

ADMINISTRATIVE MEMORANDUM

#07-01

April 19, 2007

TO: Honorable Mayor Kathleen M. Novak and City Council Members
FROM: A.J. Krieger, City Manager
SUBJECT: Resolution Approving Vitamin Cottage Redevelopment Agreement

RECOMMENDATION:

Attached to this memorandum is a resolution which, if approved, would authorize the Mayor to execute a three-party agreement between the City, NURA, and Vitamin Cottage Natural Food Markets, Inc. City staff recommends approval.

BACKGROUND:

Working with and on behalf of NURA, City staff negotiated the attached redevelopment agreement with Vitamin Cottage for the construction of a new approximately 14,000 sq ft store on N. Washington; just north of 114th. The site plan attached to the redevelopment agreement provides more detail on the proposed development plan and location. The agreement provides for a rebate of incremental property tax revenues capped at 10 years or \$250,000; whichever comes first. Based on projections City staff estimates it may take approximately 3-4 years for Vitamin Cottage to realize the full rebate.

Section 6 of the agreement establishes certain conditions and milestone dates that Vitamin Cottage must achieve in order to qualify for the rebate; perhaps the most important of which is substantial completion of the facility on or before December 31, 2008. Vitamin Cottage will actually acquire the site by the end of this month, so it is expected that construction will be completed well in advance of the 2008 date. In any event, completion of the facility is a condition precedent to receiving any incremental property tax rebates.

POTENTIAL OBJECTION:

City staff is not aware of any opposition to the proposed redevelopment agreement.

BUDGET/TIME IMPLICATIONS:

The rebate for eligible redevelopment expenses is limited entirely to incremental property tax revenues generated by this project and captured by NURA.

STAFF REFERENCE:

If Council members have any comments or questions they may contact A.J. Krieger; akrieger@northglenn.org.

SPONSORED BY: COUNCIL MEMBER MARTIN

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-28
Series of 2007

Series of 2007

A RESOLUTION APPROVING THE PROPERTY TAX INCREMENT REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF NORTHGLENN, THE NORTHGLENN URBAN RENEWAL AUTHORITY (NURA) AND THE VITAMIN COTTAGE

WHEREAS, the Redeveloper proposes to redevelop the Property as a retail commercial facility, which will include the construction of certain public and private improvements generally shown on the site plan attached as Exhibit A, which include but are not limited to a Vitamin Cottage retail store.

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

Section 1. The Property Tax Increment Reimbursement Agreement between the City of Northglenn, the Northglenn Urban Renewal Authority (NURA) and The Vitamin Cottage, attached hereto, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2007.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**PROPERTY TAX INCREMENT REIMBURSEMENT AGREEMENT
VITAMIN COTTAGE**

THIS PROPERTY TAX INCREMENT REIMBURSEMENT AGREEMENT (the "Agreement") is made and executed this ___ day of _____, 2007, by and between the CITY OF NORTHGLENN, COLORADO, a Colorado Home Rule municipal corporation, (the "City"), the NORTHGLENN URBAN RENEWAL AUTHORITY, a Colorado Urban Renewal Authority ("NURA"), and THE VITAMIN COTTAGE, a _____, (the "Redeveloper").

WITNESSETH

WHEREAS, the Redeveloper is the contract purchaser of certain vacant real property in the City with the following legal description:

LOT 3, WASHINGTON STREET CAR WASH SUBDIVISION, A
RESUBDIVISION OF BLOCK 1, WEBSTER LAKE SUBDIVISION - THIRD FILING.
A SUBDIVISION OF A PART OF NORTHGLENN, COLORADO, COUNTY OF
ADAMS, STATE OF COLORADO

(the "Property"), which is located within the NURA boundaries;

WHEREAS, the Redeveloper proposes to redevelop the Property as a retail commercial facility, which will include the construction of certain public and private improvements generally shown on the site plan attached as **Exhibit A**, which include but are not limited to a Vitamin Cottage retail store of not less than 13,776 square feet and a second pad site of approximately 1,850 square feet (the "Improvements");

WHEREAS, the City Council of the City and the Board of NURA specifically find that entering into this Agreement will promote the redevelopment of an area within the NURA boundaries and remediate conditions of blight;

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

WHEREAS, the City Council and the NURA Board find that the redevelopment of the Property is necessary to promote the public welfare including the expansion of retail sales tax generating business and expanded employment opportunities;

WHEREAS, the City Council and the NURA Board further find 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;

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 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. Definitions.

A. "Applicable Laws" means any law, ordinance, order, rule, regulation, requirement or judicial decision of any Governmental Authority, which is at any time during the Term applicable to the District, including, all Governmental Requirements and other requirements applicable to the Property. Such laws, ordinances, orders, rules, regulations shall include, without limitation, any of those which relate to zoning, public health, public safety, environmental protection, accessibility, the removal of architectural barriers and the existence or removal of any Hazardous Materials.

B. "Certificate of Commencement" means a certificate issued by the City when the City finds that the all required development approvals and initial building permits have been obtained, and actual construction work on the Improvements has commenced.

C. "Certificate of Substantial Completion" means a certificate issued by the City when the City finds that the Improvements have been substantially completed in compliance with all Applicable Laws, and the business opens on a regular basis to the general public. A Certificate of Completion may not be issued until a Certificate of Occupancy has been issued.

D. "Property Tax Increment" means the amount of property taxes paid to the County for the Property and then paid to NURA by the County over and above the base amount of property tax assessed by the County for the Property for the year immediately preceding issuance of the Certificate of Completion.

E. "Term" means the period during which this Agreement is effective as set forth in Section 5.

2. Compliance with Law.

A. The parties agree that this Agreement is entered into in compliance with all Applicable Laws, including C.R.S. § 31-25-105(1)(b), a provision of the Colorado Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, which expressly allows an urban renewal authority to enter into agreements designed to carry out the purposes of the Colorado Urban Renewal Law.

B. The City's obligations hereunder shall be subject to annual appropriation by the City Council unless and until approved by the City's electors. No provision of this Agreement shall be construed or interpreted as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City or any statutory debt limitation, including, without limitation, Article X, Section 20, or Article XI, Sections 1, 2 or 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of City funds, nor shall any provision of this Agreement restrict the future issuance of bonds or obligations payable from any class or source of City funds.

3. Improvements. 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. Redeveloper covenants and agrees that such improvements shall be substantially similar to those shown in **Exhibit A**, and the parties 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, including but not limited to the remediation of blight within the NURA boundaries.

4. Reimbursement. As an inducement to the Redeveloper to complete the Improvements, NURA agrees to set aside and thereafter pay to the City one hundred percent (100%) of the Property Tax Increment to a maximum aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). The City shall rebate the amount received from NURA to the Redeveloper up to the aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), subject to the following conditions (and all other terms and conditions of this Agreement):

1. The obligations of NURA and the City shall only commence upon issuance of a Certificate of Completion. NURA shall make payment to the City within thirty (30) days of receipt of the Property Tax Increment by NURA from the County, and the City shall make payment to the Redeveloper within thirty (30) days of receipt of the Property Tax Increment from NURA.

2. If, in any year, no Property Tax Increment is generated by the Property and received by NURA, no rebate shall be due to the Redeveloper for that year.

3. The Property Tax Increment rebate payable to the Redeveloper shall be prorated for the initial year such rebate is due based upon the date the Redeveloper completes the Improvements.

5. Term. The term of this Agreement shall be for ten (10) years from the issuance of a Certificate of Completion, or upon receipt of Two Hundred Fifty Thousand Dollars (\$250,000.00) by the Redeveloper, whichever occurs first. Upon expiration of the term of this Agreement, the parties' obligations hereunder shall terminate, whether or not Two Hundred Fifty Thousand Dollars (\$250,000.00) has been paid to Redeveloper.

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

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

To the Purchaser: Vitamin Cottage Natural Food Markets, Inc.

10. Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the parties.

11. Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

12. Integration. This Agreement contains the entire agreement between the parties and no statement, promise or inducement made by any party or the agent of any party that is not contained in this Agreement shall be valid or binding.

13. Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase or work herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

14. Governing Law. This Agreement shall be construed under the laws of the State of Colorado. In the event of any dispute between the parties which results in litigation, the exclusive venue for such litigation shall be the District Court in and for the County of Adams, State of Colorado. Each party hereto shall be possessed of all remedies, whether legal or equitable, which are provided for and which are available under Colorado law.

15. Headings for Convenience Only. The headings, captions and titles contained herein are for convenience and reference only and are not intended to enlarge or restrict the content thereof.

16. Immunity. The parties hereto understand and agree the City and NURA are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) 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 the City and NURA, their officers, employees, or volunteers.

17. Fax and Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy as if they were original signatures.

DATED this day and date first above set forth.

THE CITY OF NORTHGLENN, COLORADO

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

NORTHGLENN URBAN RENEWAL AUTHORITY

By: Phillip Carney, Chairman

ATTEST:

Pat Breitenstein

APPROVED AS TO FORM:

Jeff Parker, NURA Attorney

VITAMIN COTTAGE

By: _____

Title: _____

STATE OF COLORADO)
)
) ss.
COUNTY OF)

Subscribed, sworn to and acknowledged before me this _____ day of _____, 2007 by _____ as _____ of _____, a _____.

My commission expires:

(SEAL)

Notary Public

EXHIBIT A

