

King Soopers
9/17/13

**REDEVELOPMENT ASSISTANCE AGREEMENT
FOR DILLON COMPANIES, INC., A KANSAS CORPORATION,
DOING BUSINESS AS KING SOOPERS
IN THE CITY OF LITTLETON, COLORADO**

THIS AGREEMENT ("Agreement") is made and entered into as of the 17TH day of September, 2013, between the CITY OF LITTLETON, a Colorado home rule municipality (the "City"), and DILLON COMPANIES, INC., a Kansas corporation ("King Soopers").

WHEREAS, the City wishes to provide certain business assistance in connection with King Soopers' redevelopment and construction of a new, approximately 77,200 square foot store at 100 W. Littleton Boulevard, Littleton, Colorado (the "Project"); and

WHEREAS, King Soopers plans for the Project to generate new sales tax revenue, and create new jobs in the City; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by retaining and expanding this store within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and King Soopers agree as follows:

1. Building and Plan Review Waiver and Sales and Use Tax Rebates.

Acknowledging the economic benefits to the City with the proposed redevelopment of the Project, the City agrees to the following waivers and rebates:

a. Building and Plan Review Waiver and Use Tax Rebate:

1. The City shall waive one-half (1/2) of the building and plan review permit fees associated with the initial building permit(s) for the Project; and
2. For the first year of operation after issuance of a temporary certificate of occupancy for the Project, the City shall rebate one-half (1/2) of the use tax collected in accordance with Chapter 9 of Title 3 of the Littleton Municipal Code.
3. In no event shall the amount of the building and plan review permit fee waived, and the use tax rebated, pursuant to this paragraph 1(a) collectively exceed \$118,681.

b. Sales Tax Rebate:

1. For the first six years of operation after issuance of a temporary certificate of occupancy for the Project, the City shall collect and retain, from the retail sales collected and attributable to retail sales occurring at the Project, an amount equal to the annual average of the previous five years of sales tax collected.
 2. After such amount has been collected and retained by the City, the City shall thereafter rebate to King Soopers 100 percent of any further retail sales taxes collected for that respective year.
- c. Notwithstanding the foregoing, the waivers and rebates provided for in this paragraph 1 shall not cumulatively exceed \$500,000, nor shall they continue for a period longer than six years following issuance of a temporary certificate of occupancy for the Project.

2. Payment of Rebates. The sales and use tax rebates shall be paid by the City in annual installments, for the previous 12 months, and shall be made on or before January 31st. No interest shall be paid on amounts subject to rebate.

3. Entire Agreement. This instrument shall constitute the entire agreement between the City and King Soopers and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

4. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if King Soopers has not completed the Project (as evidenced by the issuance of a temporary certificate of occupancy) within 12 months following commencement of construction, subject to delays due to force majeure events including earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of King Soopers, provided King Soopers gives prompt written notice thereof and takes all steps reasonably necessary to mitigate the effects of the force majeure event; or King Soopers should fail to comply with any City code, after written notice of such failure and expiration of a 30 day cure period.

5. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales tax revenues in excess of the sales revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the

City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales tax revenues of the City.

6. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provisions, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. King Soopers understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or recourse to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

7. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with the City of Littleton City Charter and the City of Littleton Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experienced mediator or panel of mediators for the purpose of resolving such dispute. In the event such dispute is not fully resolved by mediation or otherwise within 60 days after a request for mediation by either party, then either party may commence legal proceedings regarding the dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Arapahoe County, Colorado.

8. Legal Challenge: Escrow. The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party.


9. Assignment. This Agreement is personal to King Soopers. King Soopers shall not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the expressed written authorization of the City Council. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

10. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and King Soopers.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.


KING SOOPERS:

DILLON COMPANIES, INC., a Kansas corporation

By: 
Name: RUSSELL J. DISPENSE
Title: VICE PRESIDENT

CITY:


CITY OF LITTLETON, a Colorado home rule municipality


Debbie Brinkman, Mayor

ATTEST:


City Clerk

Approved as to Form:


City Attorney