

PLANNING & DEVELOPMENT MEMORANDUM

June 11, 2009

TO: Honorable Mayor Kathleen M. Novak and City Council members

FROM: William Simmons, City Manager *WMS*
James Hayes, Director of Planning and Development *JH*
Travis Reynolds, Senior Planner *TR*

SUBJECT: Panattoni Enhanced Sales Tax Incentive Program (ESTIP) agreement (Circuit City building)

Background

Panattoni Development Company staff has recently approached staff regarding an amendment to their existing ESTIP agreement. In an attempt to refinance the existing debt on the property, they are proposing changes to the current agreement (ATTACHMENT A) that would amend conditions regarding the amount of required maintained retail space that is open and actively engaged in business.

In July of 2006, City Council approved an ESTIP agreement with the Panattoni Development Company, LLC to aid in redevelopment and leasing of the former Mervyn's building in the Marketplace shopping center. The basic parameters of current the agreement are as follows:

- Required redevelopment of not less than 60,000 square feet of new retail space (completed in November, 2007).
- The agreement does not commence until January 1, 2010 and terminates on December 31, 2019.
- 50/50 sharing of the enhanced sales taxes with reimbursement paid quarterly to Panattoni.
- Maximum amount of enhanced sales tax to be reimbursed to Panattoni is \$2,905,098.00 over the duration of the agreement (10 years).

Panattoni is currently undertaking a restructuring of their debt associated with the property. In order to show the existing ESTIP agreement as an asset in the property's portfolio their lending company has indicated that they need to amend the current agreement to something that ensures that the agreement is still current under present conditions.

Analysis

Both the City and Panattoni concur that the current agreement is essentially not in "full force and effect" due to the vacancy of Circuit City in excess of 90 days. Panattoni is actively attempting to re-lease the property to a new retail tenant prior to the commencement of the sales tax incentive term, January 1, 2010.

Panattoni has asked to appear before City Council to propose an alternative modification to the ESTIP agreement. The modification is described in the attached letter from William Damrath, Senior Vice President / Project Principal for Panattoni. (ATTACHMENT B)

If this is an acceptable solution to the Council, staff will prepare the proposed language amendments and supporting resolution for consideration at the June 25, 2009 meeting.

Staff Contact

If Council members have any comments or questions they may contact James Hayes at 303-450-8937, jhayes@northglenn.org or Travis Reynolds at 303-450-8836, treynolds@northglenn.org.

ATTACHMENT A

SPONSORED BY: MAYOR NOVAK, COUNCIL MEMBERS GARNER & MONROE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-99
Series of 2006

06-93
Series of 2006

A RESOLUTION APPROVING ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT RENOVATION OF FORMER MERVYN'S BUILDING

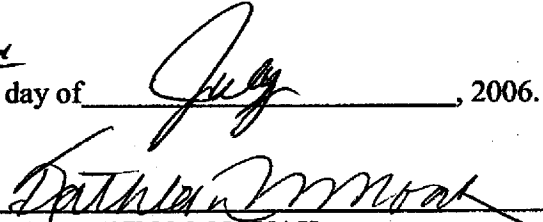
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby finds that the Enhanced Sales Tax Incentive Program Agreement Renovation of Former Mervyn's Building is necessary and appropriate based on the following criteria pursuant to 5-12-9 of the City of Northglenn Municipal Code:

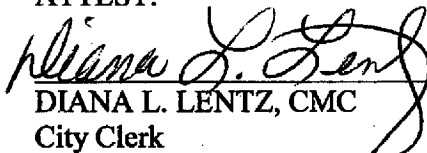
- (a) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the City through the expanded or retail sales tax generating business;
- (b) The public benefits which are provided by the applicant through public works, public or public-related improvements, additional employment for City residents, etc.,
- (c) The amount of expenditures which may be deferred by the City based upon public or public-related improvements to be completed by the applicant at the applicant's expense;
- (d) The conformance of the applicant's property or project with the comprehensive plan, zoning ordinances and building codes of the City; and
- (e) The agreement required by Section 5-12-10 having been reached, which agreement shall contain and conform to all requirements of Section 5-12-10 of the Northglenn Municipal Code.

Section 2. The Enhanced Sales Tax Incentive Program Agreement Renovation of Former Mervyn's Building attached hereto as Exhibit A, between Panattoni Development Co., LLC and the City of Northglenn, is hereby approved and the Mayor is authorized to execute same on behalf of the City.


DATED at Northglenn, Colorado, this 27th day of July, 2006.


KATHLEEN M. NOVAK
Mayor

ATTEST:


DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:


COREY T. HOFFMANN
City Attorney

**ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT
RENOVATION OF FORMER MERVYN'S BUILDING**

THIS ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT (hereafter referred to as the ("Renovation of the former Mervyn's Building ESTIP Agreement")) is made and executed this 12th day of ~~August~~ ^{October} 2006, by and between the CITY OF NORTHGLENN, COLORADO, a Colorado Home Rule municipal corporation, (hereafter referred to as the "City"), and FRE NORTHGLENN RETAIL, LLC, a Delaware limited liability company, as to an undivided 57.67% interest and CHARLES L. KESSINGER and JACQUE L. KESSINGER as to an undivided 42.33% interest, as tenants in common (hereafter referred to collectively as the "Redeveloper").

W I T N E S S E T H

WHEREAS, the Redeveloper has acquired certain real property in the City commonly described as the former Mervyn's Building, located at 10602 Melody Drive, Northglenn, Colorado (the "Property"); and

WHEREAS, the Redeveloper proposes to redevelop the Property as a multi-tenant retail facility which redevelopment will include the construction of certain public and private improvements generally described in the attached **Exhibit A**; and

WHEREAS, in entering into this ESTIP Agreement, the City Council of the City specifically finds that entering into this ESTIP Agreement will encourage the establishment or substantial expansion of retail sales tax generating businesses within the City; thereby stimulating the economy of and within the City; thereby providing employment for residents of the City and others; thereby expanding the goods available for purchase and consumption by residents of the City; and further increasing the sales taxes collected by the City; and

WHEREAS, the City Council finds that the redevelopment of the Property is necessary to promote the public welfare including the expansion of retail sales tax and/or seat tax generating business and expanded employment opportunities; and

WHEREAS, the City Council further finds that entering into this ESTIP Agreement shall provide a mechanism for the provision to the residents of the City of necessary public and private improvements at no cost or reduced cost to the residents and the government of the City; and

WHEREAS, the parties hereto wish to set forth in full their agreement as to the general nature and extent of the public and private improvements which shall be constructed and installed by the Redeveloper within and upon the Property, and the manner for and extent of the reimbursement to the Redeveloper for such construction and installation; and

WHEREAS, the parties wish to memorialize all aspects of their agreement as to the terms and conditions of such reimbursement in this ESTIP Agreement.

NOW THEREFORE, the parties hereto, for themselves, their successors and assigns (to the extent this ESTIP Agreement is assignable, as specified hereinafter), in and for the consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

1. This ESTIP Agreement is entered into in compliance with the provisions of Article 12, Chapter 5 of the Northglenn Municipal Code.

2. The parties hereby mutually agree that Redeveloper shall construct, or cause to be constructed, certain public, public-related and private improvements within or adjacent to the Property. The specific location and extent of such public, public-related and private improvements has not yet been identified, but the parties covenant and agree that such improvements, as well as the additional employment opportunities and tax revenues to be generated by the redevelopment of the Property are significant benefits to the City and its residents, and that the reimbursements contemplated by this Agreement are for a valid and important public purpose. The City shall not be entitled to relief in the event that Redeveloper shall fail to construct said improvements; provided, however, that this ESTIP Agreement shall terminate and be of no further force or effect in the event the Redeveloper shall fail to commence construction of not less than Sixty Thousand (60,000) square feet of new retail sales tax generating retail space on or before one (1) year from the date of execution of this ESTIP Agreement.

3. The parties hereby mutually agree that the base amount of the City's three percent (3%) general sales tax (specifically excluding the one-half percent (1/2%) sales tax devoted to water acquisition) to be used in determining the "enhanced sales tax" to be shared hereunder is zero (0) since the Property will not have produced any sales tax for over one (1) year preceding its reopening as a retail sales tax generating facility. Pursuant to the provisions of Article 12 of Chapter 5 of the Municipal Code, all sales tax revenues collected from any and all businesses within the Property shall constitute "enhanced sales taxes" and shall be subject to division as specified herein.

4. The parties hereby agree that any and all "enhanced sales taxes" as defined in paragraph 3 above shall be subject to sharing by the City and the Redeveloper on a 50/50 basis, with fifty percent (50%) of said enhanced sales taxes being available to the City for use in its discretion, and fifty percent (50%) being reimbursed to the Redeveloper for the cost of the public, public-related and private improvements.

5. The parties agree that the maximum amount of "enhanced sales tax" revenue which is subject to distribution to the Redeveloper from sales within the Property hereunder shall be Two Million Nine Hundred Five Thousand Ninety-Eight Dollars (\$2,905,098.00), and that the "enhanced sales taxes" shall be shared commencing with sales taxes generated on the Property on or after January 1, 2010, and shall terminate on December 31, 2019. The parties specifically acknowledge and agree that whether or not the entire Two Million Nine Hundred Five Thousand Ninety-Eight Dollars (\$2,905,098.00) has been received by Redeveloper, this ESTIP Agreement shall terminate following division and payment of the sales tax increment through December 31, 2019. Likewise, the parties acknowledge and agree that receipt by Redeveloper of the entire Two Million Nine Hundred Five Thousand Ninety-Eight Dollars (\$2,905,098.00) prior to December 31, 2019, shall

terminate this ESTIP Agreement.

6. It shall be the duty of the City to undertake collection of all sales taxes generated within the Property, and thereafter to administer division and sharing thereof, in accordance with the provisions of Sections 5-12-7 and 5-12-8 of the City's Municipal Code. The parties agree that, for purposes of administration of this ESTIP Agreement, reimbursement to Redeveloper shall occur on a quarterly basis (i.e., January - March, April - June, July - September, and October - December). Reimbursements to Redeveloper shall be made within forty-five (45) days following the last day of each quarter and shall be calculated based upon all sales taxes paid to the City from businesses within the Property in the preceding quarter.

7. The obligations of the City under this ESTIP Agreement are specifically conditioned upon and made subject to the following contingencies:

- a. Redeveloper shall complete construction of the improvements contemplated by this ESTIP Agreement no later than August 31, 2007.
- b. Redeveloper shall, during the term of this ESTIP Agreement, maintain that not less than Sixty Thousand (60,000) square feet of retail sales tax generating retail space on the Property, open and actively engaged in business, subject to temporary closures not to exceed ninety (90) days in duration.

Should any of these contingencies not be satisfied on or before the date specified, this ESTIP Agreement shall terminate and be of no further force and effect.

8. The parties specifically acknowledge and agree that no undertaking on the part of the City to share "enhanced sales taxes" as specified herein constitutes a debt or obligation of the City within any constitutional or statutory provision. The City's obligations hereunder shall be subject to annual appropriation by the City Council unless and until approved by the City's electors.

9. Any and all undisbursed "enhanced sales tax" increment subject to sharing hereunder shall be escrowed in the event there is a legal challenge to the Enhanced Sales Tax Incentive Program in general or to this ESTIP Agreement. In the event of such a legal challenge, Redeveloper may continue to receive reimbursements under this Agreement if it posts a bond or other security, in a form acceptable to the City, for the full amount of such reimbursements. The City shall actively defend against any such legal challenge, and the Redeveloper may participate in such defense at its own cost and expense.

10. None of the obligations, benefits, and provisions of this ESTIP Agreement shall be assigned in whole or in any part without the express written authorization of the Northglenn City Council, except that this ESTIP Agreement shall run with ownership of the Property and Redeveloper's rights and obligations hereunder shall automatically transfer to grantees under any deeds conveying the Property. In addition, no third party may rely upon or enforce any provision of this ESTIP Agreement, the same being an agreement solely between the City and the Redeveloper, and its permitted assigns, and which agreement is made for the benefit of no other person or entity.

The preceding sentence notwithstanding, this Agreement and the Redeveloper's rights hereunder may be assigned to a company or companies, including, without limitation, any investors in the Property as long as Carl D. Panattoni and/or Jeff Pintar, directly or indirectly, have an ownership interest in the Property and/or any company owning an interest in the Property, and/or to a lender who holds a first deed of trust against the Property.

11. This ESTIP Agreement shall be subject to amendment only by a written instrument executed by each party. Any such amendment shall require the approval by the City Council of the City of Northglenn at a regular or special meeting of the City Council, and execution thereof by the Mayor and attestation by the City Clerk.

12. Any written notices provided for or required in this ESTIP Agreement shall be deemed delivered when either personally delivered or mailed, postage fully prepaid, certified or registered mail, return-receipt requested, to the parties at the following addresses:

To the City: City Manager
 City of Northglenn
 11701 Community Center Drive
 Northglenn, CO 80233

With a copy to: Hayes, Phillips, Hoffmann & Carberry, P.C.
 1350 Seventeenth Street, Suite 450
 Denver, CO 80202

To the Redeveloper: c/o Panattoni Development Company, LLC
 4601 DTC Boulevard, Suite 650
 Denver, CO 80237
 Attn: Will Damrath

With a copy to: Panattoni Law Firm
 8413 Jackson Road, Suite C
 Sacramento, CA 95826
 Attn: Peter E. von Elten, Esq.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of Santa Clara

} ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

Subscribed and sworn to (or affirmed) before me on this

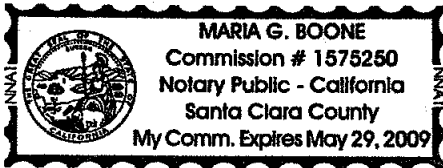
20th day of September, 2006, by

(1) Mary Kay Kennedy
Name of Signer

- Personally known to me
 - Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)
- (and

(2) _____
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)



Maria G. Boone
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Enhanced Sales Tax Incentive Program Agreement Renovation of Former Mervyn's Building

Document Date: None Number of Pages: 8

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

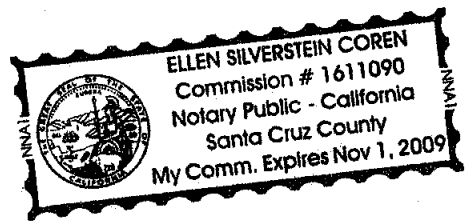
County of Santa Cruz } ss.

On Sept. 29, 2006, before me, Ellen Silverstein Coren, notary public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jacque L. Kessinger
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that s/he/they executed the same in ~~her/his~~ authorized capacity(ies), and that by ~~her/his~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Ellen Silverstein Coren
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

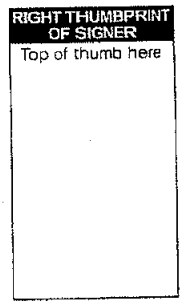
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



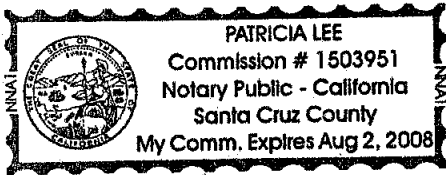
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Santa Cruz } ss.

On September 29, 2004, before me, Patricia Lee, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)
personally appeared Charles L. Kessinger
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Patricia Lee
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: entire a sales tax incentive program regarding renovation of former government buildings
Document Date: _____ Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: _____

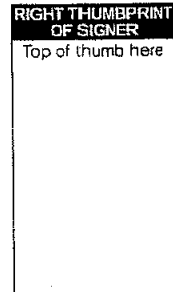


EXHIBIT A

SEE ATTACHED



O'BRIEN & ASSOCIATES
 ARCHITECTURE
 PLANNING
 INTERIORS

391 S. ULSTER STREET
 DENVER, COLORADO 80202
 303.595.9777
 FAX: 303.595.9777

530 HARVEST HILL ROAD
 SUITE 105
 DALLAS, TEXAS 75239
 FAX: 972.948.4441
 WWW.OBANDASSOCIATES.COM

MERYNN'S RENOVATION
 10622 MELDY DRIVE
 NORTHGLENN, COLORADO
 A DEVELOPMENT OF
 PANATTONI DEVELOPMENT

REVISION LOG

NO.	DESCRIPTION	DATE

DATE: _____ REVISED: _____
 JOB #: 25018 DATE: Feb 29, 2006
 SCALE: As Shown
 PROJECT: MERYNN'S RENOVATION NO. C-209

DATE: _____ REVISED: _____
 JOB #: 25018 DATE: Feb 29, 2006
 SCALE: As Shown
 PROJECT: MERYNN'S RENOVATION NO. C-209

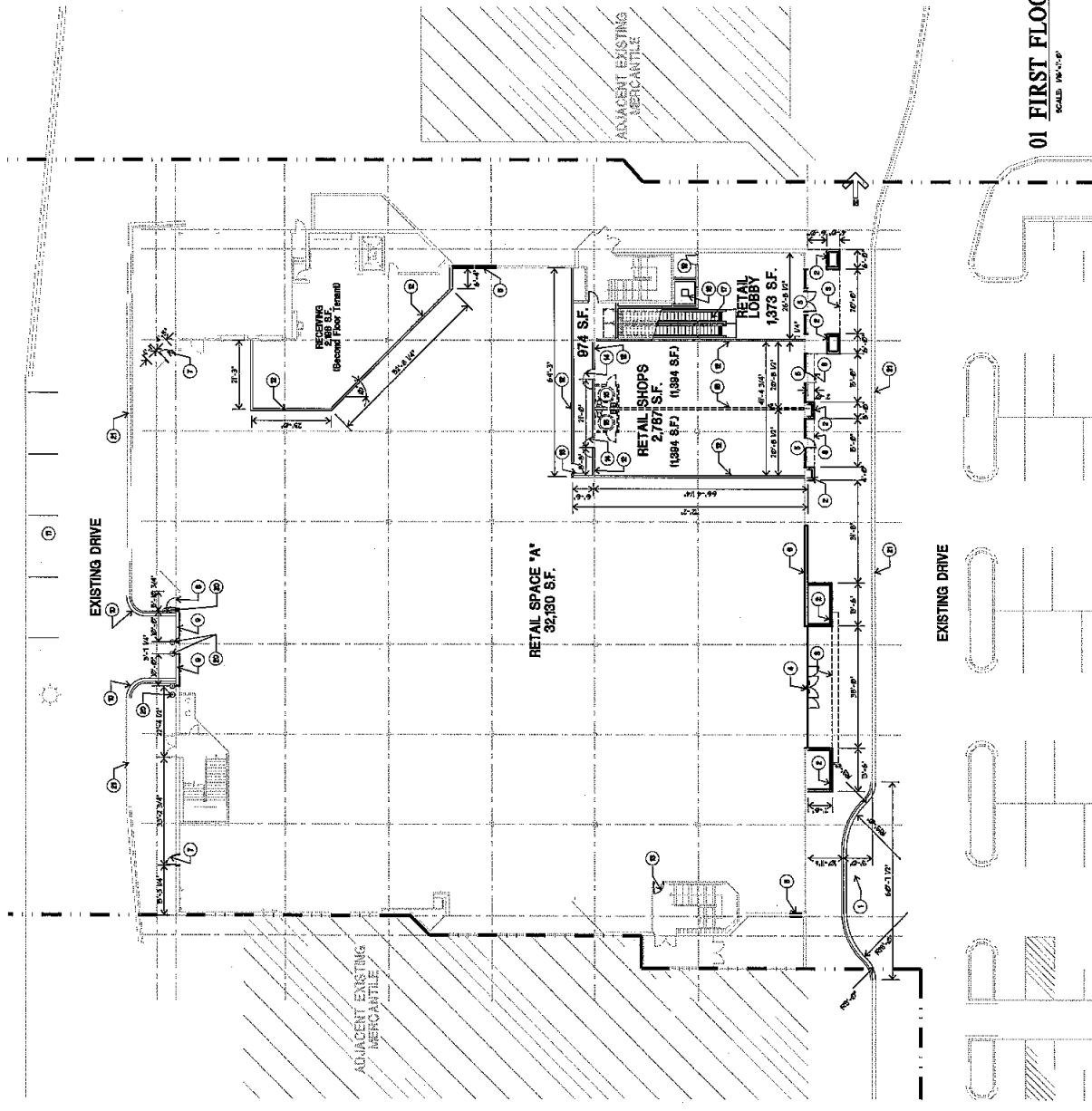
SHEET NO. A3.2
 First Floor Plan

FIRST FLOOR AREA:

RETAIL SPACE 'A'	32,180 SQ FT
RETAIL SHOPS	2,787 SQ FT
RETAIL LOBBY - RETAIL 'B'	1,373 SQ FT
RECEIVING - RETAIL 'B'	2,86 SQ FT
STAIRS/ELEVATORS	2,828 SQ FT
GROSS FLOOR AREA	46,964 SQ FT

FLOOR PLAN KEY NOTES:

1. CUSTOMER PICK UP LANE. FIRE LANE TO REMAIN STRAIGHT AND MUST BE STRIPED.
2. BRICK VENEER OVER 3/8" SHEATHING OVER 6"x6" GA. GALV. METAL STUDS @ 16" O.C. COLOR: (LIGHT COLOR)
3. 1/2" THICK EPS OVER EXTERIOR DENS-GLASS GOLD 5/8" SHEATHING BOARD OVER 6"x6" GA. GALV. METAL STUDS @ 16" O.C. COLOR: (LIGHT COLOR)
4. GLASS-TEMPERED WALL CLEAR ANCHORED SYSTEM (W/ T INSULATED GLASS-TEMPERED)
5. ALUMINUM STOREFRONT CLEAR ANCHORED SYSTEM (W/ T INSULATED GLASS-TEMPERED)
6. IN-HILL WALL OPENING WITH 6" METAL STUDS @ 24" O.C. WITH 1/2" TYPE 'X' GYP. BD. ON INTERIOR FACE & 3/4" BATT INSULATION. EXTERIOR FACE TO BE FILLED WITH BRICK TO MATCH EXISTING.
7. NEW HOLLOW METAL DOOR (MATCH EXISTING)
8. NEW HOLLOW METAL DOOR TO HILL INTO EXISTING DOUBLE DOOR OPENING. COLOR: (TO MATCH LIGHT EPS)
9. NEW OVERHEAD SECTIONAL DOOR (MATCH EXISTING)
10. NEW CURB CUT AND DRIVE WAY. FIRE LANE TO REMAIN STRAIGHT AND BE STRIPED.
11. 4 PARKING SPACES TO BE STRIPED OFF AND NOT ENROACH THE FIRE LANE. NEW SPACES TO BE 8'6" W. 16'6" D. WITH 1/2" BATT INSULATION. BOTH SIDES 1/2" BATT INSULATION.
12. NEW 1/2" RATED HOLLOW METAL DOOR INTO EGRESS CORRIDOR. COLOR: (TO BE DETERMINED)
13. NEW 1/2" RATED HOLLOW METAL DOOR INTO EGRESS CORRIDOR WITH 80 DEGREE SWING. COLOR: (TO BE DETERMINED)
14. FINISH BATHROOM LOCATIONS TO BE COORDINATED WITH TENANT FINISH DOCUMENTS.
15. NEW ESCALATOR
16. NEW HYDRAULIC PASSENGER ELEVATOR
17. NEW HYDRAULIC PASSENGER ELEVATOR MECHANICAL ROOM
18. NEW 1/2" PLASTER CONCRETE FILLED BOLLARD.
19. COLOR: (SAFETY YELLOW)
20. ALL CURBS AROUND BUILDINGS TO BE PAINTED FOR FIRE LANE. COLOR: (RED COLOR)



01 FIRST FLOOR PLAN
 SCALE: 1/8"=1'-0"

ALL DIMENSIONS TO BE FIELD VERIFIED

SECOND FLOOR AREA:

RETAIL SPACE 'B'	36219 SQ FT
RETAIL LOBBY - RETAIL 'B'	1373 SQ FT
COMMON AREAS	264 SQ FT
STAIRS & EGRESS	1209 SQ FT
GROSS FLOOR AREA	41862 SQ FT

FLOOR PLAN KEY NOTES:

- 1 8" METAL STUDS 20 GA. AT 24" OC WITH 9/16" TYPE "X" GYP. BO. ON BOTH SIDES 1 1/2" MIN. INSULATION.
- 2 1/2" METAL STUD WITH 5/8" GYPSUM BOARD ON OUTSIDE FACE ONLY.
- 3 3-5/8" METAL STUD SOFFIT WITH 5/8" GYPSUM BOARD ON OUTSIDE FACE ONLY.
- 4 DECORATIVE METAL GUARD RAIL
- 5 FINISH HEIGHT TO BE 42" ABOVE FINISHED FLOOR
- 6 8'-0" x 12'-0" FROSTED SKYLIGHT TO BE INSTALLED BETWEEN THE ROOF STRUCTURE.
- 7 NEW HYDRAULIC PASSENGER ELEVATOR
- 8 NEW ESCALATOR
- 9 IN-FILL IN THE EXISTING ESCALATOR FLOOR OPENING.
- 10 IN-FILL IN THE EXISTING STAIR AND CONVECTOR BELT OPENING.



O'BRIEN & ASSOCIATES
ARCHITECTURE
PLANNING
INTERIOR

508 S. ULSTER STREET
SUITE 300
DENVER, CO 80202
PAX 303-595-577

510 HARVARD HILL ROAD
SUITE 105
DALLAS, TEXAS 75219
PAX 727-9443

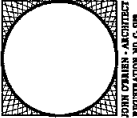
www.obriencorp.com

MERYN'S RENOVATION
A DEVELOPMENT OF
NORTHGLENN, COLORADO
10602 MELODY DRIVE
PANTONI DEVELOPMENT

ISSUE LOG

NO.	DESCRIPTION	DATE

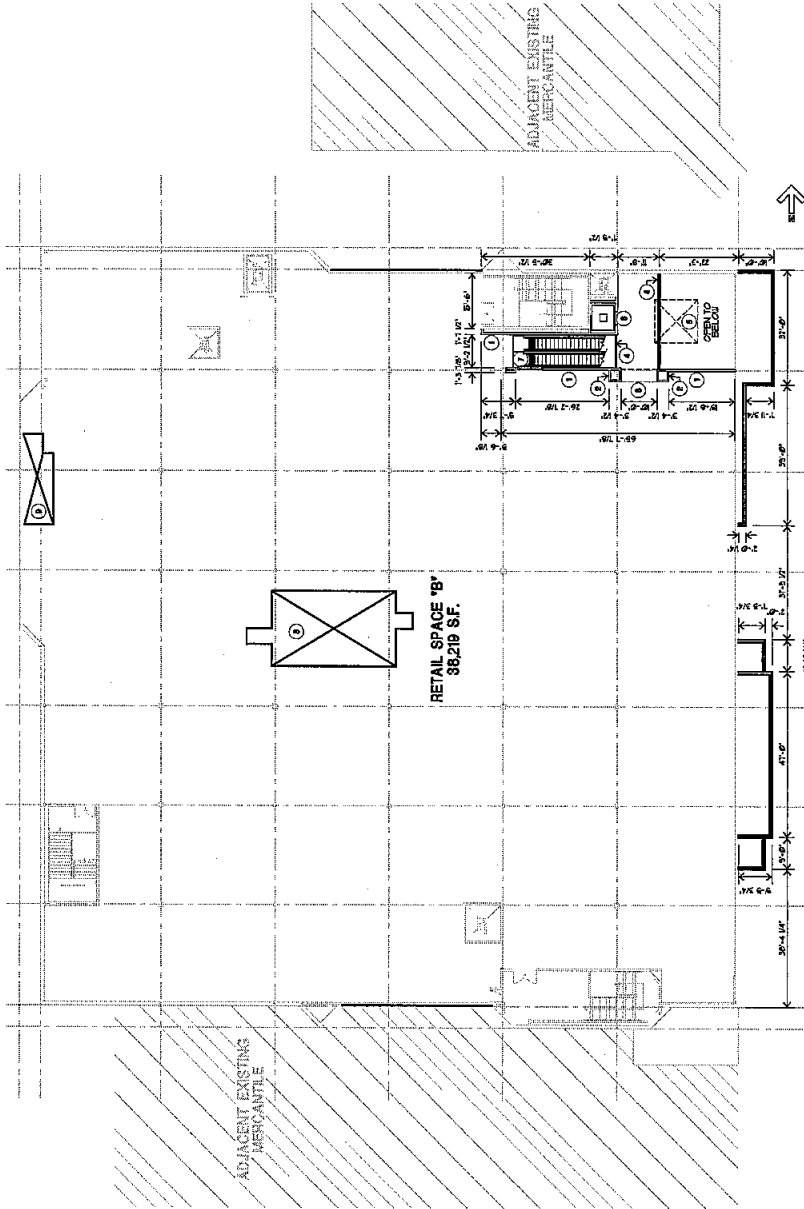
CONTRACTOR: O'BRIEN & ASSOCIATES
THIS DRAWING IS PART OF A PROJECT AND NOT BE REPRODUCED OR COPIED WITHOUT THE WRITTEN CONSENT OF O'BRIEN & ASSOCIATES.



JOHN O'BRIEN - ARCHITECT
REGISTERED ARCHITECT

DATE: 05/01/08
JOB #: 2501
DATE: June 29, 2008
SCALE: As Noted

SHEET NO. A3.3
Second Floor Plan



01 SECOND FLOOR PLAN
SCALE: 1/8"=1'-0"

ALL DIMENSIONS TO BE FIELD VERIFIED



June 3, 2009

James A. Hayes, Director of Planning & Development
City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061

RE: 10602 Melody Drive, Northglenn, Adams County, Colorado ("Property")
Enhanced Sales Tax Incentive Program Agreement dated October 12, 2006 ("ESTIP")

Dear Mr. Hayes:

Panattoni Development Company, Inc., as agent for the owners of record ("Agent"), hereby requests the following modification to the ESTIP by and between the City of Northglenn ("City") and FRE Northglenn Retail, LLC and Charles L. Kessinger and Jacque L. Kessinger (collectively "Redeveloper"):

- Section 7 (b) requires Redeveloper to maintain minimum 60,000 square feet of retail sales tax generating space on the Property. Agent requests a reduction in a minimum square footage to 25,000 square feet. In exchange, Redeveloper will grant City a minimum "floor" sales tax revenue threshold. Specifically, sales tax sharing pursuant to the ESTIP will not commence until City receives sales tax revenue generated from the Property of \$145,000 per annum (the "Floor"), which equates to approximate taxable retail sales of \$4,800,000.

The Floor shall be suspended once the Property achieves minimum occupancy of 60,000 SF. By way of example, on January 1, 2009 the Property occupancy totaled 40,027 SF; therefore, the Floor would be in full force and effect. Assuming on January 1, 2010 occupancy achieves 60,000 SF the Floor would be immediately suspended and sales tax sharing would commence as currently outlined in the ESTIP (i.e. City and Redeveloper equally share in 3.00% sales tax received from the Property).

Pursuant to the telephone conversation between you and Jeff Konieczny, Finance Manager of Agent, the ESTIP valuation is taken into consideration by Redeveloper's lender in JP Morgan Chase; therefore, approval of the proposed ESTIP modification would provide relief for both Redeveloper and its lender. Conversely, a denial of the ESTIP modification will have a material negative impact upon Redeveloper's ability to finance tenant improvements necessary to attract quality national retailers to the Property.

Finally, per your invitation to Jeff Konieczny, Agent would appreciate an opportunity to speak direct with City Council on June 11, 2009 to discuss the proposed ESTIP modification.

Sincerely,

A handwritten signature in blue ink, appearing to read "William J. Damrath".

William J. Damrath, Senior Vice President / Project Principal
Panattoni Development Company, Inc.
Agent for Owners of Record