

ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT

THIS ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT (the "ESTIP Agreement") is made and executed this 15th day of March, 2022, by and between the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (hereafter referred to as the "City") and **FIVE R ON 8TH, LLC** (hereafter referred to as "Owner").

WITNESSETH

WHEREAS, Owner is the owner of property located at 1130 8th Avenue in the City of Greeley, Colorado and legally described as set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"), upon which Owner desires to construct improvements consisting of a redevelopment of the property into a multi-tenant retail facility (collectively, the "Project");

WHEREAS, the Project will include a significant reconstruction of certain improvements, such improvements generally described in the attached **Exhibit B**, attached hereto and incorporated herein by this reference, which the Parties agree constitute eligible "Improvements" as defined by Section 6-924 of the Greeley Municipal Code, meaning "...public improvements, including, but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, public art, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, building facades, architectural enhancements, 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";

WHEREAS, in entering into this ESTIP Agreement, the City Council of the City specifically finds that entering into this ESTIP 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;

WHEREAS, the City Council finds that the Project is necessary to promote the public welfare, including the expansion of retail sales tax generating business and expanded employment opportunities;

WHEREAS, the City Council further finds that entering into this ESTIP Agreement shall provide a mechanism for the provision to the residents of the City of necessary public and private improvements at no cost or reduced cost to the residents and the government of the City;

WHEREAS, the parties hereto wish to set forth in full their agreement as to the general nature and extent of the public and private improvements which shall be constructed and installed by Owner, and the manner for and extent of the reimbursement to Owner for such construction and installation;

WHEREAS, the parties wish to memorialize all aspects of their agreement as to the terms and conditions of such reimbursement in this ESTIP Agreement.

NOW THEREFORE, the parties hereto, for themselves, their successors and assigns (to the extent this ESTIP 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 ESTIP Agreement is entered into in compliance with the provisions of Article VI, Chapter 12 of the Greeley Municipal Code.

2. The parties hereby mutually agree that Owner shall construct or cause to be constructed, certain public and public-related improvements as part of the Project. This ESTIP Agreement shall terminate and be of no further force or effect in the event Owner shall fail to commence the Project by September 30, 2022. For the purposes of this ESTIP Agreement the owner shall be deemed to commence the project on the date of the of the first City inspection related to the building permit.

3. The parties hereby mutually agree that the base amount of the City's three percent (3%) general sales tax to be used in determining the "enhanced sales tax" to be shared hereunder is \$0 (the "Base Amount"). All general sales tax revenues collected from the Property in excess of the Base Amount 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 at a rate of one hundred percent (100%). The uses to which the shared sales taxes may be applied are limited to those set forth in section 6-924 of the Greeley Municipal Code.

5. The parties agree that the maximum amount of "enhanced sales tax" revenue which is subject to distribution to Owner from sales within the Property hereunder shall be \$500,000, and that the "enhanced sales taxes" shall be shared commencing with sales taxes generated on the Property upon receipt of the Certificate of Occupancy for the first approved tenant. The parties specifically acknowledge and agree that whether or not the entire \$500,000 has been received by Owner, this ESTIP Agreement shall terminate following division and payment of the sales tax increment through a ten year period, commencing with receipt of the Certificate of Occupancy for the first approved tenant. Likewise, the parties acknowledge and agree that receipt by Owner of the entire \$500,000 prior to the end of the ten year period, shall terminate this ESTIP Agreement.

6. The parties agree that the sales tax-generating tenants at the property must not represent a transfer of sales tax revenue currently being generated from another location within Greeley. Each prospective qualifying tenant must be approved by the EHH Director of the City to determine ESTIP Agreement eligibility. Owner shall request that a prospective qualifying tenant be approved by providing written notice to the City and the City shall have ten (10) business day to either approve or deny the prospective tenant. If the City does not respond within ten (10) business day the prospective qualifying tenant shall be deemed approved by the City.

7. 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 6-925 and 6-926 of the City's Municipal Code. The parties agree that, for purposes of administration of this ESTIP Agreement, reimbursement to Owner shall occur on a quarterly basis (*i.e.*, January - March, April - June, July - September, and October - December). Reimbursements to Owner 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.

8. The obligations of the City under this ESTIP Agreement are specifically conditioned upon and made subject to the following contingencies:

a. Owner shall commence the Project on or before September 30, 2022.

b. Owner shall complete construction of the Project contemplated by this ESTIP Agreement no later than December 31, 2023.

9. 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.

10. Any and all undisbursed "enhanced sales tax" increment subject to sharing hereunder shall be escrowed in the event there is a legal challenge to the Enhanced Sales Tax Incentive Program in general or to this ESTIP Agreement. In the event of such a legal challenge, Owner 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 Owner may participate in such defense at its own cost and expense.

11. None of the obligations, benefits, and provisions of this ESTIP Agreement shall be assigned in whole or in any part without the express written authorization of the City Manager. No third party may rely upon or enforce any provision of this ESTIP Agreement, the same being an agreement solely between the City and Owner, and which agreement is made for the benefit of no other person or entity. The preceding sentence notwithstanding, this Agreement and Owner's rights hereunder may be assigned without the written authorization of the City to a company under substantially the same ownership and/or to a lender who holds a first deed of trust against the Property.

12. This ESTIP 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 Greeley at a regular or special meeting of the City Council, and execution thereof by the Mayor and attestation by the City Clerk.

13. Any written notices provided for or required in this ESTIP 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: Raymond C. Lee III
City Manager
City of Greeley
1000 10th Street
Greeley, CO 80631

With copy to: Doug Marek
City Attorney
1100 10th Street, Suite 401
Greeley, Colorado 80631

For Owner: Five R on 8th, LLC
By: Western States Management, LLC, Manager
5200 W. 20th Street
Greeley, CO 80634
Attn: Tyler Richardson, Manager

DATED this day and date first above set forth.

The Parties hereby agree to the same and execute this Agreement by their duly authorized representatives as follows:

CITY OF GREELEY, COLORADO

Mayor

City Clerk

Date

Approved as to Substance:

City Manager

Approved as to Legal Form:

City Attorney

Approved as to Availability of Funds:

Director of Finance

FIVE R ON 8TH, LLC

By: Western States Management, LLC.

Its: Manager

By: _____

Printed Name

Tyler Richardson, Manager

Date

EXHIBIT A

Legal Description

A parcel of land being a portion of Block 83 of the Map of the Town of Greeley, recorded April 6, 1887 as Reception No. 24738 of the Records of Weld County, situate within the Northwest Quarter (NW1/4) of Section Eight (8), Township Five North (T.5N.), Range Sixty-five West (R.65W.), Sixth Principal Meridian (6th P.M.), City of Greeley, County of Weld, State of Colorado, more particularly described as follows:

Lot 5, Lot 6, and the West 25 feet of Lot 7, all in said Block 83, excepting therefrom the South 133.00 feet of said Lot 5, Block 83.

Said described parcel contains a total of 29,789 sq. ft., more or less.

EXHIBIT B

Property Improvements

Acquisition Costs	
	<u>Total</u>
Land Acquisition	\$875,000
Total Acquisition Costs	\$875,000

Hard Costs	
	<u>Total</u>
Property Improvements	\$2,420,022
Tenant Allowance	\$1,026,500
Dry Utilities Allowance	\$55,000
Total Hard Costs	\$3,501,522

Soft Costs	
	<u>Total</u>
Total Soft Costs	\$1,253,913
Total Unlevered Costs	\$5,630,435
Lender Fees & OpEx Escrow	\$44,955
Interest During Construction	\$104,225
Total Levered Costs	\$5,779,615

Conceptual Elevations

