



**ADMINISTRATION MEMORANDUM**  
**14-39**

**DATE:** December 22, 2014

**TO:** Honorable Mayor Joyce Downing & City Council Members

**FROM:** John R. Pick, City Manager   
Debbie Tuttle, NURA Executive Director 

**COPY:** NURA Board of Directors  
Corey Hoffmann, City Attorney

**SUBJECT:** CR-138 - Texas Roadhouse Business Incentive Zone (BIZ) Agreement

**PROJECT OVERVIEW**

Texas Roadhouse is finalizing its due diligence and negotiations with the owners of the Marketplace (LNR) to relocate its Thornton restaurant to the Northglenn Marketplace at 104<sup>th</sup> Avenue and I-25. Texas Roadhouse wants to demolish the former Bennigan's restaurant and construct a new \$3.2 million facility. The 7,818 square-foot restaurant would be built on the former Bennigan's restaurant pad site (**Attachment A - Site Location**). Construction and opening of the new facility is estimated in Fall/Winter 2015.

The following is a summary of the proposed project:

**Facility**

- 7,818 Square Foot Restaurant
- 140 Employees
- Land Lease - 15 Years with 3 Additional Five-Year Extension Options
- 400,000+ Customers Annually

**Project Costs**

- Est. \$1.8 Million Construction Costs
- Est. \$1.4 Million in Furniture, Fixtures & Equipment (FF&E) & Misc. Operating Start-Up Costs

**COMPANY BACKGROUND**

Texas Roadhouse has been in business for 21 years and has 450+ stores nationally. The restaurant wants to move from its current facility on Grant Street to expand to serve its growing customer base. The proposed facility will also serve as the company's staff training center which will bring in more people to the Marketplace and the city.

**INCENTIVE REQUEST**

Texas Roadhouse is requesting incentives to help off-set construction and relocation expenses to move to the Marketplace. The construction of the building, start-up costs, and FF&E are estimated at approximately \$3.2 million. Additionally, it is estimated that relocation costs will exceed \$1 million.

Attached for City Council's consideration is a Business Incentive Zone (BIZ) Agreement (**Exhibit A**) which would provide for allowable permit and building-related fee waivers, and 3% abatement of use taxes on construction materials and FF&E for up to the first year not to exceed \$65,027.

### Proposed BIZ Incentives

1 Year Limitation Of Use Tax Incentive As Provided In City Code Section 5-13-2 (BIZ)	\$34,200
1 Year Limitation Of Use Tax Incentive (Cost of Project) As Provided In City Code Section 5-13-2	\$26,175
1 Year Limitation Of Building Permit Fee Incentive As Provided In City Code Section 5-13-2	\$2,498
1 Year Limitation Of Plan Check Fee Incentive As Provided In City Code Section 5-13-2	\$1,624
1 Year Limitation Of Electrical Permit Fee Incentive As Provided In City Code Section 5-13-2	\$530
<b>Total Incentive Not To Exceed</b>	<b>\$65,027</b>

On December 10, 2014, the Northglenn Urban Renewal Authority (NURA) approved a three (3) year business incentive for \$500,000 (**Attachment B** - NURA Resolution N/14-26) to help assist with the business assistance package request made by the company.

If approved, between the City and NURA business assistance incentives would provide up to \$565,027 to Texas Roadhouse to construct a new 7,818 square restaurant at the Marketplace.

### STAFF RECOMMENDATION

Texas Roadhouse requested a business incentive to be considered to assist with costs in the construction, furniture, fixtures, and equipment (FF&E) to relocate from its current facility and construct a new restaurant at the Marketplace.

Texas Roadhouse is making a long term commitment to the Marketplace with a 15-year land lease obligation, with three additional five-year term options on the property (30 year potential), and the capital investment of \$3.2 million.

The former Bennigan's restaurant has been closed since 2007, and therefore is not generating any sales taxes. The Texas Roadhouse restaurant estimates more than 400,000 guests annually visiting the Marketplace, generating sales tax, property and use tax revenues, and the creation of 140 new jobs. Additionally, it would create new synergy for the Marketplace, and new traffic in the Center which would be valuable to existing and new tenants

In accordance with the Business and Development Assistance and Incentive Policy staff recommends approval of CR-138, and entering into an Agreement (**Exhibit A**) with Texas Roadhouse for a Business Incentive Zone (BIZ) not to exceed a total of \$65,027. This is in compliance with the provisions of Article 13 of Chapter 5 of the Northglenn Municipal Code.

### BUDGET IMPACT

This \$65,027 business incentive would waive allowable building fees, permits, and abate use tax on construction materials and FF&E for the first year which would be collected by the city and applied to the General Fund.

### STAFF REFERENCE:

If you have any comments or questions, they may contact John Pick at 303.450.8706 or [jpick@northglenn.org](mailto:jpick@northglenn.org); or Debbie Tuttle at 303-450-8743 or [dtuttle@northglenn.org](mailto:dtuttle@northglenn.org).

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-138  
Series of 2014

\_\_\_\_\_  
Series of 2014

A RESOLUTION APPROVING AN INCENTIVE AGREEMENT WITH TEXAS ROADHOUSE HOLDINGS, LLC

WHEREAS, the Northglenn Business Incentive Zone Ordinance provides for the waiving of use tax on building materials, building permit fees, and plan check fees associated with redevelopment projects that will generate revenue for the City;

WHEREAS, Texas Roadhouse Holdings, LLC desires to relocate an existing business to the City of Northglenn and construct a new restaurant facility at the Northglenn Marketplace;

WHEREAS, the new restaurant facility will generate revenue for the City, improve properties at the Northglenn Marketplace, and expand employment opportunities in the City of Northglenn; and

WHEREAS, the City's Business Incentive Zone Review Committee has reviewed the incentive request of Texas Roadhouse Holdings, LLC and has determined that a business incentive in the amount of \$65,027 is appropriate for the business relocation and construction project.

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

Section 1. The Incentive Agreement between the City of Northglenn and Texas Roadhouse Holdings, LLC (the "Incentive Agreement"), attached hereto as Exhibit 1, in an amount not to exceed \$65,027.00 for waivers of building permit fees, plan review fees, and use taxes otherwise due for the business relocation and construction project is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED, at Northglenn, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

**INCENTIVE AGREEMENT  
(TEXAS ROADHOUSE)**

THIS INCENTIVE AGREEMENT (this "Agreement") is made and executed this \_\_\_\_ day of December, 2014, by and between the CITY OF NORTHGLENN, COLORADO, a Colorado home rule municipal corporation (hereafter referred to as the "City"), and TEXAS ROADHOUSE HOLDINGS LLC, a Kentucky limited liability company (hereafter referred to as "Texas Roadhouse").

**W I T N E S S E T H**

WHEREAS, Texas Roadhouse has entered into a land lease for certain property located generally at 231 West 104<sup>th</sup> Avenue, Northglenn, Colorado (the "Property");

WHEREAS, Texas Roadhouse is proposing to relocate an existing business to Northglenn and more specifically to construct a new restaurant in the Northglenn Marketplace (the "Project") on the Property;

WHEREAS, the City desires to provide rebates, fee waivers, and use tax abatement for construction on the Property in an amount not to exceed Sixty-Five Thousand Twenty-Seven and 00/100 Dollars (\$65,027.00) (the "Incentives") in order to assist Texas Roadhouse in the Project;

WHEREAS, in entering into this Agreement, the City Council of the City specifically finds that entering into this Agreement will encourage the substantial expansion of a tax generating business 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 taxes collected by the City;

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

WHEREAS, the City Council further finds that entering into this 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 wish to memorialize all aspects of their agreement as to the terms and conditions of such Incentives in this Agreement.

NOW THEREFORE, the parties hereto, for themselves, their successors and assigns (to the extent this 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. Authority. This Agreement is entered into in compliance with the provisions of Article 12 of Chapter 5 of the Northglenn Municipal Code.

2. Eligible Improvements. Texas Roadhouse intends to construct, or cause to be constructed, the Project on the Property. Subject to the terms and conditions of this Agreement, provided Texas Roadhouse completes the construction of the Project on the Property on or before December 31, 2015 (subject to force majeure), the Project shall be eligible for the Incentives set forth herein. For purposes of this Agreement, the term “force majeure” shall mean the failure or delay in the performance of a party’s duties or obligations hereunder on account of strikes or labor unrest, riots, insurrection, fire, flood, storm, extreme and unusual weather conditions, explosions, acts of God, war, governmental action, earthquakes, or any other cause beyond the reasonable control of such party without fault or negligence of such party.

3. Business Incentive Zone (BIZ). In accordance with the goals and purposes of Article 13 of Chapter 5 of the Northglenn Municipal Code, the City shall provide the following Incentives described below. In calculating the specific use tax incentives, the total amount of the City’s four percent (4%) use tax is restricted by less one-half percent (1/2%) use tax devoted to water acquisition and one-half percent (1/2%) use tax devoted to capital improvements, which results in a three percent (3%) use tax to be used in determining the below described abatements. The total BIZ incentives are as follows:

a. The City shall abate twenty-five percent (25%) of the applicable building permit, plan check, and electrical fees otherwise due and owing to the City on the Project;

b. The City shall abate three percent (3%) use tax otherwise due and owing to the City during calendar year 2015 on the Project-related construction materials; and

c. The City shall further abate three-percent (3%) of the City’s use tax otherwise due and owing to the City during calendar year 2015 on new business expenses and fixtures, furniture and equipment (FF&E) in excess of the Use Tax Base defined below.

The parties agree that the Use Tax Base (the “Use Tax Base”) during the previous 12 month period on new business expenses and FF&E shall be Zero (0). In addition, the maximum amount of Incentives under this Section 3 shall not exceed the total amount of **Sixty-Five Thousand Twenty-Seven and 00/100 Dollars (\$65,027.00).**

4. The obligations of the City under this Agreement are specifically conditioned upon and made subject to Texas Roadhouse completing construction of the Project contemplated by this Agreement by no later than December 31, 2015 (subject to force majeure). Should this contingency not be satisfied on or before the date specified, Texas Roadhouse shall pay to the City all amounts actually abated by the City under this Agreement, and this Agreement shall terminate and be of no further force and effect.

5. Remedies. Texas Roadhouse waives any constitutional claims against the City arising out of a breach of this Agreement. Texas Roadhouse remedies against the City under this Agreement are limited to breach of contract claims. The City's remedies against Texas Roadhouse under this Agreement are also limited to breach of contract claims.

6. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the parties shall cooperate to cure any legal defects in this Agreement.

7. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Adams County, Colorado. Each party hereby waives its rights to a jury trial of any such suit, action or proceeding.

8. Assignment. None of the obligations, benefits, and provisions of this Agreement shall be assigned in whole or in any part without the express written authorization of the Northglenn City Council. In addition, no third party may rely upon or enforce any provision of this Agreement, the same being an agreement solely between the City and Texas Roadhouse, and which agreement is made for the benefit of no other person or entity. The preceding sentence notwithstanding, this Agreement and Texas Roadhouse's rights hereunder may be assigned to a company under substantially the same ownership and/or to a lender who holds a first deed of trust against the Property.

9. Modifications. This 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.

10. Governmental Immunity. The City, its elected officials, officers, and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to City, its elected officials, officers and employees.

11. Notices. Any written notices provided for or required in this 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.  
1530 Sixteenth Street, Suite 200  
Denver, CO 80202  
Attn: Corey Y. Hoffmann, Northglenn City Attorney

To Texas Roadhouse:   Texas Roadhouse Holdings LLC  
6040 Dutchmans Lane  
Louisville, KY 40205  
Attn: Legal Department

DATED this day and date first above set forth.

THE CITY OF NORTHGLENN, COLORADO

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Joyce Downing, Mayor

ATTEST:

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Johanna Small, City Clerk

APPROVED AS TO FORM:

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Corey Y. Hoffmann, City Attorney

Signatures Continue on Following Page

TEXAS ROADHOUSE HOLDINGS LLC,  
a Kentucky limited liability company

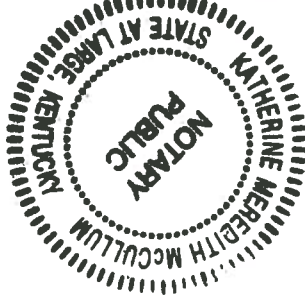
By: Texas Roadhouse, Inc.,  
a Delaware corporation,  
its Manager

By: *Russell Arbuckle*  
Name: Russell Arbuckle  
Title: Director of Real Estate

COMMONWEALTH OF KENTUCKY   §  
   §  
COUNTY OF JEFFERSON       §

Before me, the undersigned authority, on this day personally appeared Russell Arbuckle, the Director of Real Estate of Texas Roadhouse, Inc., a Delaware corporation, Manager of TEXAS ROADHOUSE HOLDINGS LLC, a Kentucky limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this 15 day of December, 2014.



*Katherine Meredith McCullum*  
Notary Public, Commonwealth of Kentucky

*Katherine Meredith McCullum*  
Printed Name

My Commission Expires: 8-7-16



MARKET PLACE

W. 104TH STREET

INTERSTATE 25

109 PARKING STALL

TEXAS  
ROADHOUSE  
7,818 SF

EXISTING  
BUILDING



**Greenbergfarrow**  
DATE: JULY 29, 2014

SITE SKETCH 7

TEXAS ROADHOUSE - 7,818 SF

TEXAS ROADHOUSE  
NORTHGLENN, CO  
NWQ INTERSTATE 25 AND W. 104TH STREET  
PARKING: PROVIDED  
109 SPACES

NORTHGLENN URBAN RENEWAL AUTHORITY

RESOLUTION NO.

N/14-26  
Series of 2014

**A RESOLUTION APPROVING AN INCENTIVE AGREEMENT WITH TEXAS ROADHOUSE HOLDINGS LLC FOR THE PROPERTY LOCATED AT 231 W. 104<sup>th</sup>, NORTHGLENN, COLORADO**

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE NORTHGLENN URBAN RENEWAL AUTHORITY, THAT:**

Section 1. The incentive agreement attached hereto as **Exhibit A** is hereby approved and the Chair is authorized to execute the same on behalf of the Authority.

DATED this 10th day of December, 2014.



Rosie Garner  
Chair

ATTEST:



Debbie Tuttle  
Executive Director

APPROVED AS TO FORM



Jeff Parker  
Board Attorney