

PLANNING AND DEVELOPMENT DEPARTMENT

MEMORANDUM 17-19

DATE: March 27, 2017
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: James A. Hayes, AICP, City Manager *JH*
Brook Svoboda, Director of Planning and Development *BS*
Eric J. Ensey, AICP, Senior Planner *EE*
SUBJECT: CR-34; License Agreement between the City of Northglenn and SBX
Helena Lyndale Ave., LLC

Purpose

Consideration of approval of a License Agreement between the City of Northglenn and SBX Helena Lyndale Ave., LLC (the applicant) to retain use of a tract of land owned by the city as landscaping and drive-aisle for a national coffee user located at 550 W. 104th Avenue.

Background

The applicant owns the lots legally described as Lots 2, 3, and 4, Block 1, North Glenn, Seventeenth Filing. The subject site currently contains the vacant Bellco Credit Union building and is addressed at 550 W. 104th Avenue. The City of Northglenn owns the lot adjacent to the north of the applicant's property legally described as Lot 1, Block 1, North Glenn, Seventeenth Filing. Lot 1 has been used by the city as right-of-way for W. 104th Avenue.

The applicant approached the city desiring to redevelop the site and construct a new national coffee user building at this location. During pre-application discussions with the applicant, staff discovered that the existing driveway entrance, site landscaping, and a portion of the drive-thru drive aisle on the site encroaches on Lot 1, which is owned by the city. Additionally, there is an existing fence that is located within the Monterey Circle right-of-way. The applicant desires to raise the existing building while retaining the driveway entrance, site landscaping, drive-thru drive aisles, and fence that encroaches into the right-of-way.

The applicant is requesting the City Council consider approval of the attached License Agreement to allow the existing improvements to remain. The agreement would allow the applicant to utilize and maintain the designated licensed area, but allows for termination of the agreement in the event that the city would need all or a portion of Lot 1 in the future.

Update

N/A

Budget Implications

None. The applicant is responsible for any and all improvements located within the licensed property. Additionally, the License Agreement requires the applicant to insure the licensed property and indemnifies the city from any liability.

Schedule/Time Implications

N/A

Next Steps/City Council Options

The City Council has the option to approve, deny, or approve with modifications the attached License Agreement at its discretion. Should the City Council approve the agreement, staff will coordinate execution of the document and recordation with Adams County.

Staff Recommendation

Staff recommends that the City Council approved the License Agreement as proposed.

Staff Reference

Brook Svoboda, Director of Planning and Development, bsvoboda@northglenn.org, 303.450.8937
Eric Ensey, Senior Planner, eensey@northglenn.org, 303.450.8740

Attachments

Attachment 1 License Agreement with Exhibits

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-34
Series of 2017

Series of 2017

A RESOLUTION APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF NORTHGLENN, COLORADO AND SBX HELENA LYNDAL AVE., LLC

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

Section 1. The License Agreement between the City of Northglenn and SBX Helena Lyndale Ave., LLC, attached hereto as **Exhibit A**, for use of City-owned property located adjacent to 550 W. 104th Avenue, is hereby approved and the Mayor is authorized to execute the agreement on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this _____ day of _____, 2017.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, is made and entered into this ___ day of _____, 2017, by and between the CITY OF NORTHGLENN, COLORADO, (the "City") and SBX Helena Lyndale Ave, LLC, a Utah limited liability company the (the "Licensee").

NOW, THEREFORE, in consideration of the mutual premises and benefits contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Licensee covenant and agree as follows:

1. **LICENSED PROPERTY.** The City hereby agrees to permit the Licensee to exclusively use the Northern Licensed Property and the Southern Licensed Property (together, the Northern Licensed Property and the Southern Licensed Property being referred to herein as the "Licensed Property"), each as more particularly described hereinbelow and identified in Exhibit A, provided the Licensed Property is and shall be subject to all easements and other encumbrances of record.

2. **INSURANCE.** Licensee shall obtain for itself, its agents, successors, assigns, lessees, Licensees and agents, necessary and adequate worker's compensation insurance, personal injury insurance, and property damage insurance, with limits commensurate with the hazards and risks associated with the use of the Licensed Property, but in no event less than the liability limits established by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* (currently \$350,000 per persons and \$990,000 per occurrence), as now in effect or as hereinafter amended. Neither Licensee nor its agents, successors and assigns shall commence any construction activities on the Licensed Property until it has obtained all insurance required under this section and shall have filed a certificate of insurance or a certified copy of the insurance policy with the City. Each insurance policy shall list the City as an additional named insured and shall contain a clause providing that coverage shall not be cancelled by the insurance company without Licensee providing the City thirty (30) days' advance written notice of the intention to cancel.

3. **UTILITIES.** Licensee covenants and agrees to pay all charges for water, electric power and other utilities assessed, levied or incurred on the Licensed Property during the term of this Agreement or any renewal thereof.

4. **INSTALLATION, MAINTENANCE, REPAIR AND ALTERATIONS.** Licensee shall at its discretion install improvements and landscaping as applicable on the Licensed Property according to plans approved by the City. After any initial construction and/or installation, Licensee covenants and agrees not to make or permit to be made any material alterations in, or material additions to, the Licensed Property without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, and to keep the Licensed Property, and any improvements thereon, in good repair at the expense of Licensee; to properly irrigate and care for all landscaping upon or about the Licensed Property and to keep

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the same in good order and condition upon the expiration or termination of this License, ordinary wear and tear and loss by fire, flood, or act of God excepted.

5. USE. Licensee covenants and agrees that it shall utilize, and the City hereby permits and grants a license therefore, (a) the Northern Licensed Property for: a retail drive-through isle, vehicular and pedestrian ingress and egress to and from the property owned by Licensee which is directly adjacent to the Licensed Property (the "Adjacent Property") to 104th Avenue, utilities, landscaping and other related improvements to the Adjacent Property, and (b) the Southern Licensed Property for: utilities, landscaping and other related improvements to the Adjacent Property, including, without limitation, that certain existing or future fencing situated thereon and identified in Exhibit A as the "Fence", and for no other purpose and not to use the Licensed Property or permit it to be used for purposes prohibited by the laws of the applicable United States, State of Colorado, or any political subdivision thereof. The Adjacent Property is more particularly described in Exhibit B attached hereto and incorporated herein.

6. RE-ENTRY. Licensee covenants and agrees to permit the City or its duly authorized representatives to enter upon the Licensed Property, at any reasonable hour of the day, for the purpose of inspecting the same, making surveys, and to do such other acts and things as it deems necessary for the protection of its interests therein.

7. NOTICE. Any notice required under this License shall be in writing and mailed by certified mail to the respective parties at the address hereinabove given. The Parks Foreman shall be the representative of the City to accept or give any approval, notice or the like provided hereunder. In the event Licensee should change the address hereinabove given during the term of this License, Licensee shall notify the City in writing of such change of address:

The City: _____
City of Northglenn
P.O. Box 330061
Northglenn, CO 80233-8061

Licensee: c/o Wadsworth Development Group, LLC
Attn: R. Roman Groesbeck
166 E. 14000 S., Suite 210,
Draper, UT 84020

8. NO COVENANT OF TITLE OR QUIET POSSESSION. Except to the extent expressly provided herein, the rights granted herein are without covenant of title or warranty of quiet possession of the Licensed Property and no water or water rights are granted by this License.

9. SUCCESSORS AND ASSIGNS. Subject to the terms and conditions of this License Agreement, the provisions of this License Agreement shall be considered a covenant that runs with the land herein described and this License shall inure to the benefit of, and be binding upon, the respective legal representatives, heirs, successors and assigns of the parties.

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10. ASSIGNMENT OR SUB-LEASE. Licensee covenants and agrees not to assign this License or to sublet any part of the Licensed Property without first obtaining the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

11. PROPERTY LICENSED TAKEN "AS IS." Except to the extent expressly provided herein, Licensee understands and agrees that the Licensed Property is licensed "as is." The City makes no warranty, written or implied, that the Licensed Property is fit for any purpose or that it meets any federal, state, county or local law, ordinance or regulation applying to the Licensed Property.

12. LIABILITY AND INDEMNIFICATION. Except for acts directly attributable to the City, the City shall not be liable for any loss, injury, death or damage to any person or personal property which may arise from the use or condition of the Licensed Property including, but not limited to, loss, injury, death, or damage resulting from ice, water, rain, snow, gas, electrical wires, fire, theft, burst pipes or plumbing failures during the term of the License or any renewal thereof. Licensee hereby expressly agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and insurers against any liability, loss, damage, demand, action, cause of action or expense of whatever nature (including court costs and attorney fees) which may result from any loss, injury, death or damage allegedly sustained by any person, firm, corporation or other entity which arises out of or is caused by reason of Licensee's negligent use of the Licensed Property or Licensee's failure, after written notice to cure from the City which cure remains uneffected, to fulfill the terms and conditions of the License.

13. RESERVATION FOR COUNCIL USE. This License is made under and conformable to the provisions of all City of Northglenn regulations insofar as applicable. Said provisions are incorporated herein and made part hereof by this reference and shall supersede any apparently conflicting provisions otherwise contained in the License. The City reserves the right to, at the City's cost and expense, make full use of the Licensed Property as may be necessary or convenient in the operation of the City's drainage infrastructure or drainageways under the control of the City, and the City retains all rights to, at the City's cost and expense, operate, maintain, install, repair, remove or relocate any of its facilities located within the Licensed Property at any time and in such a manner as it deems necessary, but with no less than sixty (60) days prior written notice to Licensee.

14. TERMINATION.

a. This License Agreement may be terminated by the City at any time upon one hundred and twenty (120) days written notice to Licensee; provided, notwithstanding any termination of this License Agreement, and without in any way limiting any easements and other encumbrances of record benefiting the Adjacent Property, Licensee shall be entitled to: (i) vehicular and pedestrian ingress and egress to and from the Adjacent Property over the Northern Licensed Property to 104th Avenue, and City shall not prevent Licensee or otherwise erect any improvement or permanent barrier which would prohibit such ingress or egress, and (ii) keep the Fence erected and situated on the Southern Licensed Property .

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b. If default shall be made in any of the covenants or agreements herein contained to be kept by Licensee, it shall be lawful for the City to enter into the said Licensed Property, or any part thereof, either with or without process of law, to terminate the interest of Licensee or of any person or persons occupying the same, and to expel, remove or put out such person or persons, using such force as may be necessary in so doing, without being liable to prosecution or to damages therefor, and the said Licensed Property again to repossess and enjoy as in the first and former estate of the City. If at any time the License shall be terminated as aforesaid, or by any other means, Licensee agrees to surrender and deliver up said Licensed Property peaceably to the City immediately upon the termination, and if Licensee shall remain in possession after termination, Licensee shall be deemed guilty of a forcible detainer on said property Licensed, and waiving all notice, shall be subject to eviction and removal, forcibly or otherwise, with or without process of law.

15. VENUE. For the resolution of any dispute arising hereunder, venue shall be in the courts of Adams County, State of Colorado.

16. RECORDING. The Licensee shall be entitled to cause this License Agreement to be recorded in the Office of the County Recorder of Adams County, Colorado.

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IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate.

CITY OF NORTHGLENN, COLORADO

By: _____
Joyce Downing, Mayor

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

LICENSEE

By: **SBX Helena Lyndale Ave., LLC**
a Utah limited liability company

By: Wadsworth & Sons IV, LLC
Its: Manager

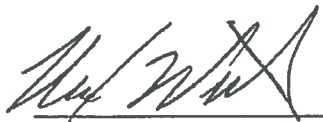
_____ 

By: NATE BALLARD

Its: COO

ATTEST:

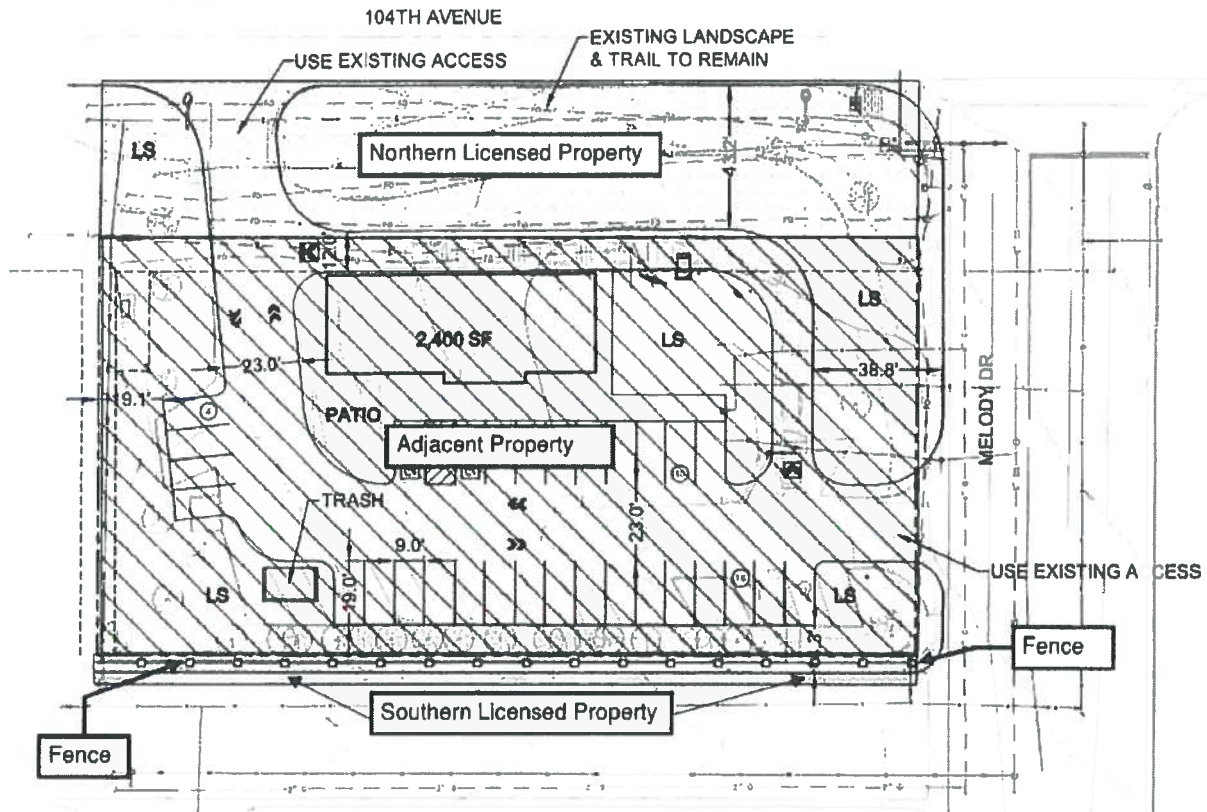
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Project Manager 3/10/17
Title Date

3/10/17

EXHIBIT A



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EXHIBIT B

(Legal Description of Adjacent Property)

**LOTS 2, 3 AND 4, BLOCK 1, NORTHGLENN SEVENTEENTH FILING, COUNTY OF
ADAMS, STATE OF COLORADO.**

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