

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-126
Series of 2006

Series of 2006

A RESOLUTION APPROVING AN ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT WITH BEST BUY STORES, L.P.

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 Best Buy Stores 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 Best Buys Stores, L.P. 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 _____, 2006.

KATHLEEN M. NOVAK
Mayor

ATTEST:

APPROVED AS TO FORM:

DIANA L. LENTZ, CMC
City Clerk

COREY Y. HOFFMANN
City Attorney

BEST BUY ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT

THIS ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT (hereafter referred to as the “Best Buy ESTIP Agreement”) is made and executed this _____ day of _____, 20____, by and between the CITY OF NORTHGLENN, COLORADO, a Colorado Home Rule municipal corporation, (hereafter referred to as the “City”), and Best Buy Stores, L.P., a Virginia limited Partnership (hereafter referred to as the “Redeveloper”).

WITNESSETH

WHEREAS, the Redeveloper is the owner of approximately 3.03 acres of real property located at 110 West 104th Avenue, Northglenn, Colorado, legally described in Exhibit A attached hereto (the “Property”); and

WHEREAS, Redeveloper proposes to redevelop the Property as for the purpose of developing and operating a retail store, which redevelopment will include the construction of certain public improvements generally described in the attached Exhibit B; and

WHEREAS, in entering into this Agreement, the City Council of the City specifically finds 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 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 Agreement shall provide a mechanism for the provision to the residents of the City of necessary public 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 improvements which shall be constructed and installed by Redeveloper within and upon the Property, and the manner for and extent of the reimbursement to 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. This 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 or public-related improvements within or adjacent to the Property. The specific location and extent of such public or public-related 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 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 thirty thousand (30,000) square feet of new retail sales tax generating retail space or new admissions tax generating space on or before one (1) year from the date of execution of this 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 Dollars (\$0.00) annually. 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 which exceed Zero Dollars (\$0.00) annually 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 25/75 basis, with twenty-five percent (25 %) of said enhanced sales taxes being available to the City for use in its discretion, and seventy-five percent (75%) being reimbursed to the Redeveloper for the cost of the public and public-related 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 One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000), and that the "enhanced sales taxes" shall be shared through and including December 31, 2016. The parties specifically acknowledge and agree that whether or not the entire One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000) has been received by Redeveloper, this Agreement shall terminate following division and payment of the sales tax increment through December 31, 2016. Likewise, the parties acknowledge and agree that receipt by Redeveloper of the entire One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000) prior to December 31, 2016, shall terminate this 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 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 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.

8. Any and all undisbursed “enhanced sales tax” increment subject to reimbursement hereunder shall be escrowed in the event there is a legal challenge to the Enhanced Sales Tax Incentive Program in general or to this 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 Redeveloper may participate in such defense at its own cost and expense.

9. 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 the Redeveloper, 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 under substantially the same ownership and/or to a lender who holds a first deed of trust against the Property.

10. 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.

11. 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.
1350 Seventeenth Street, Suite 450
Denver, CO 80202

To the Redeveloper: Best Buy Stores, L.P.
7601 Penn Avenue South
Richfield, MN 55423
Attn: Legal Department - Real Estate
Federal Tax Identification Number: 41-1822872

With a copy to: Robins, Kaplan, Miller & Ciresi L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
Attn: Steven A. Schumeister, Esq.

[SIGNATURES ON NEXT PAGE.]

DONE AND RESOLVED this day and date first above set forth.

CITY:

THE CITY OF NORTHGLENN, COLORADO

ATTEST:

Kathleen M. Novak, Mayor

Dated: _____

Diana L. Lentz, City Clerk

Dated: _____

APPROVED AS TO FORM:

Herbert C. Phillips, City Attorney

Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

Subscribed, sworn to and acknowledged before me this ____ day of _____, 2006, by Kathleen M. Novak as Mayor of the City of Northglenn and Diana L. Lentz as City Clerk.

My commission expires: _____

(SEAL)

Notary Public

REDEVELOPER:

BEST BUY STORES, L.P.,

a Virginia limited partnership

By: BBC Property Co.,
a Minnesota corporation

Its: General Partner

By: _____

Name: _____

Title: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On _____, 2006, before me, _____, a Notary Public in and for said state or commonwealth, personally appeared _____, the _____ of BBC PROPERTY CO., a Minnesota corporation, the general partner of BEST BUY STORES, L.P., a Virginia limited partnership, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
My Commission Expires: _____

(SEAL)