

TAB 7

POINT PAPER

RESOLUTION 08-17 Albertson's Tax Abatement

Problem: Albertson's, Inc. is requesting reimbursement for ad valorem taxes paid for tax years 2005, 2006, and 2007 due to tax abatement agreement signed with the Community Redevelopment Agency of the City of Palmetto (CRA). Reimbursement amounts to \$56,560.00 per year for a total of \$169,680.00.

Background: On December 13, 1999 the CRA Board of Commissioners passed a resolution (Attachment A) and on September 22, 2000 a Tax Abatement Agreement was entered into thereby granting an ad valorem tax abatement to Albertson's for the store being built on 8th Avenue between 10th and 12th Streets in the City of Palmetto. The tax abatement was agreed upon for a period of twenty-five years beginning January 1, 2001, subject to Albertson's completing the construction in accordance with plans approved by the CRA, and yearly submission of a paid ad valorem tax receipt. Upon receipt, the CRA would reimburse Albertson's for up to \$56,560 of ad valorem taxes. Should the tax payment be less than \$56,560, the excess would carry forward to the next year.

In a letter dated April 9, 2008 (Attachment B), Albertson's informed the CRA that they were requesting reimbursement for taxes paid for tax years 2005, 2006, and 2007. Accompanying this letter was documentation (Attachment C) from Manatee County Tax Collector showing receipt in excess of \$56,560 from Albertson's for each of these years. CRA has budgeted for the tax abatement for each of these years; however, for FY 2006 and 2007, the funds were never expensed and were rolled into the CRA Fund Balance at year end. The tax year 2007 reimbursement will be paid from FY 2008 budget.

Alternatives:

1. Do nothing.
2. Approve Resolution #08-17 approving the payment of \$113,120.00 for tax years 2005 and 2006 out of CRA Fund Balance.

Recommendation: Staff recommends alternative #2, Approve Resolution #08-17.

Budget Impact: Tax Abatement Program expense line 690 559 8213 will be increased by \$113,120.

RESOLUTION NO. 08-17

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AMENDING RESOLUTION NO. 07-39, WHICH RESOLUTION ADOPTED THE BUDGET FOR FISCAL YEAR 2007-2008, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, from time to time it is necessary to increase or decrease revenues and expenditures in certain accounts, and;

WHEREAS, it is necessary to provide budgetary authorization for the expenditure of these funds;

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA:

Section 1: That Expense Account 690 559 8213, Tax Abatement Program, for the fiscal year ending September 30, 2008 is increased by One Hundred Thirteen Thousand One Hundred Twenty Dollars (\$113,120), due to not having made budgeted tax abatement payments to Albertson's.

Section 2: This Resolution shall be funded from CRA Fund Balance.

Section 3: This Resolution shall become effective immediately upon its passage.

Section 4: All Resolutions and parts of Resolutions in conflict herewith are repealed.

Passed by the City Commission of the City of Palmetto, Florida in regular session with a quorum present and voting this 2nd day of June, 2008.

**BY: _____
Lawrence E. Bustle, Jr., Mayor**

ATTEST:

**_____
James R. Freeman, City Clerk**

Attachment A

Albertson's Store
NWC 8th and 10th
Palmetto, FL

TAX ABATEMENT AGREEMENT

THIS TAX ABATEMENT AGREEMENT ("Agreement") is entered into as of the 22nd day of September, 2000, by and between the Community Redevelopment Agency of the City of Palmetto, Florida (the "CRA"), and Albertson's, Inc. ("Albertson's").

WITNESSETH

WHEREAS, the Board of Commissioners of the CRA passed a resolution on December 13, 1999, authorizing the CRA to grant an ad valorem tax abatement to Albertson's as to a proposed new store project to be located within the Community Redevelopment Area on 8th Avenue between 10th and 12th Streets in the City of Palmetto (the "Albertson's Project"); and

WHEREAS, it would be in the best interest of the citizens of the City of Palmetto for the Albertson's Project to be completed; and

WHEREAS, the CRA finds that the proposed Albertson's Project meets all eligibility requirements for a tax abatement; and

WHEREAS, Albertson's acknowledges that completion of the Albertson's Project in accordance with plans approved by the CRA is required for the CRA to provide the ad valorem tax abatement as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the CRA and Albertson's agree as follows:

Section 1. The Albertson's Project meets the eligibility requirements for a tax abatement, and the CRA hereby grants a tax abatement for the improvements to be constructed for a period of twenty-five (25) years beginning January 1, 2001, subject only to Albertson's completion of the Albertson's Project in accordance with plans approved by the CRA, and the issuance of a Certificate of Occupancy by the City of Palmetto, Florida (the "City").

Section 2. The CRA shall have forty-five (45) days after receipt of the site plan and exterior elevations ("Plans") proposed by Albertson's for the Albertson's Project to notify Albertson's in writing of the CRA's approval of the plans or disapproval of the Plans specifying the reasons therefor. The CRA's approval of the Plans shall not be unreasonably withheld, conditioned or delayed. Failure to approve or disapprove such Plans within the forty-five (45) day period shall be deemed a disapproval of the Plans by the CRA. The CRA's approval of such Plans pursuant to this Agreement is intended for the purposes of the grant of the tax abatement only and shall not be construed as the City's approval for the purpose of obtaining any building or construction permits or licenses.

Section 3. The total amount of tax abatement per year shall be \$56,560.00 in ad valorem taxes. In the event that the ad valorem tax bill for any year is less than the aforesaid amount, the amount of the tax abatement in excess of the ad valorem bill shall carry forward and be available for additional abatement in future years when the ad valorem tax bill exceeds the amount of the tax abatement.

Section 4. Unless cured as hereinafter provided, the CRA may terminate the tax abatement by an approved resolution, upon a finding that the Albertson's Project was not completed as approved. Prior to taking an action to terminate the tax abatement, the CRA shall provide written notice of its findings to Albertson's specifying in detail the deficiencies found and the action(s) required to cure such deficiencies and Albertson's shall have sixty (60) days after receipt of such notice to commence and diligently pursue the cure of such deficiencies. Upon completion of such cure, Albertson's shall provide written evidence thereof to CRA. The parties agree that termination of the tax abatement is the sole and exclusive remedy of the CRA for Albertson's failure to complete the Albertson's Project as approved, and the CRA shall not have the right to seek specific performance, damages or to pursue any other remedy for such failure.

Section 5. The tax abatement shall be credited as follows:

Albertson's shall pay the full amount of its ad valorem tax bill to the appropriate collection agency and shall present to the CRA a paid receipt; which receipt must pertain to taxes assessed upon the fully completed Albertson's Project for which a

Certificate of Occupancy has been issued. The CRA shall, within thirty (30) days of presentation of the receipt, remit to Albertson's that portion of the paid ad valorem taxes which are to be abated, including the amount of any excess tax abatement from prior years, if applicable.

6.1 Notices.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by telefacsimile, personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address or telefacsimile number set forth below:

CRA: Community Redevelopment Agency
516 8th Avenue West
Palmetto, FL 34221
Fax No.: 941-723-4704
Attention: Karen Hartman, Executive Director

Albertson's: Albertson's, Inc.
250 Parkcenter Boulevard
P. O. Box 20
Boise, ID 83726
Fax No.: 208-395-6575
Attention: Legal Department

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of

(A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party or in the case of a telefacsimile, the date and time of receipt as shown on the confirmation of the telefacsimile transmission.

7.1 Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

7.2 Binding Agreement. This Agreement shall not be binding or enforceable until both parties have executed an original of this Agreement and have delivered to each other an original of this Agreement fully executed witnessed and/or attested by the delivering party.

7.3 Parties Bound. This Agreement binds and benefits the parties, and their successors, provided however, that if after business operations at the Albertson's Project have initially commenced, the Albertson's Project shall thereafter become "Vacant", as hereinafter defined, then for each day during such periods that the Albertson's Project shall be Vacant, the annual tax abatement payment shall be reduced on a per diem basis by an amount equal to $1/365^{\text{th}}$ of the annual tax abatement payment called for hereunder for each day in the applicable tax year that the Albertson's Project remains Vacant. For the purposes of this agreement, the Albertson's Project shall be deemed to be "Vacant" in the event that in excess of ten percent (10%) of the square feet of the improvements situated upon the Albertson's Project site become unoccupied or in the event that business operations shall cease in excess of ten percent (10%) of the square feet of the improvements that are situated upon the Albertson's Project site, provided that any cessation of occupancy and/or cessation of business operations as referenced herein shall continue during a continuous and uninterrupted period in excess of thirty (30) days, for reasons other than temporary closure due to (a) strikes, lockouts, or other labor difficulties, acts of God, the requirements of any local, state or federal law, rule or regulation, fire or other casualty, condemnation, war, riot, or insurrection, or (b) the restoration, reconstruction, expansion, alteration, modification, or remodeling of the improvements situated upon the Albertson's Project site.


7.4 Attorney Fees. In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding.

7.5 Entire Agreement. This Agreement contains the entire agreement between parties. No agreement to modify this Agreement will be effective unless in writing and executed by the party against whom the modification is sought to be enforced.

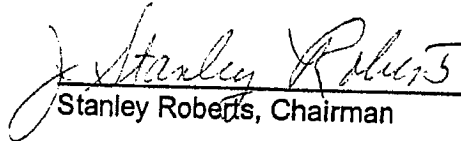
EXECUTED as of the day and year first above written.

**COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF
PALMETTO, FLORIDA**

ATTEST:

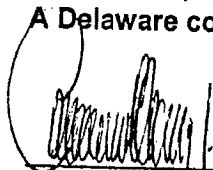


Alan Moore, Vice Chairman

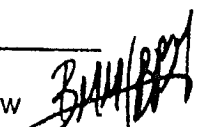

Stanley Roberts, Chairman


**ALBERTSON'S:
Albertson's, Inc.,
A Delaware corporation**

ATTEST:



By: Lincoln V. Sharp, Jr.
Its: Vice President, Real Estate Law



By: 
Printed Name: JULIE THOMSON BACKE
Its: Assistant Secretary

Attachment B



April 9, 2008

Certified Mail #7001 2510 0008 2017 5173

Ms Tonya Lukowiak
Community Redevelopment Agency
715 4th Street West
Palmetto, FL 34221

Re: Albertsons LLC #4484
1101 8th Avenue West
Palmetto, Florida
Annual Tax Abatement

Dear Ms Lukowiak:

In accordance with the Tax Abatement Agreement dated September 22, 2000 between the Community Redevelopment Agency ("CRA") and Albertson's, please find a copy enclosed of the print screen of Manatee County Tax Collector that states we paid year 2005, 2006, and 2007.

Albertsons requests CRA release the abated tax in the amount \$169,680.00 (\$56,560.00 for each year-2005, 2006 and 2007) to my attention at the following address:

Judy Spiller
c/o Albertsons LLC
4320 W Thunderbird Road
Glendale, AZ 85306

Please feel free to call me direct at 602-547-5151 if you have any questions.

Sincerely,
Albertsons LLC

Judy Spiller

PROPERTY MANAGEMENT -
C59, 4320 W. Thunderbird Road, Glendale, AZ 85306
TEL (602) 547-5151, FAX (602) 547-5671

