

**PLANNING AND DEVELOPMENT MEMORANDUM**  
**#10-08**

April 22, 2010

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

**FROM:** William Simmons, City Manager *WMS*  
James Hayes, Director of Planning and Development  
Patrick Breitenstein, Director of Urban Renewal *PB*

**SUBJECT:** Retail Rentals ESTIP Agreement CR-76

**RECOMMENDATION:**

Attached to this memorandum is an ESTIP Agreement proposed with Retail Rentals, LLC. The agreement would rebate sales tax totaling \$7500.00 to Retail Rentals for installation of a City required grease interceptor at 10737 N. Washington. Staff recommends that the agreement be approved.

**BACKGROUND:**

The site in question was originally a Dairy Queen Restaurant constructed in the 1960's. The building has been occupied by at least two other restaurants since the Dairy Queen ceased operation. The building, located in an urban renewal area, now stands vacant. Chubby's Mexican Restaurant proposes to occupy the site for five years with options to renew (see lease attached).

Although the building was extensively remodeled in 2005 only minimal upgrades were made to the sanitary sewer service line including installation of an under sink grease trap. Since completion of the remodel, the City has implemented the FOG program, in conformance with federal and state requirements, to reduce the volume of fats, oils, and grease entering the City sanitary sewer system, thereby reducing the cost to the City of system maintenance. The grease trap installed in 2005 does not meet the requirements of the FOG program. Change of occupancy to a new restaurant triggers application of the FOG program and requires that a conforming grease interceptor be installed before a business license may be issued to Chubby's.

The estimated cost of the grease interceptor is \$15000 to \$20000 (see letter from Retail Rentals attached). Through their Business Upgrade Assistance Program, the Northglenn Urban Renewal Authority (NURA) has committed \$7500.00 reimbursement to Retail Rentals (see NURA Resolution N/10-4 attached, approved by the NURA Board on April 15).

The owners of Chubby's Restaurant estimate \$1,000,000 in sales from the restaurant which would generate approximately \$40,000 per year in sales tax revenue for the City. The attached ESTIP Agreement provides for 100 per cent reimbursement of sales tax per month until a cumulative total of \$7500.00 is paid or twelve months has passed, whichever should occur first.

Two public purposes are served by approval of the attached ESTIP Agreement. First is improvement to the City sanitary sewer collection system. Second, is elimination of blight in an urban renewal area by encouraging occupancy of a vacant building.

**BUDGET IMPLICATION:**

The ESTIP agreement obligates the City to a total reimbursement of \$7500.00. The anticipated annual sales tax revenue from the restaurant is approximately \$40,000.00.

**STAFF REFERENCE:**

If Council members have any questions they may contact James Hayes, Director of Planning and Development at 303-450-8937 or by e-mail at [jhayes@northglenn.org](mailto:jhayes@northglenn.org) or Patrick Breitenstein, Director of Urban Renewal, at 303-450-8742 or by email at [pbreitenstein@northglenn.org](mailto:pbreitenstein@northglenn.org).

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-76  
Series of 2010

Series of 2010

A RESOLUTION APPROVING AN ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT WITH RETAIL RENTALS, LLC

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 with Retail Rentals, LLC 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 attached hereto as Exhibit A, between Retail Rentals, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

ATTEST:

APPROVED AS TO FORM:

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

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

**THE ENHANCED SALES TAX INCENTIVE PROGRAM**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between RETAIL RENTALS, LLC, hereinafter referred to as the "Developer", and the CITY OF NORTHGLENN, COLORADO, hereinafter referred to as the "City".

**WITNESSETH:**

WHEREAS, Article 12 of Chapter 5 of the Northglenn Municipal Code, entitled ENHANCED SALES TAX INCENTIVE PROGRAM (the "ESTIP Program"), is intended to encourage in part the establishment of retail sales tax generating business within the City; and

WHEREAS, the Developer desires to participate in the ESTIP Program and to share in the enhanced sales tax derived from the property described as 10737 N. Washington Street, Northglenn, Colorado 80233 (the "Property"), for the installation of a 1500 gallon grease interceptor (the "Improvement") to the extent allowed in this Agreement and/or the ESTIP Program.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the parties hereto, to be kept and performed by each of them, the parties agree as follows:

1. Term. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence upon the first month sales tax revenue is received from the Property following final inspection of the Improvement (the "Commencement Date"), and terminate after twelve (12) months of reimbursement of sales tax revenue as described below, or the reimbursement of a total amount of Seven Thousand, Five Hundred Dollars (\$7,500.00), whichever first occurs.

2. Qualification of Property for the ESTIP Program. The City agrees that the Property qualifies for the ESTIP Program and that the Improvement qualifies for public-related purposes pursuant to the ESTIP Program. The following provisions shall apply for each month in which the ESTIP Program is in effect for the Property:

- a. One Hundred Percent (100%) of the "Enhanced Sales Taxes" collected by the City and derived from the Property for twelve (12) months from the Commencement Date shall be utilized for the ESTIP herein established and approved.
- b. In determining the amount of "Enhanced Sales Taxes," the "base amount" as defined in the ordinance and agreed to by the City and the Developer shall be Zero (0).
- c. It is agreed that Enhanced Sales Taxes of at least Seven Thousand Five Hundred Dollars (\$7,500) are reasonably likely to be generated in the first twelve (12) months of operation of the new retail business to be located on the Property.

- d. The Developer shall share in the Enhanced Sales Taxes derived from the Property and the new businesses located thereon in the amount of one hundred percent (100%) of the Enhanced Sales Taxes up to a maximum amount of Seven Thousand Five Hundred Dollars (\$7,500.00) for the entire term of this Agreement.
- e. Enhanced Sales Taxes from the Property shall be shared and the Developer's share thereof shall be disbursed on a monthly basis as provided herein commencing on the Commencement Date of this Agreement. The maximum period of time that this Agreement shall be in effect is twelve (12) months, or until the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) derived from Enhanced Sales Taxes defined herein, have been paid to Developer for reimbursement for the Improvement, whichever occurs first, at which time this Agreement shall terminate. It is expressly understood by the parties that this Agreement will terminate as provided in Paragraph 1 of this Agreement or upon the occurrence of the earlier to be reached of the maximum time as provided in the preceding sentence (whether or not the maximum amount to be shared has been reached) or disbursement of the maximum amount to be shared as provided in the preceding sentence (whether or not the maximum time set forth has expired).
- f. This Agreement is a personal agreement between the City and the Developer and is not transferable and does not run with the land and shall not be recorded against the Property. Further, this Agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision.
- g. The Developer shall be deemed the "owner or proprietor" of the Property solely entitled to reimbursement provided for herein for purposes of this Agreement and the ESTIP whether or not the Developer owns all or any portion of the Property at the relevant time, since the Developer is responsible for the installation of the Improvement.

3. Nonappropriation/Multi-Fiscal Year Obligations. Notwithstanding anything in this Agreement to the contrary, this Agreement is specifically subject to annual appropriation of sufficient funds to pay Enhanced Sales Taxes as provided by this Agreement. In the event that appropriation of sufficient funds is not made in any year, resulting in the inability of the City to pay Enhanced Sales Taxes hereunder, the City shall not be obligated to make payment of the non-appropriated amounts in such year.

4. Subordination. Notwithstanding anything in this Agreement to the contrary, the Developer shall have no right, claim, lien, or priority in or to the City's sales tax revenue superior to or on parity with the rights, claims, or liens of the holders of any sales tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes, existing or hereafter issued by the City, and that all rights of the Developer are, and at all times shall be, subordinate and inferior to

the rights, claims, and liens of the holders of any and all such sales tax revenue bonds, notes, certificates, or debentures, issued by the City and payable from or secured by any sales taxes.

5. Remedies. The Developer waives any constitutional claims against the City arising out of a breach of this Agreement. The Developer's remedies against the City under this Agreement are 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 or the ESTIP.

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.

8. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon the earlier of actual receipt or seventy-two (72) hours after deposit in the United States Mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the City:

Copy to:

Corey Y. Hoffmann, City Attorney  
Hayes, Phillips, Hoffmann & Carberry, P.C.  
1530 16<sup>th</sup> Street, Suite 200  
Denver, Colorado 80202

Notice to the Developer:

Retail Rentals, LLC  
Attn: Donald Lunnon  
700 Colorado Blvd., Suite 340  
Denver, Colorado 80206

Copy to:

9. Entire Agreement - Amendments. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement between the Developer and the City acting pursuant to City Council authorization.

CITY OF NORTHGLENN, COLORADO

By: \_\_\_\_\_  
Joyce Downing, Mayor

ATTEST:

\_\_\_\_\_  
Johanna Small, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney





# RETAIL RENTALS LLC

700 Colorado Blvd #340, Denver CO 80206  
303-377-5358

Via Fax and /or E mail

November 23, 2009

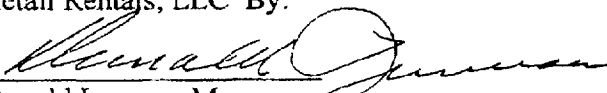
Northglenn Urban Renewal Authority  
111701 Community Drive  
Northglenn, CO

The City of Northglenn is requiring the installation of a new grease interceptor system to replace the current grease interceptor system at the property located at 10737 Washington St.

The cost of the system will range from \$15,000 to \$20,000 which will create an immediate financial hardship for both the tenant and the property owner. In order to comply with the requirements of the City we are requesting financial assistance to fund this project through the aid of the Business Upgrade Assistance Program.

Sincerely,

Retail Rentals, LLC By:

  
Donald Lunnon, Manager

DL/jl

WE PLAN ON HIRING AROUND 20 NEW PEOPLE TO OPERATE THIS NEW LOCATION..

AND WE ESTIMATE ON DOING \$1 MILLION DOLLARS A YEAR IN SALES



## THE HISTORY OF CHUBBYS

CHUBBYS WAS FOUNDED OCT 10<sup>TH</sup> 1967 BY MY GRANDMOTHER DOWN IN DENVER, 1231 WEST 38<sup>TH</sup> AVE. AND THAT RESTAURANT IS STILL IN OPERATION. I MYSELF HAVE MY OWN CHUBBYS IN THORNTON, CO. 8330 N. WASHINGTON ST. AND I HAVE BEEN THERE FOR 7 YEARS AND I HAVE ALSO HAD A CHUBBYS IN WESTMINSTER, CO 7310 N FEDERAL BLVD. THAT LOCATION WAS ALL REDONE SO I HAD TO MOVE OUT OF THAT LOCATION. CHUBBYS HAS BEEN IN BUSINESS FOR 43 YEARS AND WE ARE PLANNING ON OPENING UP MORE LOCATIONS ACROSS COLORADO.

JULIAN CORDOVA



**THIS LEASE HAS IMPORTANT LEGAL CONSEQUENCES. THE PARTIES SHOULD CONSULT LEGAL COUNSEL BEFORE SIGNING.**

**COMMERCIAL LEASE  
(NNN)**

This Commercial Lease (the "Lease") is made on September 24, 2009 (date) and is entered into by and between Landlord (as defined below) and Tenant (as defined below). In consideration of the payment of the Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to the Lease (the "Additional Rent"); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in the Lease.

**PARTIES, PREMISES, AND DEFINED TERMS**

1. Landlord: RETAIL RENTALS LLC  
a(n) Limited Liability Company  
*[Individual, Company, or Type of Entity] (the "Landlord").*

2. Tenant: JULIAN T. CORDOVA  
a(n) Individual  
*[Individual, Company, or Type of Entity] (the "Tenant").*

3. Premises: Landlord is the owner of certain real estate legally described as Northglenn 2<sup>nd</sup> Filing Block 37 point of Lot 15 Beginning at SE corner of Section 10/2/68 thence N 259/33ft Thence W 50ft to WLY ROW LN Washington St. to NE Corner SD Lot 15" S 268/45 Ft. in Adams *[insert county]*, Colorado (the "Real Estate"). The Real Estate is improved with a restaurant building *[insert description of building, or buildings] (the "Improvements")* (the Real Estate and the Improvements are collectively referred to as the "Property"). Landlord hereby leases and demises to Tenant the following described portion of the Property: Address 10737 Washington St., Northglenn, CO 80233, Suite NA, consisting of approx 1274 square feet (the "Premises").

4. Term: Landlord Leases the Premises to Tenant from twelve o'clock noon on the 1st day of October, 2009 and until 11:59 p.m. on the 30<sup>th</sup> day of September, 2014 (the "Term"). Subject to Tenant's performance of all obligations under the Lease, including, without limitation, payment of Rent and Additional Rent, Tenant shall enjoy quiet possession of the Premises.

5. Rent: Rental for the first year of the Term is ~~\_\_\_\_\_~~ 00/100 in US Currency ~~\_\_\_\_\_~~ payable in equal installments of ~~\_\_\_\_\_~~ No/100 in US Currency ~~\_\_\_\_\_~~ in advance to Landlord on the first day of each calendar month for that month's rental before twelve o'clock noon, without notice (the "Rent"). Unless otherwise provided in the Lease, all payments due under the Lease, including Additional Rent, shall be mailed, or delivered to Landlord at the following address: 700 Colorado Blvd #340, Denver, CO 80206. If the Term does not begin on the first day of the month, the Rent shall be prorated accordingly. Rent for subsequent years of the Term [shall] *[shall not]* be increased. In the event Rent is subject to increase, it shall be increased on the following basis:

- 1. The second year (12 months) of this Lease, the monthly sum due shall be ~~\_\_\_\_\_~~
- 2. The third year (12 months) of this Lease, the monthly sum due shall be ~~\_\_\_\_\_~~
- 3. The fourth year (12 months) of this Lease, the monthly sum due shall be ~~\_\_\_\_\_~~
- 4. The fifth year (12 months) of this Lease, the monthly sum due shall be ~~\_\_\_\_\_~~

6. Option: Tenant [shall] *[shall not]* have the option to extend the Term, pursuant to the terms and conditions contained herein, for an additional Five Year period (the "Option"). In the event Tenant desires to exercise the Option, Tenant shall, at least Sixty days before expiration of the Term, provide Landlord with written notice of its intent to exercise the Option. Rent shall be adjusted and payable as follows: at the then market rate as determined by Landlord

The option shall only be exercisable provided that no Tenant Defaults currently exist and that no Tenant Defaults have occurred over the Term of the Lease which have not been cured by Tenant as provided by the Lease.

7. Security Deposit: Prior to occupying the Premises, Tenant shall keep on deposit with Landlord a security, cleaning, and damage deposit in the amount of Four Thousand One Hundred Seventy-three and 73/100 Dollars (\$4,173.73) as security for the return of the Premises at the expiration of the Term in as good condition as when Tenant entered the Premises, normal wear and tear excepted, as well as the faithful, timely, and complete performance of all other terms, conditions, and covenants of the Lease (the "Security Deposit").

8. Use: The Premises shall be used for a restaurant business provided this use conforms with applicable zoning regulations. Tenant shall not, without the prior written consent of Landlord, permit the Premises to be used for any other purpose.

9. Utilities/Additional Rent: Tenant shall pay all of the utilities for the Premises indicated in this Paragraph 9 as Additional Rent and shall pay Tenant's Pro Rata Share of all other items in this Paragraph 9 as

Initials: JL Landlord \_\_\_\_\_ Tenant

**A RESOLUTION APPROVING FINANCIAL ASSISTANCE TO RETAIL RENTALS, LLC,  
FOR THE INSTALLATION OF A GREASE INTERCEPTOR AT CHUBBY'S MEXICAN  
RESTAURANT**

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

Section 1. The Board of Commissioners hereby approves providing the following financial assistance to Retail Rentals, LLC, for the installation of a grease interceptor at 10737 N. Washington St.:

The Authority shall pay \$7500 to Retail Rentals, LLC, for the installation of a building code compliant grease interceptor at 10737 N. Washington St., Northglenn, Colorado 80233 (the "Property"), upon the following conditions being met:

1. Installation of the code-compliant interceptor being completed and approved by the City Building Inspection and Public Works Departments; and
2. Proof that Chubby's Mexican Restaurant (tenant) has entered into a lease with Retail Rentals, LLC for the Property for a term of no less than five (5) years.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Phil Carney  
Chairman

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Patrick T. Breitenstein  
Recording Secretary

\_\_\_\_\_  
Jeff Parker  
Board Attorney