

**CITY OF WHEAT RIDGE, COLORADO**  
**RESOLUTION NO. 33**  
Series of 2012

**TITLE: A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH KING SOOPERS, INC. FOR PARTICIPATION IN THE ENHANCED SALES TAX INCENTIVE PROGRAM (ESTIP) IN AN AMOUNT NOT TO EXCEED \$300,000 FOR THE REMODEL OF THEIR STORE LOCATED AT 3817 SHERIDAN BOULEVARD**

**WHEREAS**, the City has adopted as a portion of the Wheat Ridge Code of Laws ("Code") Chapter 22, Division 4, "Enhanced Sales Tax Incentive Program" (the Program) to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

**WHEREAS**, King Sooper (Kings) has applied to participate in the Program and a public hearing was posted and conducted; and

**WHEREAS**, Kings 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;

**WHEREAS**, Owner plans to construct public improvements of approximately \$400,000 and a total project budget of 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 increased 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's commitment to this shopping center and the City of Wheat Ridge to 2033; and

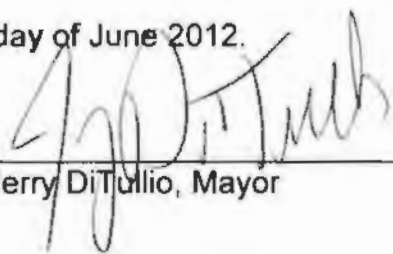
**WHEREAS**, cost-sharing at the rate prescribed herein will serve to aid the expansion of Owner in that it will alleviate a portion of the costs associated with the expansion.

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

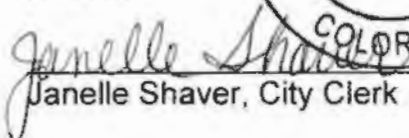
Agrees to execute an Agreement Pursuant to Enhanced Sales Tax Incentive Program wherein an amount not to exceed \$300,000 of enhanced sales tax will be rebated to Dillon Companies, Inc., a Kansas Corporation dba King Soopers.

**DONE AND RESOLVED** this 25<sup>th</sup> day of June 2012.



  
\_\_\_\_\_  
Jerry DiTullio, Mayor

ATTEST:

  
\_\_\_\_\_  
Janelle Shaver, City Clerk

**AGREEMENT PURSUANT TO ENHANCED SALES TAX INCENTIVE PROGRAM**

This Agreement Pursuant To Enhanced Sales Tax Incentive Program (this "Agreement") is made and entered into as of the 25<sup>th</sup> day of June, 2012, by and between 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, hereinafter referred to as the "City," collectively the "Parties," and each individually, as a "Party."

**RECITALS:**

Whereas, the City has adopted Chapter 22, Article 69 - 84 of the Wheat Ridge Code of Laws, entitled the Enhanced Sales Tax Incentive Program (the "ESTIP Program"), a copy of which is attached hereto as **Exhibit A**, to encourage, in part, the establishment of retail sales tax generating businesses within the City; and

Whereas, the Owner desires to participate in the ESTIP Program and to share in the enhanced sales tax derived from the property described as a Grocery Store, generally located at 3817 Sheridan Boulevard in Wheat Ridge, Colorado and more particularly described in **Exhibit B**, attached hereto and incorporated by this reference (the "Property"), for the installation of Public Improvements described in **Exhibit C**, attached hereto and incorporated by this reference (the "Public Improvements") to the extent allowed by this Agreement and the ESTIP Program.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the Parties hereto, to be kept and performed 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 the first day of the calendar month following the month in which the Owner receives their Certificate of Occupancy on the Property or June 30, 2013 whichever shall occur first (the "Commencement Date") and shall terminate on the one (1) year anniversary date of the Commencement Date, unless otherwise provided in this Agreement (the "Term"). The Term may be renewed by up to SIX (6) one (1) year periods (the "Extended Term"). The Term of this Agreement shall automatically renew for each additional one year period to the extent required by Section 4(d) hereof.
3. **Application of City Code**. This Agreement is subject to the limitations of the ESTIP Program, as found in the City of Wheat Ridge Code of Laws. In the event of conflicts between this Agreement and the ESTIP Program, the ESTIP Program shall control.

**4. Qualification of Property for the ESTIP Program.** The City agrees that the Property qualifies for the ESTIP Program and the Public Improvements are improvements for public and or public related purposes that will stimulate the economy of and within the City, provide employment opportunities for residents of this City and others, expand the goods available for purchase and consumption by residents of the City, and increase sales taxes collected by the City. The City finds the business is reasonably likely to generate enhanced sales taxes of at least One Hundred Eighty-Nine Thousand dollars (\$189,000) over the full term of this Agreement. The following provisions shall apply for each year in which the ESTIP Program is in effect for the Property:

- a. One Hundred percent (100%) of the "Enhanced Sales Taxes" collected by the City and derived from the Property shall be segregated by the City to be utilized for the ESTIP Program herein established and approved (the "Allocated Revenues"). For purposes of this Agreement "Enhanced Sales Taxes" shall have the meaning set forth in the ESTIP Program at Section 22-75 of the Wheat Ridge Code of Laws.
- b. The amount of Enhanced Sales Taxes shall be calculated as follows: the actual amount of sales taxes collected on the Property during the period July 1, 2011 to June 30, 2012 (the "base amount"), shall be subtracted from the actual amount of sales taxes collected annually commencing after: (i) the first day of the calendar month following the month in which the Owner receives their certificate of occupancy on the Property, or (ii) June 30, 2013, whichever occurs first. The excess of collections in each such year above the base amount shall be the Enhanced Sales Taxes for that year.
- c. The Owner shall share in the Enhanced Sales Taxes derived from the Property and the business located thereon as provided herein.
- d. Enhanced Sales Taxes from the Property shall be shared and the Allocated Revenues shall be disbursed to the Owner on an annual basis with sales taxes collected on and after the Commencement Date. The maximum period of time that this Agreement shall be in effect shall be the earlier of: (i) SEVEN (7) years, commencing on the Commencement Date, or (ii) until the sum of THREE HUNDRED THOUSAND Dollars (\$300,000.00) in Enhanced Sales Taxes (the "Maximum Amount") has been paid to Owner for reimbursement for such improvements, whichever occurs first, at which time this Agreement shall terminate. It is expressly understood by the Parties that this Agreement will terminate upon the occurrence of the earlier to be reached of the maximum time as provided in the preceding sentence (whether or not the Maximum Amount has been reached) or the disbursement of the Maximum Amount as provided in the preceding sentence (whether or not the maximum time set forth has expired).

Notwithstanding the foregoing, the Term will be automatically extended for one year for up to six (6) additional one (1) year periods if the Maximum Amount has not been disbursed during the Extended Term because the City Council has not appropriated the funds as provided in Paragraph 5 of this Agreement.

- e. This Agreement is a personal agreement between the City and the Owner and does not run with the Owner's property interest in the land. The obligations, benefits and/or the provisions of this Agreement may not be assigned in whole or in part without the express authorization of the City Council, acting in its sole and exclusive discretion and no third party shall be entitled to rely upon or enforce any provisions hereon. Notwithstanding the foregoing, Owner may assign its interests in this Agreement to an affiliate or to a successor by consolidation. For the purposes of this Paragraph, an affiliate means an entity which controls, is controlled by, or is under common control with the Owner. This Agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision.
- f. Any Enhanced Sales Taxes subject to the Agreement shall be escrowed in the event there is a legal challenge to the ESTIP Program or to the approval of this Agreement.
- g. At the end of the Term of this Agreement as provided for herein, any monies segregated by the City which have not been expended as hereunder provided may be transferred to another account of the City or used in a manner determined by the City in its sole discretion, excluding any amounts escrowed under Paragraph 4.f above.
- h. From the Enhanced Sales Tax proceeds segregated by the City, the City shall pay to the Owner the actual cost incurred by the Owner for the construction and installation of the Public Improvements beginning at the time that all of the Public Improvements are substantially completed, but not to exceed the Maximum Amount defined in Paragraph 4.d above and set forth in **Exhibit C**.
- i. In order to obtain reimbursement for such actual costs, the Owner shall submit invoices to the City after the Effective Date of this Agreement, the payment of which shall be subject to the City's approval for compliance of the expenditures with this Agreement and the ESTIP Program and the availability of Allocated Revenues. Each invoice presented to the City by the Owner shall be accompanied by an affidavit or other supporting documentation from the general contractor stating:
  - i. that said improvements have been substantially completed pursuant to plans and specifications approved by the City through the issuance of permits and site plan approvals by the City in the ordinary course; and
  - ii. that the Owner has paid the full amount specified on the invoice.

- j. The Owner shall be deemed the “owner or proprietor” of the Property for the purposes of this Agreement and the ESTIP Program, whether or not the Owner owns all or any portion of the Property at any relevant time, since the Owner is coordinating the installation of the Public Improvements.

5. **City’s Budget Process.** Each year, the City Manager shall include in a budget presented to the City Council pursuant to Chapter X, Sec. 10.2 of the Wheat Ridge Home Rule City Charter, the appropriation of the Allocated Revenues for payment to the Owner as provided in this Agreement. Nothing in this Agreement shall be construed as obligating the City Council to appropriate the Allocated Revenues in any fiscal year.

6. **No Debt or Pecuniary Liability.** Notwithstanding anything in the Agreement to the contrary, the Agreement is specifically subject to annual appropriation of sufficient funds to pay the Allocated Revenue as provided in the ESTIP Program. No multiple year fiscal obligation is created hereby. The decision of the City Council not to appropriate funds in any given year shall not affect, impair or invalidate any of the remaining provisions of this Agreement. None of the obligations of the City hereunder shall be payable from any source other than Enhanced Sales Taxes.

7. **Subordination.** Notwithstanding anything in this Agreement to the contrary, the Owner shall have no right, claim, lien, or priority, in or to the City’s sales tax revenue that would be superior to or on parity with the rights, claims, or liens of the holders of any sales tax revenue that would be bonds, notes, certificates, or debentures payable from or secured by any sales taxes, outstanding as of the Effective Date of this Agreement. All rights of the Owner are, and at all time shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such sales tax revenue bonds, notes, certificates, or debentures, issued by the City and payable from or secured by any sales taxes.

8. **No Covenant to Construct or to Open.** The intent of this Agreement is to provide for Owner’s participation in the ESTIP Program, in the event that Owner constructs the Public Improvements or to operate the same once completed or otherwise. Notwithstanding any provision in this Agreement to the contrary, Owner shall have no obligation under this Agreement to construct the Public Improvements, and in that event, the City shall have no obligation to share any of the Enhanced Sales taxes with Owner.

9. **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 Owner be entitled to a claim, nor shall the City be liable for, any special, exemplary, punitive or consequential damages of any kind, including economic damages or lost profits.

**10. Severability.** It is understood and agreed by the Parties 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 the Agreement or the ESTIP. Should the allocation of the Enhanced Sales Tax, or the payment of the Allocated Revenues 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 the City.

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

**12. 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. 29<sup>th</sup> Avenue  
    Wheat Ridge, CO 80033

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

Notice to the Owner:                      Dillon Companies, Inc. dha King Soopers  
    Attention: Real Estate Department  
    65 Tejon Street  
    Denver, CO 80223

13. **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.

14. **Effective Date.** This Agreement shall be effective and binding upon the Parties upon the date first set forth above. Notwithstanding any provision of this Agreement which may be interpreted to the contrary, in the event that Owner does not construct and make improvements to the Property on or before June 30, 2013, then upon notice by the Owner to the City, this Agreement shall terminate and both Parties shall be relieved of all liability hereunder.

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

**OWNER**

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

  
Russell J. Dispense  
Vice President

State of Colorado )  
City and ) ss.  
County of Denver )

The foregoing Agreement was acknowledged before me this 18 day of July, 2012, by Russell J. Dispense as Vice President of Dillon Companies, Inc., a Kansas corporation on behalf of the corporation.

WITNESS MY HAND AND OFFICAL SEAL.

My Commission expires: 4-6-2014

  
Notary Public



My Commission Expires 4-6-2014





CITY OF WHEAT RIDGE

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

ATTEST:

[Signature]  
Name: Janelle Shaver  
Title: City Clerk

State of Colorado )  
) ss.  
County of Jefferson )

The foregoing Agreement was acknowledged before me this 25<sup>th</sup> day of June, 2012, by Jerry DiTullio as Mayor and Janelle Shaver as City Clerk, respectively, of the City of Wheat Ridge, Colorado.

WITNESS MY HAND AND OFFICAL SEAL.

My Commission expires: 10/28/2014

[Signature]  
Notary Public



**EXHIBIT A**

Ordinance 2001-08  
The Enhanced Sales Tax Incentive Program  
(The "ESTIP Program")

**Sec. 22-73. - Program established.**

There is hereby established within the city an enhanced sales tax incentive program.

*(Ord. No. 1988-758, § 1(24-1), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-74. - Purpose.**

The purpose of the enhanced sales tax incentive program created by this division is to encourage the establishment and/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 further expanding the goods available for purchase and consumption by residents of the city, and further increasing the sales taxes collected by the city, which increased sales tax collections will enable the city to provide expanded and improved municipal services to and for the benefit of the residents of the city, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the city and its taxpayers and residents.

*(Ord. No. 1988-758, § 1(24-2), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-75. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Enhanced sales tax* shall mean the amount of sales tax collected by the city over and above a base amount negotiated by, and agreed upon by, the applicant and the city, and which amount is approved by the city council, which base amount shall never be lower than the amount of sales taxes collected by the city at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales taxes, or, in the case of a newly established business, an amount which represents the good faith determination by the applicant and the city as to the amount of sales taxes which could be generated from the new business without the participation by applicant in the ESTIP created under this division.

*ESTIP* means the enhanced sales tax incentive program created under this division.

*Owner or proprietor* shall mean the record owner or operator of an individual business, or, in the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that the owner (whether an individual, corporation, partnership or other entity) is the owner or less or of the individual businesses operated thereon.

*(Ord. No. 1988-758, § 1(24-3), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-76. - Participation.**

Participation in ESTIP shall be based upon approval by the city council exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business or location, or the owner or proprietor of an existing retail sales tax generating business or location which wishes to expand substantially, may apply to the city for inclusion within the ESTIP provided that the new or expanded business is reasonably likely to generate enhanced sales taxes of at least five thousand dollars (\$5,000.00) in the first year of operation.

*(Ord. No. 1988-758, § 1(24-4), 5-23-88; Ord. No. 1990-854, § 1, 11-26-90; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-77. - Approval of agreement; use of funds generally.**

Approval by the city council of an agreement implementing this ESTIP shall entitle the successful applicant to share in enhanced sales taxes derived from applicant's property or business in an amount which shall not in any event exceed the enhanced sales taxes; provided, however, that applicant may use such amounts only for public and/or public-related purposes such as those specified herein and which are expressly approved by the city council at the time of consideration of the application. The time period in which the enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the city council, in its discretion, to a specified time, or until a specified amount is reached.

*(Ord. No. 1988-758, § 1(24-5), 5-23-88; Ord. No. 2002-1240, § 1, 1-28-02; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-78. - Uses enumerated.**

The uses to which the shared enhanced sales taxes may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purposes of this division, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements, together with the

relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the city council upon the city council's finding that said improvement are public or public-related improvements, and that such improvements shall enhance the competitive position of the applicant within the Denver metropolitan area marketplace.

*(Ord. No. 1988-758, § 1(24-6), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-79. - Increments, sharing of funds.**

The base figure for sales taxes shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties, and approval by the city council, and which increments shall be reasonably related to the average monthly performance of the business or property in question, or similar businesses in the area (i.e. adjust for seasonal variations). If in any month the agreed upon figure is not met by applicant so as to create enhanced sales tax for that month, no funds shall be shared with applicant for that month, and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, funds in excess of those enhanced sales taxes agreed to be shared shall not have been shared with any applicant.

*(Ord. No. 1988-758, § 1(24-7), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-80. - Revenues restricted.**

It is an overriding consideration and determination of the city council that existing sources of city sales tax revenues shall not be used, impaired, or otherwise affected by this enhanced sales tax incentive program. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the treasurer to collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the other sales tax generating uses and businesses within the city and to provide an accounting system which accomplishes the overriding purpose of this section. It is conclusively stated by the city council that this division would not be adopted or implemented but for the provisions of this section.

*(Ord. No. 1988-758, § 1(24-8), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-81. - Capital improvement fund.**

The one (1) percent of sales and use taxes earmarked for the capital improvement fund may be utilized in this ESTIP for public improvements so long as the same are within the meaning of the phrase capital improvements as defined in the voter approved sales tax referendum previously held within the city, and provided that the same are found and determined by the city council to be capital improvements which could be

provided by the city from the capital improvement fund but for the provision of such improvements by the applicant; provided, however, that such use of capital improvement funds as part of this ESTIP shall be limited to the amount agreed pursuant to section 22-83 hereof; provided further, however, that nothing contained herein shall limit the city council in the determination to appropriate additional capital improvement funds for capital improvements affecting the property in question as a part of the city's regular appropriation and budget process.

*(Ord. No. 1988-758, § 1(24-9), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-82. - Criteria for approval of application.**

Approval of an application for inclusion in this ESTIP shall be given by the city council, at a public hearing held as a portion of a regularly scheduled city council meeting, based upon the following criteria:

- (1)  
The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the city through the expanded or new retail sales tax generating business;
- (2)  
The public benefits which are provided by the applicant through public works, public improvements, additional employment for city residents, etc;
- (3)  
The amount of expenditures which may be deferred by the city based upon public improvements to be completed by the applicant;
- (4)  
The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city;
- (5)  
The agreement required by section 22-83 having been reached, which agreement shall contain and conform to all requirements of section 22-83
- (6)  
Approval shall be by motion adopted by a majority of the entire city council.

*(Ord. No. 1988-758, § 1(24-10), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

**Sec. 22-83. - Agreement required.**

Each application for approval submitted to the city council shall be subject to approval by the council solely on its own merits. Approval of an application shall require

that an agreement be executed by the owner and the city, which agreement shall, at a minimum, contain:

- (1)  
A list of those public or public-related improvements which justify applicant's approval, and the amount which shall be spent on such improvements;
- (2)  
The maximum amount of enhanced sales taxes to be shared, and the maximum time during which the agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);
- (3)  
A statement that this is a personal agreement which is not transferable and which does not run with the land;
- (4)  
That this agreement shall never constitute a debt or obligation of the city within any constitutional or statutory provision;
- (5)  
The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal such amount, that there shall be no sharing of funds for such month;
- (6)  
The base amount shall be agreed upon which shall consider the historic level of sales at the property in question, or a similar property within the area in the event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within this program;
- (7)  
A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this enhanced sales tax incentive program or the approval of any application therefor;
- (8)  
An affirmative statement that the obligations, benefits, and/or provisions of this agreement may not be assigned in whole or in any part without the

expressed authorization of the city council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;

(9)

Any other provisions agreed upon by the parties and approved by the city council.

*(Ord. No. 1988-758, § 1(24-11), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

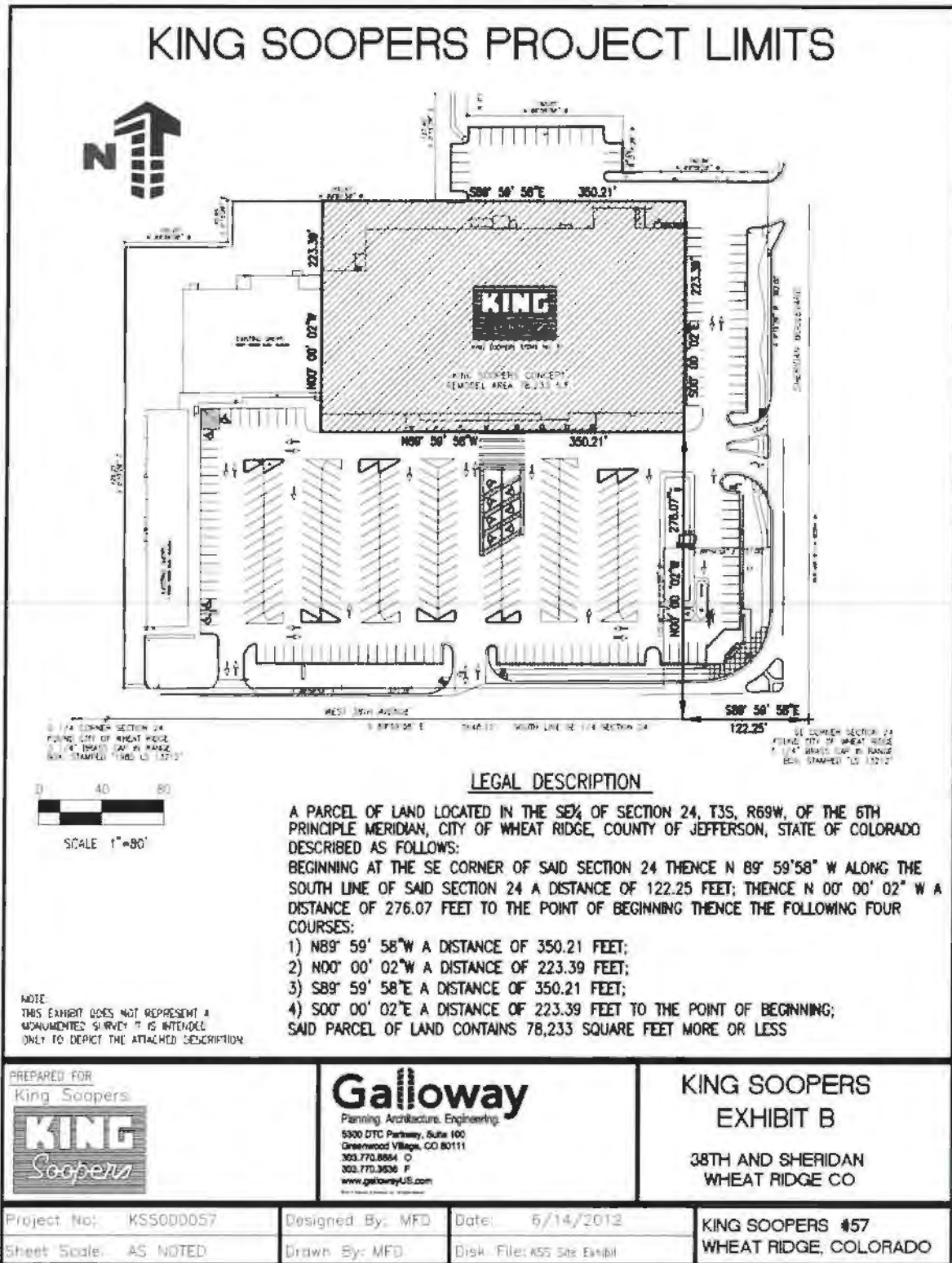
**Sec. 22-84. - Joint venture; liability.**

The city council has enacted this ESTIP as a joint benefit to the public at large and to private owners for the purposes of providing the city with increased sales tax revenues generated upon and by properties improved as a result of this program; public improvements being completed by private owners through no debt obligation being incurred on the part of the city, and allowing applicants an opportunity to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading such properties. The city council specifically finds and determines that creation of this ESTIP is consistent with the city's powers as a home rule municipal corporation, and that exercise of such powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the city shall never be a joint venture in any private entity or activity which participates in this ESTIP, and the city shall never be liable or responsible for any debt or obligation of any participant in ESTIP.

*(Ord. No. 1988-758, § 1(24-12), 5-23-88; Ord. No. 1272, § 1, 12-9-02)*

## EXHIBIT B

### Legal Description of the Property





## **EXHIBIT C**

### Qualifying Public Improvement Costs

Owner public improvements are designed to provide a greater product selection to benefit the community as well as exterior improvements to enhance the property. The remodel includes new paint, decorative columns, additional entrances, resulting in a pedestrian mall feel, and a new and refresh store fascia on the building. Additionally the Owner plans to add a Starbucks with outdoor patio seating, which provides customers a neighborhood gathering place within the City.

Owner 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. The contribution of \$300,000 from the City will aid in the investment of over \$2.1 million in building improvements. These improvements are projected to be complete by June 30, 2013.

With the public improvements, the Owner 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.