

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 32
Series of 2012

TITLE: A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT ALLOWING KING SOOPERS, INC. TO PARTICIPATE IN THE WHEAT RIDGE BUSINESS DEVELOPMENT ZONE PROGRAM FOR THE REBATE OF BUILDING USE TAX IN AN AMOUNT NOT TO EXCEED \$100,000 IN ASSOCIATION WITH THE REMODEL OF THEIR FACILITY AT 38TH AND SHERIDAN BOULEVARD

WHEREAS, the City has adopted as a portion of the Wheat Ridge Code of Laws ("Code") Chapter 22, Article I, Division 5, "Business Development Zone" (the "Program"), to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

WHEREAS, Owner has applied to participate in the Program and a public hearing was posted and conducted; and

WHEREAS, Owner is the owner and operator of leased space and improvements thereon within the City and known as the "Owner," and is the operator of a grocery store serving residents of Wheat Ridge and surrounding communities; and

WHEREAS, pursuant to Code Sec. 22-86 (b), the City Council has designated the real property leased by Owner as a "Wheat Ridge Business Development Zone"; and

WHEREAS, Owner plans to construct tenant improvements totaling approximately \$5.8 million; and

WHEREAS, the project retains necessary neighborhood services and brings revenue to the City from surrounding communities – a true definition of economic development; and

WHEREAS; the project Retains 50 plus full-time and 100 plus part-time jobs within the center, and

WHEREAS; the project creates new revenue through permit fees, and use tax on furniture, fixtures and equipment;

WHEREAS; the project spurs reinvestment and remodeling of the entire existing center on this signature corridor, thus enhancing and preserving its economic viability in the City; and

WHEREAS; the project extends the lease and King Soopers commitment to this shopping center and the City of Wheat Ridge to 2033; and

WHEREAS, the Program allows the City to provide for the sharing of certain categories of fees, taxes and other business development-related charges for new development within the business development district ("Eligible City Fees, Charges and Taxes" as defined in Code Sec. 22-87 (2)) to the extent allowed by an agreement with a business owner; and

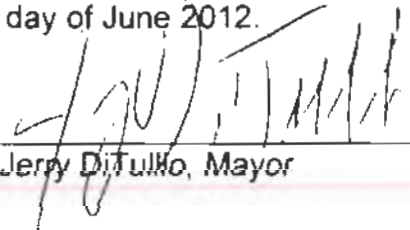
WHEREAS, cost-sharing at the rate prescribed herein will serve to aid the expansion of Owner in that it will alleviate a portion of the costs associated with the expansion.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

Agrees to execute an Agreement to Participate in the City of Wheat Ridge Business Development Zone Program wherein an amount not to exceed \$100,000 of approved and audited building use tax will be abated to Dillon Companies, Inc., a Kansas Corporation dba King Soopers.

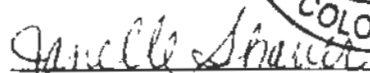
DONE AND RESOLVED this 25th day of June 2012.





Jerry DiTullo, Mayor

ATTEST:



Janelle Shaver, City Clerk

AGREEMENT TO PARTICIPATE IN THE
CITY OF WHEAT RIDGE BUSINESS DEVELOPMENT ZONE PROGRAM

This Agreement to Participate in the City of Wheat Ridge Business Development Zone Program (this "Agreement") is made and entered into as of June 25, 2012, by and between the Dillon Companies, Inc., a Kansas Corporation (dba King Soopers), for the store located at 3817 Sheridan Blvd. in the City of Wheat Ridge, Colorado, hereinafter referred to as the "Owner" and the CITY OF WHEAT RIDGE, COLORADO, 7500 W. 29th Avenue, Wheat Ridge, Colorado 80033 hereinafter referred to as the "City," collectively the "Parties," and each individually, as a "Party."

WHEREAS, the City has adopted as a portion of the Wheat Ridge Code of Laws ("Code") Chapter 22, Article I, Division 5, "Business Development Zone" (the "Program"), to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

WHEREAS, Owner has applied to participate in the Program and a public hearing was posted and conducted; and

WHEREAS, Owner is the owner and operator of leased space within the City (the "Property") and is the operator of a grocery store serving residents of Wheat Ridge and surrounding communities; and

WHEREAS, pursuant to Code Sec. 22-86 (b), the City Council has designated the Property as a "Wheat Ridge Business Development Zone"; and

WHEREAS, Owner plans to construct tenant improvements totaling approximately \$5.8 on the Property, which improvements are referred to herein as the "Project;" and

WHEREAS, Owner's tenant improvements will lead to increased sales tax for the City of Wheat Ridge; and

WHEREAS, the project retains necessary neighborhood services and brings revenue to the City from surrounding communities – a true definition of economic development; and

WHEREAS, the Project retains 50 plus full-time and 100 plus part-time jobs within the shopping center where the Property is located, and

WHEREAS, the Project creates new revenue through permit fees, use tax on furniture, fixtures and equipment and incremental sales tax;

WHEREAS, the Project spurs reinvestment and remodeling of the entire existing center on this signature corridor, thus enhancing and preserving its economic viability in the City; and

WHEREAS, the Project extends the lease and King Soopers' commitment to this shopping center and the City of Wheat Ridge to 2033; and

WHEREAS, the Program allows the City to provide for the sharing of certain categories of fees, taxes and other business development-related charges for new development within the business development district ("Eligible City Fees, Charges and Taxes" as defined in Code Sec. 22-87 (2)) to the extent allowed by an agreement with a business owner; and

WHEREAS, cost-sharing as provided herein will serve to aid the Owner in that it will alleviate a portion of the costs associated with the Project.

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

1. **Recitals.** The Recitals set forth above are incorporated in this Agreement by reference

2. **Term.**

The term of this Agreement shall commence on June 25, 2012 and shall terminate upon full refund by the City to Owner of eligible City fees, charges and taxes as set forth in Paragraph 7 (the "Term"). Notwithstanding the foregoing, it is an express provision of this Agreement that this Agreement shall expire and be of no further force and effect upon the occurrence of the (1) payment of the maximum amount to be shared as set forth in Paragraph 7 or (2) determination by the City of Owner's default, as provided in Paragraphs 13 or 15.

3. **The Project.**

The Project proposed by the Owner through which it desires to participate in the Program consists of the following, generally: lease space property upon which to construct tenant improvements in the amount of over \$5.8 million that will include interior and exterior improvements to the Owner site. The foregoing shall be collectively referred to herein as the "Project," and is more fully described below at Sections 4 and 7.

4. **Representations of Owner.** Pursuant to Code Sec. 22-94, Owner hereby represents to the City the following:

a. **Improvements justifying Project approval.**

- i. **Revitalization of land.** The Project will invest an estimated \$2.1 million in an interior and exterior remodel of the building with plans subject to approval by the City of Wheat Ridge Community Development Department and \$3.7 in furniture, fixtures and equipment. The Scope of Development is attached as Exhibit A.
- ii. **Estimated cost.** The cost for the initial phase of the Project including the improvements described above is estimated to be approximately FIVE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$5,800,000).

- b. Expected incremental future tax revenue. Owner operates a for-profit corporation. It is anticipated the Project will directly generate future incremental sales and use tax revenue. Other indirect benefits to the community which have been identified by the Owner include:
- i. Short-term positive impact during construction: Prior to the completion of the Project, the tenant improvement phase will employ additional personnel in the construction phase;
 - ii. This Project may lead to exterior improvements by the owners and tenants of the remainder of the shopping center.
 - iii. Retains necessary neighborhood services and brings revenue to the City from surrounding communities – a true definition of economic development;
 - iv. Retains 50+ full-time and 100+ part-time jobs within the center;
 - v. Creates new revenue through permit fees and use tax on furniture, fixtures and equipment;
 - vi. Extends the lease and King Soopers' commitment to this shopping center and the City of Wheat Ridge to 2033.

5. Personal agreement; non-transferable; no third party beneficiaries

The cost-sharing of Eligible City Fees, Charges and Taxes as approved herein shall constitute a personal agreement between the City and Owner. The terms of this Agreement do not run with the Owner's property interest in the land. The obligations, benefits and/or provisions of this Agreement may not be assigned in whole or in any part without the express authorization of the City Council. No third party shall be entitled to rely upon or enforce any provision hereof.

6. Agreement not to constitute debt or obligation of the City

Nothing herein shall be construed to constitute a debt or obligation of the City. Notwithstanding any other provision of this Agreement to the contrary, the Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). This Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the City and other applicable law.

7. Cost-sharing

a. Estimated Eligible City Fees, Charges and Taxes. The following are estimates of the Eligible City Taxes which are the subject of the cost-sharing herein.

- Eligible Use Tax:

- a. Approximately \$3.12 million in equipment purchase to include items such as: refrigeration units, deli and meat cases, ovens, proofers, shelving, pallet jackets and other equipment to be used within the building remodel

- b. Approximately \$610,000 in fixture purchases to include items such as: lighting, decors, doors, sinks, air conditioning units, coupling towers and other fixtures to be used within the building remodel

- c. Approximately \$2.1 million in building valuation for the interior and exterior of the building

b. Expected Incremental Building Use Tax Revenue. The Expected Building Use Tax Revenue, as such term is defined in Code Sec. 22-87 (2) is projected to be approximately \$102,600.

c. Cost-sharing. Pursuant to Code Sec. 22-88, cost-sharing of the Eligible City Fees, Charges and Taxes, this Agreement shall be limited to Building Use Tax Revenue. *Notwithstanding the foregoing*, and in reliance upon the representation of Owner of the benefits to the City of the Project, the City and Owner agree to the cost-sharing for the Eligible City Fees, Charges and Taxes as follows:

- i. 100% of the Eligible City Building Use Taxes shall be due and paid to the City by Owner for tenant improvements.

- ii. Upon receipt thereof of all owed use tax, the City shall refund 100% of such Eligible City Building Use Taxes back to the Owner in one payment of \$100,000, subject to review and approval by the City of properly documented expenditures for eligible improvements as described at Paragraph 12.

- iii. In no event shall the City be obligated to refund more than \$100,000 of eligible City Building Use Tax revenues received by it.

8. Legal challenge

In the event of legal challenge to the Program as applied to Owner, any costs scheduled to be shared-back to Owner shall be escrowed until resolution of the dispute.

9. Waiver of Code requirements

To the extent any requirements of Code Secs. 22-85 through 22-96 have been waived; such waiver has occurred pursuant to Code Sec. 22-93 (c) whereby the City Council has found

by a $\frac{3}{4}$ majority vote that such waiver is in the public's interest and will provide a substantial benefit to the City.

10. No joint venture

Pursuant to Code Sec. 22-95, nothing herein shall be construed to create a joint venture between the City and Owner. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in the Program, and the City shall never be liable or responsible for any debt or obligation of any participant, including the Owner, in the Program.

11. Use of funds

Pursuant to Code Sec. 22-89, Owner expressly acknowledges and agrees that any Eligible Use Tax, Fees, and Charges refunded to the Owner under this Agreement, up to the amount agreed upon by the City Council pursuant to this Agreement may only be used for the purpose of the Project, as described in Paragraph 12, on Owner's Property within the underlying Business Development Zone.

12. Uses enumerated

Pursuant to Code Sec. 22-90, the uses to which the Eligible Use Tax, Fees, and Charges may be put by the Owner shall be strictly limited to those which are approved by the City Council and which relate directly to the Project within the City, which Project is anticipated to directly generate more municipal sales and use tax revenues for the City in the future. Uses hereby expressly approved by City Council are as follows:

- Building materials for the interior and exterior improvements to the King Soopers located at the northwest corner of Sheridan Boulevard and 38th Avenue in Wheat Ridge;

13. No covenant to construct or to operate

The intent of this Agreement is to provide for Owner's participation in the Program, in the event that Owner completes the Project. Notwithstanding any provision in this Agreement to the contrary, Owner shall have no obligation under this Agreement to complete the Project or operate the Project once completed or otherwise. In the event Owner fails to complete the Project, this Agreement may be terminated at the option of the City.

14. Remedies

The Owner waives any constitutional claims against the City arising out of a breach of this Agreement. The Owner's remedies against the City under this Agreement are limited to breach of contract claims. In no event shall the City be liable for any form of damages, including without limitation: exemplary, punitive or consequential damages, including economic damages and lost profits.

15. Termination

In the event Owner fails to comply with one or more of the terms of this Agreement, City may, in its sole discretion, terminate this Agreement.

16. Indemnification

To the fullest extent permitted by law, Owner agrees to indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by the Owner's negligent acts, errors or omissions in the performance of this Agreement and those of its sub-contractors, sub-consultants or anyone for whom the Owner is legally liable. To the extent permitted by the Colorado Constitution and statutes, the City agrees to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions arising from this Agreement. These defense and indemnification obligations shall survive the expiration or termination of this Agreement. The Parties acknowledge that the provisions of this Paragraph are not intended to waive or alter any of the rights and defenses afforded to the City under the common law, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et. seq.* or any other law.

17. Severability

If any part, term or provision of this Agreement or the Program is held by a court of competent jurisdiction 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 the Agreement or the Program. Should the sharing of Eligible City Fees, Charges and Taxes pursuant to this Agreement be judicially adjudged illegal, invalid or unenforceable under the present or future laws effective during the Term of this Agreement by a court of competent jurisdiction in a final, non-appealable judgment, the Parties shall utilize their best, good faith efforts to restructure this Agreement or enter into a new agreement consistent with the purposes of this Agreement. Should the Parties be unsuccessful in their efforts, the Agreement shall terminate without penalty or recourse to either Party.

18. Governing law; venue

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 proper and exclusive in the district court for Jefferson County, Colorado.

19. Notices

All notices required or permitted under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to be

addressed to the Parties set forth below. All notices so given shall be considered effective upon the earlier of the actual receipt or seventy-two (72) hours after deposit in the United States Mail with the proper address. Either Party by notice so given may change the address to which future notices shall be sent:

Notice to the City: City Manager
City of Wheat Ridge
7500 W. 29th Ave.
Wheat Ridge, CO 80033

Copy to: City Attorney
City of Wheat Ridge
7500 W. 29th Ave.
Wheat Ridge, CO 80033

Notice to the Owner:

Copy to: Dillon Companies, Inc dba King Soopers
Attention: Real Estate Department.
65 Tejon Street
Denver, CO 80223

20. Entire agreement – amendments

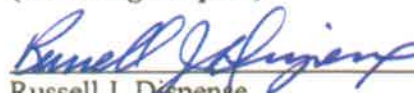
This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto.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

21. Effective date

This Agreement shall be effective and binding upon the Parties upon the date first set forth above.

IN WITNESS WHEREOF, Owner and City have each caused this Agreement to be executed by their authorized representatives.

OWNER
Dillon Companies, Inc., a Kansas Corporation
(dba King Soopers)


Russell J. Dispense
Vice President

OWNER, LLC
State of Colorado)
City and sem) ss.
County of Jefferson)
Denver

The foregoing Agreement was acknowledged before me this 21 day of June, 2012, by Russell J. Dispense, Vice President of Dillon Companies, Inc. a Kansas Corporation on behalf of the corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: 4/6/2014



Susan R. McKnight
NOTARY PUBLIC

My Commission Expires: 4/6/2014

CITY OF WHEAT RIDGE

By: [Signature]
Name: Jerry DiTullio
Title: Mayor

ATTEST:

Janelle Shaver
Name: Janelle Shaver
Title: City Clerk



Approved as to Form

[Signature]
Gerald E. Dahl, City Attorney

EXHIBIT A

SCOPE OF DEVELOPMENT

Qualifying Public Improvement Costs

King Soopers' public improvements are designed to provide a greater product selection to benefit the community as well as exterior improvements to enhance the property. The interior remodel will accommodate the expansions and additions of meat and seafood, organic produce, prepared foods, deli offerings, health and beauty, dairy with organic offerings, and additional departments (floral, baby and a branded café/coffee option). In addition, King Soopers public improvements include paint and facade upgrades to the exterior of the store.

King Soopers estimates the public improvements investment breakdown to be as follows:

- Approximately \$3.12 million in equipment purchase to include items such as: refrigeration units, deli and meat cases, ovens, proofers, shelving, pallet jackets and other equipment to be used within the building remodel
- Approximately \$610,000 in fixture purchases to include items such as: lighting, decors, doors, sinks, air conditioning units, coupling towers and other fixtures to be used within the building remodel
- Approximately \$2.1 million in building valuation for the interior and exterior of the building

King Soopers believes that the public improvement upgrades to this specific store will better serve the existing loyal customer base in the Wheat Ridge area, attract and entice new shoppers to this store and the shopping center, and provide public benefit to the community. These improvements are projected to be complete by June 2013.

With the public improvements, King Soopers estimates that they can maintain their loyal customer base as well as add to that customer base in subsequent years, bringing new revenue to the City and sustaining the economic viability of the site.