-entry system in which a record of the names and addresses of such holders is kept and (ii) require that each Person acquiring a beneficial ownership interest in any such certificate be an Accredited Investor. In connection with any transfer or sale, the Transfer Agent may require a letter from the transferee to the effect that such transferee is an Accredited Investor purchasing for its own account with no present view to resale or other distribution of the Series 2012 Note or any interest therein or is a bank or trust company acting as trustee as described above. The City shall not be required to recognize the interest of, take any action on behalf or for the benefit of or make any payment to any Person acquiring an interest in the Series 2012 Note by any means other than a transfer effectuated in compliance with this Ordinance.

(f) **Resignation of Agents.** If the Paying Agent, Registrar or Transfer Agent shall resign, or if the City shall reasonably determine that the Paying Agent, Registrar or Transfer Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to the Lender at the address last shown on the registration books of the City, appoint a successor paying agent, registrar or transfer agent. Every such successor Paying Agent, Registrar or Transfer Agent shall be a Commercial Bank or an

The principal of this Series 2012 Note is subject to redemption, and shall be called for redemption, in whole or in part in integral multiples of \$5,000 on any interest payment date as of which there are Redemption Funds (as defined in the Ordinance identified below) in excess of \$25,000 available in the Income Account (identified below), as further provided in the Ordinance.

[Insert other redemption provisions, if any.]

Notice of redemption is to be given by the paying agent by sending a copy of such notice by certified or registered first-class postage prepaid mail, or by electronic means promptly confirmed by the City by telephone or mail, or acknowledged electronically by the recipient, at least 30 days prior to the redemption date, to the Lender at the address appearing on the registration books of the City. Such notice, which may be made contingent upon the availability of funds in the Income Account (identified below) to effect such redemption, shall specify that the principal of this Series 2012 Note is to be redeemed and shall identify the date fixed for redemption, and shall further state that on the redemption date there will be due and payable the outstanding principal of this Series 2012 Note to be redeemed plus accrued interest thereon to the redemption date plus any premium due, and that from and after such date interest will cease to accrue on this Series 2012 Note, and shall be in substantially the form provided in the Ordinance (identified below).

The interest on this Series 2012 Note is payable by check or draft mailed to the Lender at the address appearing on the registration books of the City, by the Director of Finance of the City of Cherry Hills Village, Colorado, or her successors, as paying agent (the "Paying Agent"). The final installment of principal and interest hereon is payable to the Lender upon presentation and surrender of this Series 2012 Note at maturity or upon prior redemption. Any interest hereon not paid when due and any interest hereon accruing after maturity is payable to the Lender as of a special record date fixed by the Paying Agent for the payment of such interest, by check or draft mailed as aforesaid. Notice of the special record date and of the date fixed for the payment of such interest is to be given by sending a copy thereof by certified or registered first-class postage prepaid mail, at least 10 days prior to the special record date, to the Lender at the address appearing on the registration books of the City. If the date for making or giving any payment, determination or notice described herein is a Saturday, Sunday, legal holiday or any other day on which the Paying Agent or Registrar is authorized or required by law to remain closed, such payment, determination or notice is to be made or given on the next succeeding day which is not a Saturday, Sunday, legal holiday or other day on which the Paying Agent or Registrar is authorized or required by law to remain closed. For so long as the Lender is the registered owner of the Series 2012 Note, nothing herein prevents the City and the Lender from agreeing to alternate arrangements for making principal or interest payments on the Series 2012 Note, including, without limitation, electronic transfers or intrabank transfers.

This Series 2012 Note is issued pursuant to an ordinance of the City (the "Note Ordinance") as supplemented by a Final Terms Certificate (the Note Ordinance and such Final Terms Certificate being referred to collectively as the "Ordinance"). Payment of the principal of, interest on and any premium due in connection with the redemption of this Series 2012 Note is to be made solely from, and as security for such payment there are irrevocably (but not necessarily exclusively) pledged pursuant to the Ordinance, two special accounts, thereby identified as the Income Account and the Principal and Interest Account, into which the City Council has covenanted in the Ordinance to pay, from certain revenues derived from the imposition and collection of special assessments (the "Assessments") pertaining to certain water system improvements benefitting properties in Cherry Hills Village Special Improvement District No. 7 (the "District") in the City, sums derived from the collection of the Assessments. In addition, the City may at its option, but is not required to, augment such funds with any other moneys of the City legally available for expenditure for the purposes thereof as provided in the Ordinance.

It is hereby recited, certified and warranted that for the payment of the principal of, interest on and any premium due in connection with the redemption of this Series 2012 Note, the City has created and will maintain said special funds and will deposit the Pledged Revenues therein, and out of said special funds, as an irrevocable charge thereon, will pay the principal of, interest on and any premium due in connection with the redemption of this Series 2012 Note in the manner provided by the Ordinance.

This Series 2012 Note is secured by a lien on the Pledged Revenues, and such Series 2012 Note constitutes an irrevocable and exclusive first lien upon the Pledged Revenues.

The City Council covenants and agrees with the Lender that it will keep and will perform all of the covenants of this Series 2012 Note and of the Ordinance.

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This Series 2012 Note is authorized and issued for the purpose of defraying the cost of acquiring, constructing and installing masonry fence improvements in the District under the authority of and in full conformity with the Constitution of the State of Colorado, the City Charter, the City Code of the City, and all other laws of the State of Colorado thereunto enabling and pursuant to the Ordinance, which was duly adopted prior to the issuance of this Series 2012 Note.

Reference is hereby made to the Ordinance, and to any and all modifications and amendments thereof, for a description of the provisions, terms and conditions upon which this Series 2012 Note is issued and secured, including, without limitation, the nature and extent of the security for this Series 2012 Note, provisions with respect to the custody and application of the proceeds hereof, the collection and disposition of the revenues and moneys charged with and pledged to the payment of the principal of, interest on and any premium due in connection with the redemption of this Series 2012 Note, the terms and conditions on which this Series 2012 Note is issued, a description of the special funds referred to above and the nature and extent of the security and pledge afforded thereby for the payment of the principal of, interest on and any premium due in connection with the redemption of this Series 2012 Note, and the manner of enforcement of said pledge, as well as the rights, duties, immunities and obligations of the City and the members of its Council and also the rights and remedies of the Lender. Capitalized terms used in this Series 2012 Note and not otherwise defined shall have the same meanings, respectively, as provided in the Ordinance.

To the extent and in the respects permitted by the Ordinance, the provisions of the Ordinance, or any instrument amendatory thereof or supplemental thereto, may be modified or amended by action of the City Council of the City taken in the manner and subject to the conditions and exceptions provided in the Ordinance. The pledge of revenues and other obligations of the City under the Ordinance may be discharged at or prior to the maturity or prior redemption of this Series 2012 Note upon the making of provision for the payment of this Series 2012 Note on the terms and conditions set forth in the Ordinance.

It is hereby recited, certified and warranted that all the requirements of law have been fully complied with by the proper officers of the City in the issuance of this Series 2012 Note and the levying of the Assessments; that this Series 2012 Note is issued pursuant to and in strict conformity with the Constitution and all other laws of the State of Colorado, including the City Charter, and the Ordinance; that this Series 2012 Note does not contravene any constitutional or statutory provision or limitation of the State of Colorado, or any provision or limitation of the City Charter; and that this Series 2012 Note is issued under the authority of the Ordinance.

This Series 2012 Note is transferable only upon the registration books of the City by the _____, or her (its) successors, as transfer agent, at the request of the Lender or its duly authorized attorney-in-fact or legal representative, upon surrender hereof together with a written instrument of transfer duly executed by the Lender or its duly authorized attorney-in-fact or legal representative with guaranty of signature satisfactory to the transfer agent, containing written instructions as to the details of the transfer, along with the social security number or federal employer identification number of the transferee and, if the transferee is a trust, the names and social security numbers of the settlors and the beneficiaries of the trust. The City may deem and treat the person in whose name this Series 2012 Note is last registered upon the books of the City as the Lender for the purpose of receiving payment of the principal of, interest on and any premium due in connection with the redemption of this Series 2012 Note and for all other purposes, and all such payments so made to such person or upon its order will be valid and effective to satisfy and discharge the liability of the City upon this Series 2012 Note to the extent of the sum or sums so paid, and the City will not be affected by any notice to the contrary.

This Series 2012 Note is issued pursuant to the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S., and this recital shall be conclusive evidence of the validity and the regularity of issuance of this Series 2012 Note after its delivery for value.

This Series 2012 Note is a special and limited obligation payable solely out of and secured by an irrevocable, but not necessarily exclusive, pledge of and lien upon the Pledged Revenues, as more specifically provided in the Ordinance. This Series 2012 Note does not constitute a debt or an indebtedness or a multiple-fiscal year debt or other financial obligation of the City within the meaning of any constitutional, charter or statutory provision or limitation. This Series 2012 Note is not payable in whole or in part from the proceeds of general property taxes or any other form of taxation, and the full faith and credit of the City is not pledged for the payment of the principal of or interest on this Series 2012 Note.

IN WITNESS WHEREOF, the City Council of the City of Cherry Hills Village, Colorado has caused this Series 2012 Note to be executed in its name and on its behalf with the facsimile signature of the Mayor of the City, to be sealed with the facsimile seal of the City, and to be signed and attested with the facsimile signature of the City Clerk of the City.

[SEAL]

CITY OF CHERRY HILLS VILLAGE,
COLORADO

By

Douglas M. Tisdale, Mayor

Attest:

By _____
Laura Smith, City Clerk

CERTIFICATE OF AUTHENTICATION

This Series 2012 Note is one of the series issued pursuant to the Ordinance herein described. Attached hereto is the complete text of the opinion of bond counsel, Kutak Rock LLP, a signed copy of which, dated the date of the first delivery of the Series 2012 Note herein described, is on file with the undersigned.

Dated: _____

as Registrar

By _____
Name _____
Title _____

ABF554

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned Lender sells, assigns and transfers unto:

(Please Insert Social Security or Other Identifying Number of Assignee)

(Name and Address of Assignee)

the attached Note and does hereby irrevocably constitute and appoint _____,
_____, _____ or its successor, to transfer said Note on
the books kept for registration thereof.

Dated: _____

Signature guaranteed:

(Bank, Trust Company or Firm)

NOTICE: The signature to this assignment must correspond with the name of the Lender as it appears upon the face of the attached Note in every particular without alteration or enlargement or any change whatever.

Transfer Fee Required
[End of Form of Note]

Section 2.04. Special Obligations. The Series 2012 Note, as to all Debt Service Requirements thereof, shall be payable solely out of the Pledged Revenues. The Lender may not look to the general fund or any other fund of the City for the payment of the Debt Service Requirements, except the special funds and accounts pledged therefor. The Series 2012 Note shall not constitute a debt or indebtedness or multiple-fiscal year debt or other financial obligation of the City within the meaning of any constitutional, Charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of the City, but shall constitute a special and limited obligation of the City. The Series 2012 Note is not payable in whole or in part from the proceeds of general property taxes or any other form of taxation, and the full faith and credit of the City is not pledged for payment of the Series 2012 Note.

**ARTICLE III
FUNDS AND ACCOUNTS**

The proceeds of the Series 2012 Note and the Income shall be deposited by the City in the funds and accounts described in this Article III, to be accounted for in the manner and priority set forth in this Article III.

The Lender shall not have any control over or be in any manner responsible for the application or disposition by the City or by any of its officers, agents and employees of the moneys derived from the sale of the Series 2012 Note or of any other moneys designated in this Article III.

The Pledged Revenues and all moneys and investments paid or to be paid to or held or to be held in any fund or account hereunder (except the Excess Investment Earnings Account) are hereby pledged to secure the payment of the Debt Service Requirements of the Series 2012 Note, subject to the provisions herein relating to the Construction Account. This pledge shall be valid and binding from and after the date of the first delivery of the Series 2012 Note, and the moneys, as received by the City and hereby pledged, shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing or further act. The lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the City (except as herein otherwise expressly

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provided), and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof.

Section 3.01. Escrow Account. The proceeds of the Series 2012 Note, except the sums, if any, required in Section 3.03 hereof to be deposited in the Principal and Interest Account, shall be deposited in the Escrow Account hereby created and shall be maintained, used and withdrawn solely for the purpose of paying or reimbursing the City for payments of the Cost of the Project.

(a) **Establishment and Maintenance of Escrow Account.** There is hereby established a special account designated as the "2012 Special Assessment Refunding Revenue Note Escrow Account" (the "Escrow Account"), which shall be maintained in accordance with the provisions hereof and of the Escrow Agreement. The Escrow Account shall be maintained in an amount at the time of the initial deposits therein and at all times subsequently at least sufficient, together with the known minimum yield to be derived from the initial investment and any temporary reinvestment of the deposits therein or any part thereof in Federal Securities to pay the Refunded Bond Requirements. Except as may be otherwise provided in the Escrow Agreement, the City shall have no right or title to the moneys credited to or held in the Escrow Account, and such title shall be and is hereby transferred to the Bank in trust for the payment of the Refunded Bond Requirements pursuant to the Escrow Agreement. Moneys shall be withdrawn by the Bank from the Escrow Account in sufficient amounts and at such times to permit the payment without default of the Refunded Bond Requirements. If for any reason the amount in the Escrow Account shall at any time be insufficient for the purpose hereof, the City shall forthwith from the first moneys available therefor deposit in such account such additional moneys as shall be necessary to permit the payment in full of the Refunded Bond Requirements.

(b) **Call of Refunded Bonds.** Subject to the issuance of the Series 2012 Note, the Council hereby declares its intent to exercise on behalf of and in the name of the City its option to redeem all of the Refunded Bonds on the earliest date or dates on which the Refunded Bonds can be called and redeemed. The Council hereby authorizes the Finance Director to irrevocably instruct the paying agent for the Refunded Bonds to give or cause to be given a notice, which may be conditional, of refunding, defeasance and redemption of the Refunded Bonds.

Section 3.02. Income Account. Except as otherwise provided herein, all of the income and revenue derived from the collection and enforcement of the Assessments, including amounts, if any, received as prepayments of Assessments or resulting from the foreclosure and sale of properties subject to Assessments, shall be set aside and credited immediately to the Income Account. In addition, the City may at its sole option credit to the Income Account any other moneys of the City legally available for expenditure for the purposes of the Income Account as provided herein.

Section 3.03. Principal and Interest Account. The City shall deposit in the Principal and Interest Account, forthwith upon receipt of the proceeds of the Series 2012 Note, interest accrued thereon, if any, from their date to the date of delivery thereof to the Lender, to apply to the payment of interest first due on the Series 2012 Note.

For so long as the Series 2012 Note is Outstanding, the City shall deposit in the Principal and Interest Account from the Income Account on or before each Interest Payment Date the amount of the principal and interest due with respect to the Series 2012 Note on such Interest Payment Date, together with any Redemption Funds to be applied to the redemption of principal of the Series 2012 Note on such Interest Payment Date, and such interest and principal shall be promptly paid when due.

Section 3.04. Termination of Deposits. No payment need be made into the Principal and Interest Account if the amount in the Principal and Interest Account totals a sum at least equal to the entire amount of the Outstanding Series 2012 Note, as to all Debt Service Requirements, to its maturity or to any Redemption Date as of which the City shall have exercised or shall have obligated itself to exercise its option to redeem, prior to its maturity date, the principal of the Series 2012 Note.

Section 3.05. Use of Remaining Revenues. At such time as the Series 2012 Note is no longer Outstanding, any remaining moneys credited to the Income Account may be used for any one or any combination of other lawful purposes as the City may from time to time determine.

Section 3.06. Budget and Appropriation of Sums. The City shall take such budget and appropriation measures, if any, as are required for the application of the proceeds of the Series 2012 Note. In each year while the Series 2012 Note, either as to principal or interest, is Outstanding and unpaid any amounts on hand or expected to be available and required to be applied by the provisions of this Ordinance shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed by the Council. No provisions of any constitution, charter, statute, ordinance, resolution or other order or measure enacted after the issuance of the Series 2012 Note shall in any manner be construed as limiting or impairing the obligation of the City to keep and perform the covenants contained in this Ordinance so long as the Series 2012 Note remains Outstanding and unpaid. Nothing herein shall prohibit the Council, in its sole discretion, from appropriating other legally available funds of the City to the Income Account for the purposes thereof.

Section 3.07. Excess Investment Earnings Account. The Finance Director may establish and transfer into and pay from an Excess Investment Earnings Account within the Income Account the amount of required arbitrage rebate, if any, due to the federal government under Sections 103 and 148(f)(2) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder. The Finance Director shall determine such amounts in the manner required by said sections and related regulations. Transfer of the required arbitrage rebate amounts shall be made from the Principal and Interest Account; provided, however, that required arbitrage rebate payments shall be made to the federal government from legally available funds regardless of whether there are any remaining proceeds or other funds attributable to the Series 2012 Note that are available for the purpose.

All amounts in the Excess Investment Earnings Account, including income earned from investment thereof, shall be held by the Finance Director free and clear of any lien created by this Ordinance, and the Finance Director shall remit the same to the federal government from time to time as provided herein.

Section 3.08. Reserve Account. The Finance Director is hereby authorized to establish, in connection with the Series 2012 Note, a special account (the "Reserve Account") which shall be maintained as a book account within the Special Improvement District No. 7 Fund of the City in an amount, not to exceed \$20,000, determined by Final Terms Certificate. The Reserve Account shall be funded with monies transferred from the Capital Fund, which monies are hereby appropriated for the purposes authorized in this Section. The Reserve Account shall be maintained solely as a reserve against deficiencies in the Income Account attributable to insufficient receipts of Assessment Revenues to meet principal redemption or interest payment requirements in connection with the Series 2012 Note. Any amounts remaining in the Reserve Account at such time as the Series 2012 Note is no longer Outstanding shall be released to the City for use for any lawful purpose.

**ARTICLE IV
GENERAL ADMINISTRATION OF FUNDS**

Section 4.01. Places and Times of Deposits. Each of the special funds or accounts created or referred to in Article III hereof shall be maintained as a book account of the City and all moneys accounted for therein shall at all times be either deposited in a Commercial Bank or invested in Permitted Investments. For purposes of such deposits or investments of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such funds or accounts pertaining to the Income. Such funds or accounts shall be continuously secured to the fullest extent required or permitted by the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes of such funds or accounts. Each periodic payment shall be credited to the proper fund or account not later

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than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

Section 4.02. Investment of Funds. Any moneys in any fund or account described in Article III hereof may be invested, re-invested or deposited only in Permitted Investments. Securities or obligations purchased as such investments shall either be subject to redemption at any time at face value by the owner thereof at the option of such owner or shall mature at such time or times as shall most nearly coincide with the expected need for moneys from the fund or account in question. Securities or obligations so purchased as an investment of moneys in any such fund or account shall be deemed at all times to be a part of the applicable fund or account; provided that (with the exception of the Excess Investment Earnings Account) the interest accruing on such investments and any profit realized therefrom shall be credited to the Income Account, and any loss resulting from such investments shall be charged to the particular fund or account in question. The City shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given fund or account whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such fund or account. The City shall not invest any moneys accounted for hereunder if any such investment would contravene the covenants concerning federal income tax matters in Section 6.13 hereof.

Section 4.03. No Liability for Losses Incurred in Performing Terms of Ordinance. Neither the City nor any officer of the City shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

Section 4.04. Character of Funds. The moneys in any fund or account herein described shall consist of lawful money of the United States of America or investments permitted by Section 4.02 hereof or both such money and such investments. Moneys deposited in a demand or time deposit account in or evidenced by a certificate of deposit of a Commercial Bank pursuant to Sections 4.01 and 4.02 hereof, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States of America.

Section 4.05. Accelerated Payments Optional. Nothing contained herein prevents the accumulation in any fund or account designated herein of any monetary requirements at a faster rate than the rate or minimum rate, as the case may be, provided therefor.

ARTICLE V PRIORITIES; LIENS; ISSUANCE OF ADDITIONAL OBLIGATIONS

Section 5.01. First Lien on Pledged Revenues; Equality of Obligations. Except as expressly provided in this Ordinance the Pledged Revenues shall be and hereby are irrevocably and exclusively pledged and set aside to pay the Debt Service Requirements of the Series 2012 Note.

Section 5.02. Issuance of Additional Obligations. Nothing herein permits the issuance, in addition to the Series 2012 Note or for any purpose, of any other Obligation payable from the Pledged Revenues while the Series 2012 Note remains Outstanding.

ARTICLE VI PARTICULAR REPRESENTATIONS AND COVENANTS

The City hereby particularly represents, covenants and agrees with the Lender, and makes the following covenants and provisions which shall be a part of its contract with such Lender, and shall be kept by the City continuously until the Series 2012 Note has been fully paid and discharged:

Section 6.01. Imposition of Assessments. The City has, as of the effective date of this Ordinance, adopted the Assessment Ordinance, and covenants that it will take any supplemental action required to promptly and lawfully impose and, if necessary, reimpose the Assessments on all benefited properties in the District.

Section 6.02. Collection of Assessments. The City shall diligently enforce and collect, or cause to be enforced and collected, all Assessments in any lawful manner.

Section 6.03. Performance of Duties. The City, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Income, the Project and the District required by the Constitution and laws of the State and the Charter, ordinances, resolutions and contracts of the City, including without limitation the proper segregation of the proceeds of the Series 2012 Note and the Income and their application from time to time to the respective accounts provided therefor.

Section 6.04. Costs of Note Issue and of Performance. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the issuance of the Series 2012 Note, payment of the Debt Service Requirements, or the performance of or compliance with any covenant or agreement contained in this Ordinance shall be paid exclusively (but only from the appropriate special fund or account in the manner authorized herein) from the proceeds of the Series 2012 Note, the Pledged Revenues, or other legally available moneys, and in no event shall any of such costs or expenses be required to be paid out of or charged to the general fund of the City.

Section 6.05. Further Assurances. At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds hereby pledged or assigned, or intended so to be, or which the City may hereafter become bound to pledge or assign, or as may be reasonable and required to carry out the purposes of this Ordinance. The City, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds and accounts pledged hereunder and all the rights of the Lender hereunder against all claims and demands of all Persons.

Section 6.06. Conditions Precedent. The City represents and warrants that upon the date of issuance of the Series 2012 Note, all conditions, acts and things required by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Charter, the Code and this Ordinance to exist, to have happened and to have been performed precedent to or in the issuance of the Series 2012 Note shall exist, have happened and have been performed, and the Series 2012 Note, together with all other obligations of the City, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Charter or the Code.

Section 6.07. Records and Accounts. The City will keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the accounts referred to herein.

Section 6.08. Protection of Security. The City, its officers, agents and employees, shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Debt Service Requirements of the Series 2012 Note. No contract shall be entered into nor any other action taken by which the rights of the Lender might be prejudicially and materially impaired or diminished.

Section 6.09. Accumulation of Interest Claims. In order to prevent any accumulation of claims for interest after maturity, the City shall not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Series 2012 Note from the Pledged Revenues; and the City shall not directly or indirectly be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any of such claims for interest. If the time for the payment of any such installment of interest is extended in contravention of the foregoing provisions, the Lender, as to such installment or installments of interest, shall not be entitled in case of default hereunder to the

benefit or the security of this Ordinance, except upon the prior payment in full of the principal of the Series 2012 Note.

Section 6.10. Prompt Payment of Note. The City shall promptly pay or cause to be paid the Debt Service Requirements of the Series 2012 Note at the places, on the dates and in the manner specified herein and in the Series 2012 Note according to the true intent and meaning hereof.

Section 6.11. Use of Principal and Interest Account. The Principal and Interest Account shall be used solely and only for the purpose of paying the Debt Service Requirements of the Series 2012 Note to their respective maturities or any Redemption Date or Redemption Dates on which the City is obligated to redeem such Obligations, subject to Article VII hereof.

Section 6.12. Other Liens. At the time of issuance of the Series 2012 Note, there shall be no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues. The City shall keep the Pledged Revenues free and clear of all liens and encumbrances, except for those created under this Ordinance.

Section 6.13. Federal Income Tax Covenants; Designation of Issue as Qualified Tax Exempt Obligation. In addition to the various covenants made by it in this Ordinance, the City covenants to and for the benefit of the Lender that it shall at all times do and perform the acts and things necessary or desirable in order to assure that interest paid on the Series 2012 Note shall, for purposes of federal income taxation, be excluded from the gross income of the recipients thereof. The City will not make or permit to be made any use of the original proceeds of the Series 2012 Note, or of any moneys treated as proceeds of the Series 2012 Note under the Tax Code and applicable regulations, rulings and decisions, or take, permit to be taken or fail to take any action which would adversely affect the exclusion from gross income of the interest on the Series 2012 Note under the Tax Code and applicable regulations, rulings and decisions. The Mayor, the Clerk and the Finance Director are authorized to execute and deliver all such additional certificates, covenants or agreements as reasonably necessary to implement and comply with the foregoing covenant.

The City hereby designates the Series 2012 Note as a qualified tax exempt obligation for purposes of Section 265(b) of the Tax Code.

Section 6.14. Inspection of Records. The Lender, or its duly authorized agent or agents, shall have the right at all reasonable times to inspect all records, accounts and data relating to the Assessments and the Income, and to make copies of such records, accounts and data at the Lender's expense.

Section 6.15. Audits Required; Provision of Interim Reports. The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of the books and accounts pertaining to the District to be made forthwith by an Independent Accountant, and order an audit report showing the receipts and disbursements for each fund or account pertaining to the Pledged Revenues. Such audit may be conducted as a part of the regular annual audit of the financial statements of the City as a whole. The City shall deliver to the Lender, within two weeks of the receipt thereof, copies of all such audits and reports. In addition, the City shall deliver to the Lender, not less than thirty (30) days nor more than sixty (60) days prior to each Interest Payment Date, an unaudited statement of Assessment collections and expenditures for the six-month period ended on the date of such statement, together with the City's calculation supporting any redemption of principal of the Series 2012 Note on the ensuing Redemption Date.

ARTICLE VII DEFEASANCE

When all Debt Service Requirements of the Series 2012 Note have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Series 2012 Note shall no longer be deemed to be Outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment when the City has placed in escrow or in trust with a Trust Bank, located within or without the State, cash or Federal Securities in an amount sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all Debt

Service Requirements of the Series 2012 Note, as the same become due at their maturity date or upon any Redemption Date as of which the City shall have exercised or shall have obligated itself to exercise its option to call the Series 2012 Note for prior redemption. The Federal Securities shall become due prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow or trust, or the Federal Securities shall be subject to redemption at the option of the owner thereof to assure such availability as so needed to meet such schedule. Nothing herein shall be construed to prohibit a partial defeasance of the Series 2012 Note in accordance with the provisions of this Article VII.

ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.01. Events of Default. Each of the following events is hereby declared to be and to constitute an Event of Default:

(a) ***Nonpayment of Principal.*** Payment of the principal of the Series 2012 Note is not made when the same becomes due and payable, either at maturity or by proceedings for prior redemption, or otherwise;

(b) ***Nonpayment of Interest.*** Payment of any installment of interest on the Series 2012 Note is not made when the same becomes due and payable;

(c) ***Incapacity to Perform.*** The City for any reason becomes incapable of fulfilling its obligations hereunder;

(d) ***Nonperformance of Duties.*** The City shall have failed to carry out and to perform (or in good faith to begin the performance of) all acts and things lawfully required to be carried out or to be performed by it under any contract relating to the Income or the Project, including, without limitation, this Ordinance, and such failure shall continue for 60 days after receipt of notice from the Lender; provided that if such failure cannot be cured within such 60 days and if during that period corrective action has commenced to remedy such failure and subsequently is diligently pursued by the City to the completion of such performance, an Event of Default shall not be deemed to have occurred; and

(e) ***Default of Any Provision.*** The City defaults in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions on its part to be performed, contained in the Series 2012 Note, or in this Ordinance, but only if such default continues for 60 days after written notice, specifying such default but only requiring the same to be remedied, is given to the City by the Lender; provided that if such failure cannot be cured within such 60 days and if during that period corrective action has been commenced to remedy such default and subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred.

Section 8.02. Remedies for Defaults. Upon the happening and continuation of any of the Events of Default in Section 8.01 hereof, then and in every case the Lender, including, without limitation, a trustee or trustees therefor, may proceed against the City and its agents, officers and employees to protect and to enforce the rights of the Lender under this Ordinance by mandatory injunction or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or an operating trustee or for the specific performance of any covenant or agreement contained herein or for any proper legal or equitable remedy as the Lender may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of the Lender, or to require the City to act as if it were the trustee of an express trust, or any combination of such remedies or as otherwise may be authorized by any statute or other provision of law. All such proceedings at law or in equity shall be instituted, had and maintained for the benefit of the Lender. Any receiver or operating trustee appointed in any proceedings to protect the rights of the Lender hereunder may collect, receive and apply all Income arising after the appointment of such receiver or operating trustee in the same manner as the City itself might do. The consent to any such appointment is hereby expressly granted by the City.

Section 8.03. Rights and Privileges Cumulative. The failure of the Lender to proceed in any manner herein provided shall not relieve the City or any

of its officers, agents or employees of any liability for failure to perform to carry out any duty, obligation or other commitment. Each right or privilege of the Lender or trustee therefor is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of the Lender shall not be deemed a waiver of any other right or privilege thereof. The Lender shall be entitled to all of the privileges, rights and remedies provided or permitted in this Ordinance and as otherwise provided or permitted by law or in equity or by statute, except as provided in Sections 10.02 and 10.03 hereof, and subject to the applicable provisions concerning the Income and the proceeds of the Series 2012 Note. Nothing herein affects or impairs the right of the Lender to enforce the payment of the Debt Service Requirements or the obligation of the City to pay the Debt Service Requirements to the Lender at the time and the place expressed in the Series 2012 Note.

Section 8.04. Duties Upon Default. Upon the happening of any of the Events of Default as provided in Section 8.01 hereof, the City, in addition, will do and perform all proper acts on behalf of and for the Lender to protect and to preserve the security pledged for the payment of the Series 2012 Note and to insure the payment of the Debt Service Requirements promptly as the same become due. If the City fails or refuses to proceed as in this Section 8.04 provided, the Lender, after demand in writing, may proceed to protect and to enforce the rights of the Lender as hereinabove provided; and to that end the Lender shall be subrogated to all rights of the City under any agreement or contract involving the Pledged Revenues entered into prior to the effective date of this Ordinance or thereafter while the Series 2012 Note is Outstanding. Nothing herein requires the City to proceed as provided herein if it determines in good faith and without any abuse of its discretion that if it so proceeds it is more likely than not to incur a net loss rather than a net gain or that such action is likely to affect materially and prejudicially the Lender.

Section 8.05. Evidence of Security Ownership. Any request, consent or other instrument which this Ordinance may require or may permit to be signed and to be executed by the Lender may be in one or more instruments of similar tenor and shall be signed by the Lender or by its attorney appointed in writing. The registry maintained by the Registrar shall be conclusive evidence of the identity and amount of the ownership interest of the Lender.

ARTICLE IX AMENDMENT OF ORDINANCE

Section 9.01. Amendments of Ordinance. This Ordinance may be amended by a supplemental ordinance, but only with the written consent of the Lender.

Section 9.02. Notation on Series 2012 Note. Any certificate evidencing the Series 2012 Note delivered after the effective date of any action taken as provided in Section 9.01 or certificate evidencing the Series 2012 Note Outstanding at the effective date of such action, may bear a notation thereon by endorsement or otherwise in form approved by the Council as to such action; and if any such certificate evidencing the Series 2012 Note so executed and delivered after such date does not bear such notation, then upon demand of the Lender at such effective date and upon presentation of the certificate evidencing the Series 2012 Note for such purpose at the principal office of the City, suitable notation shall be made on the certificate evidencing the Series 2012 Note by the City Clerk as to any such action. If the Council so determines, a new Series 2012 Note so modified as in the opinion of the Council to conform to such action shall be prepared, executed and delivered; and upon demand of the Lender, shall be exchanged without cost to such Lender for the certificate Outstanding upon surrender of such Outstanding certificate.

ARTICLE X MISCELLANEOUS

Section 10.01. Sale of Series 2012 Note. The Series 2012 Note shall be sold in the manner provided by Article X of the Charter for borrowing money and entering into obligations. It is hereby determined by Council that it is in the best interests of the City for the Series 2012 Note to be sold at negotiated sale at a price, to be determined by Final Terms Certificate, not less than 100% of its

principal amount plus accrued interest, if any, to the date of its delivery to the Lender.

Section 10.02. Character of Agreement. None of the covenants, agreements, representations or warranties contained herein or in the Series 2012 Note shall ever impose or be construed as imposing any liability, obligation or charge against the City (except for the special funds pledged therefor) or against the general credit of the City payable out of general funds or out of any funds derived from general property taxes. No default on any other obligation of the City shall constitute a default for purposes of this Ordinance.

Section 10.03. No Pledge of City Property. The payment of the Series 2012 Note is not secured by an encumbrance, mortgage or other pledge of property of the City except for the Pledged Revenues. No property of the City, subject to such exception with respect to the Pledged Revenues, is pledged for the payment of the Series 2012 Note or shall be liable to be forfeited to taken in payment of the Series 2012 Note.

Section 10.04. Statute of Limitations. No action or suit based upon any Series 2012 Note or other obligation of the City shall be commenced after it is barred by any statute of limitations pertaining thereto. Any trust or fiduciary relationship between the City and the Lender or the obligee regarding any such obligation shall be conclusively presumed to have been repudiated on the maturity date or other due date thereof unless the Series 2012 Note is presented for payment or demand for payment of such other obligation is otherwise made before the expiration of the applicable limitation period. Any moneys from whatever source derived remaining in any fund or account reserved, pledged or otherwise held for the payment of any such obligation, action or suit, the collection of which has been barred, shall be available for any lawful purpose of the City. Nothing herein prevents the payment of the Series 2012 Note after an action or suit for its collection has been barred if the Council in its absolute discretion deems it in the best interests of the City or the public so to do and orders such payment to be made.

Section 10.05. Delegated Duties. The officers of the City are hereby authorized and directed to enter into such agreements and take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law, including, without limitation:

(a) **Preparation of Series 2012 Note.** The preparation of the Series 2012 Note, including the attachment thereto of a copy of the approving legal opinion of Kutak Rock LLP, bond counsel, duly certified by the Registrar;

(b) **Execution, Registration and Delivery of Series 2012 Note and Escrow Agreement.** The execution and registration of the Series 2012 Note, the execution and delivery of the Escrow Agreement and the delivery of the Series 2012 Note to the Lender pursuant to the provisions of this Ordinance;

(c) **Information.** The assembly and dissemination of financial and other information concerning the City and the Series 2012 Note;

(d) **Closing Certificates.** The execution of such certificates as may be reasonably required by the Lender, relating, among other things, to:

(i) the signing of the Series 2012 Note;

(ii) the tenure and identity of the officials of the City;

(iii) if in accordance with fact, the absence of litigation, pending or threatened, affecting the validity of the Series 2012 Note;

(iv) the excludability of interest on the Series 2012 Note from gross income for federal income tax purposes; and

(v) the delivery of the Series 2012 Note and the receipt of the Series 2012 Note purchase price.

Section 10.06. Successors. Whenever herein the City is named or is referred to, such provision shall be deemed to include any successors of the City,

whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of and other provisions for the benefit of the City contained herein shall bind and inure to the benefit of any officer, board, district, commission, authority, agency, instrumentality or other Person or Persons to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the City or of its respective successors, if any, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

Section 10.07. Rights and Immunities. Except as herein otherwise expressly provided, nothing herein expressed or implied is intended or shall be construed to confer upon or to give to any Person, other than the City and the Lender, any right, remedy or claim under or by reason hereof or of any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements herein contained by or on behalf of the City shall be for the sole and exclusive benefit of the City and the Lender.

No recourse shall be had for the payment of the Debt Service Requirements of the Series 2012 Note or for any claim based thereon or otherwise upon this Ordinance authorizing their issuance or any other ordinance or instrument pertaining thereto, against any individual member of the Council, or any officer or other agent of the City, past, present or future, either directly or indirectly through the City, or otherwise, whether by virtue of any constitution, statute or rule of law or by the enforcement of any penalty or otherwise, all such liability, if any, being by the acceptance of the Series 2012 Note and as a part of the consideration of its issuance specially waived and released by the Lender.

Section 10.08. Ratification. All action not inconsistent with the provisions of this Ordinance heretofore taken by the City or its officers, and otherwise by the City directed toward the Project and the issuance of the Series 2012 Note is hereby ratified, approved and confirmed.

Section 10.09. Facsimile Signatures. Pursuant to the Uniform Facsimile Signature of Public Officials Act, Part 1 of Article 55 of Title 11, Colorado Revised Statutes, as amended, the Mayor and the City Clerk shall forthwith, and in any event prior to the time the Series 2012 Note is delivered to the Lender, file with the Colorado Secretary of State their manual signatures certified by them under oath.

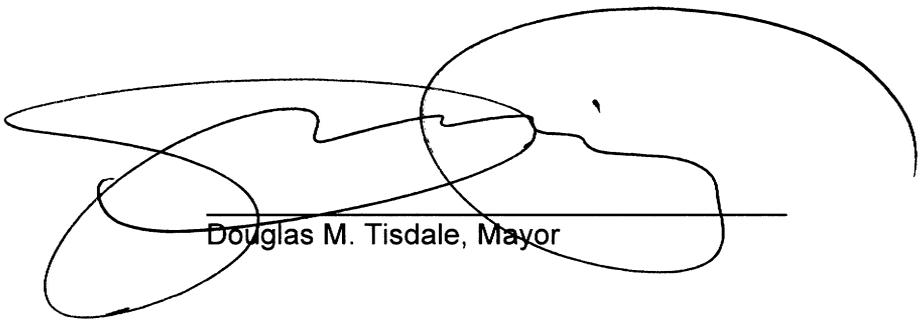
Section 10.10. Ordinance Irrepealable. This Ordinance is, and shall constitute, a legislative measure of the City and after the Series 2012 Note is issued, this Ordinance shall constitute an irrevocable contract between the City and the Lender; and this Ordinance, subject to the provisions of Articles VII and IX hereof, if the Series 2012 Note is in fact issued, shall be and shall remain irrepealable until the Series 2012 Note, as to all Debt Service Requirements, shall be fully paid, cancelled and discharged, as herein provided.

Section 10.11. Repealer of Inconsistent Actions and Measures. All ordinances, resolutions, bylaws, orders and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order or other instrument, or part thereof, heretofore repealed.

Section 10.12. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

Section 10.13. Publication; Effectiveness; Expiration. Pursuant to the Charter, this Ordinance shall be published by title following second reading and shall take effect and be in force 10 days after publication by title thereof, together with the statement that the full text is available for public inspection and acquisition in the office of the City Clerk. This Ordinance shall expire to the extent that the Series 2012 Note authorized herein is not issued by December 31, 2012.

Adopted as Ordinance No. 12, Series 2012, by the City Council of the City of Cherry Hills Village, Colorado this 20th day of November, 2012.

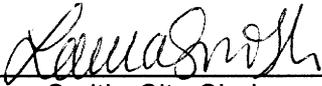


Douglas M. Tisdale, Mayor

(SEAL)

ATTEST:

APPROVED AS TO FORM:



Laura Smith, City Clerk



Kenneth S. Fellman, City Attorney

Published in the Villager
Published 11-29-12
Legal # 2890

**CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 12, SERIES 2012**

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, AUTHORIZING THE ISSUANCE OF A SPECIAL ASSESSMENT REVENUE REFUNDING NOTE, SERIES 2012 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$675,000; PRESCRIBING THE FORM OF THE NOTE; PROVIDING FOR THE PAYMENT OF THE NOTE FROM SPECIAL ASSESSMENTS IMPOSED UPON PROPERTY WITHIN THE CITY OF CHERRY HILLS VILLAGE SPECIAL IMPROVEMENT DISTRICT NO. 7 AND MAKING CERTAIN COVENANTS IN CONNECTION THEREWITH; PROVIDING OTHER DETAILS AND APPROVING VARIOUS DOCUMENTS IN CONNECTION WITH THE NOTE.

Copies of the Ordinances are on file at the office of the City Clerk and may be inspected during regular business hours.

Published in: The Villager
Published: November 29, 2012
Legal #: 2890

MNB302