

**PLANNING AND DEVELOPMENT DEPARTMENT
MEMORANDUM 13-44**

DATE: October 14th, 2013
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: John Pick, City Manager *J*
Brook Svoboda, Director of Planning and Development *BS*
SUBJECT: CR-95, Hawkins Development Tap Fee Agreement

ITEM/ISSUE

A resolution if approved would provide an incentive up to \$500,000 for two roof top restaurant uses for the Webster Lake Promenade Project.

BACKGROUND

The First Addendum to the Redevelopment between Hawkins Development and the City contemplated a \$500,000 incentive for two (2) roof top restaurant uses (not to exceed \$250,000 per use) that would be ratified by separate agreement. The redeveloper has entered into a lease agreement with a restaurant user who is proposing a roof top. Through the attached agreement the redeveloper is also requesting approval for a second roof top user in the event the developer constructs a second roof top restaurant.

At the time the 1st Addendum to the Redevelopment Agreement was drafted, it was understood that the redeveloper would be responsible for all tap fees on behalf of the development. Three of the proposed buildings will be constructed by the end user rather than the redeveloper - the end user is purchasing the tap fees. As a result, this agreement would authorize the redeveloper to receive a waiver for those tap fees payable by redeveloper, and a rebate as a result of those tap fees paid by others for the Project.

The incentive is limited to actual tap fees collected. If the sum total of tap fees collected is less than \$500,000, then the lesser amount collected shall be the maximum provided under the agreement.

BUDGET IMPLICATIONS

There are no direct budget implications at this time.

STAFF REFERENCE

Brook Svoboda, Director of Planning and Development – bsvoboda@northglenn.org, 303.450.8937

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-95
Series of 2013

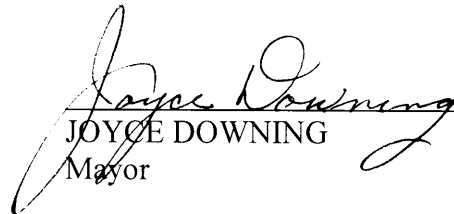
13-90
Series of 2013

A RESOLUTION APPROVING A TAP FEE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND HD NORTHGLENN, LLC

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

Section 1. The Tap Fee Agreement between the City of Northglenn and HD Northglenn, LLC, attached hereto as **Exhibit 1**, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

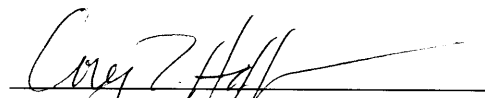
DATED at Northglenn, Colorado, this 14th day of October, 2013.


JOYCE DOWNING
Mayor

ATTEST:


JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:


COREY Y. HOFFMANN
City Attorney

TAP FEE AGREEMENT

THIS TAP FEE AGREEMENT (this “**Agreement**”) made and executed as of _____, 2013, by and between the **CITY OF NORTHGLENN** (the “**City**”), and **HD NORTHGLENN, LLC**, a Utah limited liability company (“**Redeveloper**”);

WITNESSETH

WHEREAS, the City, the Northglenn Urban Renewal Authority (the “**Authority**”), and Redeveloper’s predecessor in interests, Hawkins Development, LLC, previously entered into a Redevelopment Agreement dated October 10, 2012 (the “**Redevelopment Agreement**”) regarding approximately 11 acres, more or less, of real property described in **Exhibit A** (the “**Property**”), which Development Agreement was subsequently amended pursuant to a First Addendum to Redevelopment Agreement dated May 20, 2013 (the “**First Addendum**”) and a Second Addendum to Redevelopment Agreement dated August 14, 2013;

WHEREAS, the First Addendum, at Section 5 thereof (“**Section 5**”), provides as follows:

5. ADDITIONAL CITY INCENTIVES. In addition to the contributions set forth in the Redevelopment Agreement, the City hereby agrees to rebate water and sewer tap fees for not more than two (2) roof top restaurant uses in its sole discretion in an amount not to exceed two hundred fifty thousand dollars (\$250,000.00) per use, or a total amount not to exceed five hundred thousand dollars (\$500,000.00); provided however, nothing in this Section 5 shall compel the City to rebate such water and sewer tap fees in the event such proposed uses are not determined by the City to be consistent with the Final PUD Plan. Such rebates shall be authorized by the City by separate agreement.

WHEREAS, Redeveloper has entered into a lease with Bad Daddy’s Burger Bar (“**Bad Daddy’s**”) with roof top restaurant uses consistent with the Final PUD Plan;

WHEREAS, the City and Redeveloper have agreed that a waiver of water and sewer tap fees (collectively, “**Tap Fees**”) as applicable here has the same legal effect as a rebate under the circumstances here;

WHEREAS, this Agreement authorizes Redeveloper to receive a waiver for those water and sewer tap fees payable by Redeveloper, and a rebate as a result of those water and sewer tap fees paid by others for the Project, which Tap Fees are intended to cover the increased costs of construction associated with rooftop patio uses; and

WHEREAS, City and Redeveloper now desire to enter into this Agreement to implement the agreements contained in said Section 5 of the First Amendment, as modified hereby;

NOW, THEREFORE, the parties hereto, for themselves, their successors and assigns, in and for the consideration of the performance of the mutual duties and responsibilities set forth herein,

the receipt and adequacy of such consideration being hereby acknowledged, do hereby covenant and agree as follows:

1. The recitals set forth above are incorporated into this Agreement and shall be deemed terms and provisions hereof, to the same extent as if fully set forth in this Section 1.
2. Inasmuch as Bad Daddy's satisfies the City's criteria set forth in Section 5 for a rebate or waiver of Tap Fees up to the maximum amount of \$250,000.00 consistent with Section 5, the City hereby waives or rebates the Tap Fees based on the construction of a rooftop patio for Bad Daddy's up to said maximum amount of \$250,000.00 for Buildings B, C and G (as such Buildings are shown on **Exhibit B**, attached hereto and incorporated herein by this reference) to Redeveloper.
3. To the extent Redeveloper constructs another restaurant with rooftop patio uses on Lot 6 or on Lot 5 (as such Lots are also shown on **Exhibit B**) which is also consistent with the Final PUD Plan, the City shall waive or rebate Tap Fees based on such second rooftop patio use being built on either said Lot 6 or said Lot 5 (all as also shown on **Exhibit B** hereto), as Redeveloper may elect, up to \$250,000.00 depending on the actual cost of the Tap Fees for Buildings A, D and E.
4. This Agreement specifically authorizes a waiver for Redeveloper and/or a rebate payable only to Redeveloper from water and sewer tap fees actually paid or payable in an amount not to exceed \$250,000 per rooftop patio use based on actual additional costs of construction associated with the rooftop patio use, and in no event shall the total combined amount of the waiver and/or rebate due to Redeveloper exceed the amount paid or payable to the City for water and sewer tap fees for the Property, regardless of which entity pays such Tap Fees.
5. 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
6. 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.
7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns as the case may be.
8. Modifications. This Agreement shall be subject to amendment only by a written instrument executed by each party.

9. Except as provided herein to the contrary, any notice, request or demand to be given pursuant to this Agreement, shall be in writing and shall be sent by United States certified mail, return receipt requested, or delivered by a reputable overnight courier delivery service, addressed to Redeveloper, the Authority or the City at the following addresses:

To the City: City Manager
11701 Community Center Drive
PO Box 330061
Northglenn, Colorado 80233

With a copy to: Corey Y. Hoffmann, Esq.
Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 Sixteenth Street, #200
Denver, CO 80202

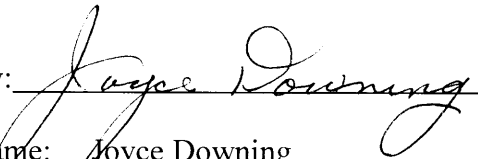
To the Redeveloper: Kevin B. Hawkins
10909 E. Arapahoe Place, Suite 103
Centennial, Colorado 80112

With a copy to: Bryan Todd, Esq.
358 South Rio Grande, Suite 200
Salt Lake City, UT 84101

All such notices, requests and demands shall be deemed given upon receipt of the addressee (or upon refusal of attempted delivery). Either Party may, by notice, designate different and/or additional addresses for notices, requests or demands to it. The parties may provide courtesy copies of any notices via facsimile.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and date first above set forth.


CITY OF NORTHGLENN, a municipal corporation

By: 

Name: Joyce Downing

Title: Mayor

ATTEST:



Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:



Corey Y. Hoffmann, City Attorney

HD NORTHGLENN, LLC,
a Utah limited liability company, by
its Manager, Hawkins Development,
LLC, a Utah limited liability company

By: _____
Kevin B. Hawkins, Manager

EXHIBIT A
LEGAL DESCRIPTION OF SHOPPING CENTER LAND

LOTS 1 THROUGH 7, BLOCK 1, AND OUTLOT A, BLOCK 1, WEBSTER LAKE PROMENADE SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JULY 5, 2013, UNDER RECEPTION NO. 2013000057754, COUNTY OF ADAMS, STATE OF COLORADO.

EXHIBIT B

