

RESOLUTION NO. R2013-35

RESOLUTION RECEIVING AND FILING
PROPOSED REDEVELOPMENT AGREEMENT – CITY OF DECATUR/GRAND
AVENUE TIF REDEVELOPMENT AGREEMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ILLINOIS:

Section 1. That the Proposed Redevelopment Agreement presented to the City Council herewith between the City of Decatur and Neimann Holdings, LLC, regarding the redevelopment of the area legally described as:

All of Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), of County Clerk's subdivision in the North East ¼ of the south east ¼ of Section 9, Township 16 North, Range 2 East of the 3rd P.M., as per Plat recorded in Book 1575, Page 127 of the records in the recorder's office Of Macon County, Illinois.

And

All of Lots Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15) of Hill's 2nd Addition as per Plat recorded in Book 536, Page 24 of the Records in the Recorder's Office of Macon County, Illinois

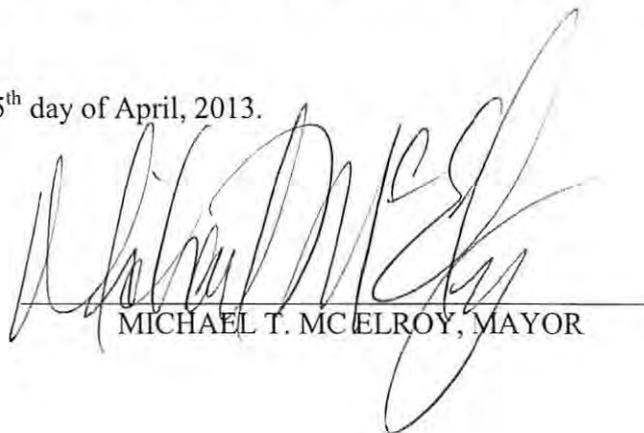
And

The adjacent Right-Of-Ways

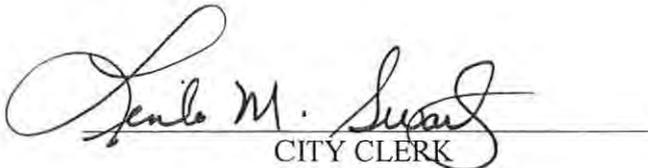
be, and the same is hereby, received and placed on file.

Section 2. That the Clerk be, and she is hereby, authorized and directed until further order of the City Council, place and keep said Proposed Redevelopment Agreement on file in the office of said Clerk and to make the same available at all times during regular business hours for public inspection.

PRESENTED and ADOPTED this 15th day of April, 2013.


MICHAEL T. MCELROY, MAYOR

ATTEST:


CITY CLERK

UPDATED LEGAL DESCRIPTION – CITY OF DECATUR/GRAND AVENUE
REDEVELOPMENT AGREEMENT

Perimeter legal

PARCEL 1

ALL OF LOTS 10, 11, AND 12 AND THAT PART OF LOTS 5, 6, 7, 8, 9, 13, 14, 15 AND 16 IN BLOCK 1 OF HILL'S SECOND ADDITION OF OUTLOTS TO THE CITY OF DECATUR, ILLINOIS LYING SOUTH AND EAST OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF S.B.I. ROUTE 48, SECTION 130 R; DESCRIBED MORE PARTICULARLY AS FOLLOWS: BEGINNING AT AN IRON PIPE MARKING THE SOUTHEAST CORNER OF THE AFOREMENTIONED BLOCK 1, THENCE SOUTH 89 DEGREES 59 MINUTES 12 SECONDS WEST ALONG THE NORTH LINE OF WEST LEAFLAND AVENUE A DISTANCE OF 271.68 FEET TO AN IRON PIPE MARKING THE SOUTHWEST CORNER OF BLOCK 1, THENCE NORTH 01 DEGREES 29 MINUTES 27 SECONDS EAST ALONG THE EAST LINE OF UNIVERSITY AVENUE A DISTANCE OF 24.48 FEET TO AN IRON PIN ON THE SOUTHEAST RIGHT OF WAY LINE OF S.B.I. ROUTE 48, THENCE NORTH 44 DEGREES 03 MINUTES 02 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 154.25 FEET TO AN IRON PIPE THENCE NORTH 39 DEGREES 42 MINUTES 59 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 52.16 FEET TO A CHISELED X IN CONCRETE; THENCE NORTH 43 DEGREES 28 MINUTES 19 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 203.70 FEET TO AN IRON PIN ON THE WEST LINE OF HILL STREET, THENCE SOUTH 01 DEGREES 42 MINUTES 51 SECONDS WEST ALONG SAID WEST LINE A DISTANCE OF 323.36 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.082 ACRES, MORE OR LESS.

ALL IN THE CITY OF DECATUR, COUNTY OF MACON, STATE OF ILLINOIS.

BASIS OF BEARING IS ASSUMED SOUTH 89 DEGREES 59 MINUTES 12 SECONDS WEST ALONG THE NORTH LINE OF LEAFLAND AVENUE.

PARCEL 2

ALL OF LOTS 1 AND 2 IN BLOCK 13 IN HILL'S SECOND ADDITION OF OUTLOTS TO THE CITY OF DECATUR AND ALL OF LOTS 1 THRU 9 IN COUNTY CLERKS SUBDIVISION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN EXCEPT THAT PART OF LOTS 1 AND 3 CONVEYED FOR RIGHT OF WAY; DESCRIBED MORE PARTICULARLY AS FOLLOWS: BEGINNING AT AN IRON PIPE MARKING THE SOUTHWEST CORNER OF BLOCK 13 IN HILL'S SECOND ADDITION OF OUTLOTS, THENCE NORTH 01 DEGREES 42 MINUTES 51 SECONDS EAST ALONG THE EAST LINE OF HILL STREET A DISTANCE OF 362.16 FEET TO THE SOUTH RIGHT OF WAY LINE OF GRAND AVENUE AS CONVEYED TO THE STATE OF ILLINOIS,

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 237.53 FEET TO AN IRON PIN, THENCE SOUTH 50 DEGREES 49 MINUTES 48 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 53.76 FEET TO AN IRON PIN ON THE WEST LINE OF OAKLAND AVENUE AS CONVEYED TO THE STATE OF ILLIOIS, THENCE SOUTH 16 DEGREES 07 MINUTES 54 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 29.41 FEET TO AN IRON PIPE, THENCE SOUTH 01 DEGREES 41 MINUTES 07 SECONDS WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 92.62 FEET TO AN IRON PIPE, THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 1.00 FEET TO AN IRON PIPE ON THE WEST RIGHT-OF-WAY LINE OF OAKLAND AVENUE, THENCE SOUTH 01 DEGREES 41 MINUTES 07 SECONDS WEST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 207.23 FEET TO AN IRON PIPE MARKING THE SOUTHEAST CORNER OF LOT 9 IN COUNTY CLERKS SUBDIVISION, THENCE SOUTH 89 DEGREES 59 MINUTES 12 SECONDS WEST ALONG THE NORTH LINE OF WEST LEAFLAND AVENUE A DISTANCE OF 290.40 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 2.382 ACRES, MORE OR LESS, ALL IN THE CITY OF DECATUR, COUNTY OF MACON, STATE OF ILLINOIS.

BASIS OF BEARINGS ASSUMED SOUTH 89 DEGREES 59 MINUTES 12 SECONDS WEST ALONG THE NORTH LINE OF LEAFLAND AVENUE.

PARCEL 3

THAT PART OF HILL STREET, OAKLAND AVENUE AND SBI ROUTE 48 BOUNDED ON THE SOUTH BY WEST LEAFLAND AVENUE AND ON THE NORTH BY GRAND AVENUE AND THAT PART OF WEST GRAND AVENUE AND WEST LEAFLAND AVENUE BOUND ON THE EAST BY SBI ROUTE 48 AND WEST BY NORTH OAKLAND AVENUE SITUATED IN THE CITY OF DECATUR, COUNTY OF MACON AND STATE OF ILLINOIS

**CITY OF DECATUR/GRAND AVENUE TIF
REDEVELOPMENT AGREEMENT**

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THIS CITY OF DECATUR/GRAND AVENUE TIF REDEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the _____ day of _____, 2013, by and between the City of Decatur, Illinois, a municipal corporation, (hereinafter referred to as the "City") and Niemann Holdings, L.L.C., an Illinois Limited Liability Company (hereinafter referred to as the "Redeveloper").

RECITALS

WHEREAS, the City is considering adopting a program for the redevelopment of a redevelopment area known as the City of Decatur/Grand Avenue TIF Tax Increment Redevelopment Area (the "Redevelopment Area") in the City, pursuant to 65 ILCS 5/11-74.4-1, *et seq* of the Illinois Revised Statutes, the "Tax Increment Allocation Redevelopment Act" (hereinafter referred to as the "Act");

WHEREAS, the City is considering, pursuant to the provisions of the Act, adopting a plan known as the City of Decatur/Grand Avenue TIF Tax Increment Redevelopment Plan and Project (hereinafter referred to as the "Redevelopment Plan") pertaining to the redevelopment of the Redevelopment Area, substantially in the form of the document entitled City of Decatur, Illinois Grand Avenue TIF, dated December 4, 2012, a copy of which is available for inspection in the office of the City Clerk of the City;

WHEREAS, the City anticipates that, in order to achieve the objectives of the Redevelopment Plan, subject to the adoption of Tax Increment Financing for the Redevelopment Area pursuant to the Act, it should provide assistance to the Redeveloper, including the reimbursement of property acquisition costs, in the development of a shopping center containing approximately 38,000 square feet consisting of a new County Market grocery store and other retail uses located on Exhibit 1 attached hereto and made a part hereof (the "Project");

WHEREAS, the City and the Redeveloper intend this Agreement to constitute an "economic incentive agreement" under Section 8-11-20 of the Illinois Municipal Code;

WHEREAS, in order to eliminate the blighting conditions within the Project Site, to help arrest and prevent blighting conditions outside the Project Site in the Redevelopment Area, to enhance the quality of life in the City, to provide an economic stimulus to the area of the City within which the Project Site is located in order to attract other private development which will enhance the tax base of the City and to further the objectives of the Redevelopment Plan, the City pursuant to its Home Rule Powers under Article 7 of the Constitution of the State of Illinois and the powers granted to the City pursuant to the Act, and Section 8-11-20 intends, subject to the adoption of Tax Increment Financing for the Redevelopment Area pursuant to the Act, to provide to the Redeveloper, Public Investment to help alleviate certain private costs of the Redeveloper;

WHEREAS, without the assistance of the City as set forth in this Agreement, the Redeveloper would not undertake the Project;

WHEREAS, the construction cost of the Project (including land acquisition and soft costs) is estimated to be Twelve Million, two hundred eighty seven thousand dollars (\$12,287,000) Dollars as more fully shown on Exhibit 2 attached hereto and made a part hereof;

WHEREAS, the City believes, subject to the adoption of Tax Increment Financing for the Redevelopment Area pursuant to the Act, it is necessary to redevelop the Redevelopment Area in order to arrest the economic and physical decline contained there, and to promote a policy of stabilization not only in the proposed Redevelopment Area, but also in the surrounding area of the City; and

WHEREAS, the City believes that the development of the Project, subject to the adoption of Tax Increment Financing for the Redevelopment Area pursuant to the Act, pursuant to the proposed Redevelopment Plan is in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of the applicable federal, state and local laws.

NOW THEREFORE, in consideration of the promises and mutual covenants and obligations of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

ARTICLE I: DEFINITIONS

"**Act**" means the *Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq* as it may be amended from time to time.

"**Applicable Law**" means all laws, statutes, acts, ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all Governmental Authorities, that now or hereafter during the term of this Agreement may be applicable to the City, the Redeveloper, and/or the Project, and the construction, maintenance, use and operation thereof, including those relating to employees, zoning, building, health, safety, Hazardous Materials, and accessibility of public facilities.

"**Exterior Architectural Appearance**" means the architectural character, general composition and general arrangements of the exterior of the Project, and the adjacent plazas and pedestrian areas, including the kind, color and texture of the building material and the type and character of all windows, doors, light fixtures, signs and appurtenant elements, visible from public streets and thoroughfares.

"**Final Site Plan**" means the final plan for the Project which sets forth the limits of the work to be done, the building locations, ingress and egress, loading areas, parking, if any, landscaping, signage and adjoining streets including one or more elevations or sketches showing the exterior features and designs of all the buildings or structures.

"**Preliminary Plans**" means plans and drawings, including a Preliminary Site Plan for the Project attached hereto as Exhibit 1 which are preliminary to the Construction Plans,

which plans and drawings CAN include but are not limited to the limits of the work to be done, the location of buildings and all auxiliary structures, ingress and egress, loading areas, parking, if any, proposed signage, landscaping and one or more elevations showing the Exterior Architectural Appearance of the Project.

"Preliminary Site Plan" means the site layout for the Project including parking, if any, buildings, ingress and egress, pedestrian and vehicular circulation, utilities, grading, storm water detention, landscaping and service areas, and all proposed dedications and easements.

"Project" means the shopping center and related facilities to be developed and constructed by the Redeveloper as more fully on described on Exhibit 1 attached hereto and made a part hereof.

"Project Revenues" means for a calendar year an amount equal to the sales tax transferred by the State of Illinois Department of Revenue to the City that have been collected from retailers located in the Project in that year.

"Project Site" means the real property to be utilized for the Project as more fully shown on Exhibit 1 attached hereto and made a part hereof.

"Public Investment" means the rebate of Project Revenues and Real Estate Tax Increment in the manner provided in Article IV of this Agreement.

"Real Estate Tax Increment" means the *ad valorem* real property taxes levied and received by the City on the Equalized Assessed Value of the Project, the Project Site and any other structures or buildings on the Project Site less the Initial Equalized Assessed Value for the Redevelopment Area as determined pursuant to the Act.

"Redevelopment Area" means the City of Decatur/Grand Avenue TIF Redevelopment Project Area as adopted by the City in 2013.

"Substantial Completion or Substantially Complete" means complete construction of the shell and core, with finished interiors of common areas and, as to residential areas of each building, to the point of qualification for the issuance of certificates of occupancy pursuant to codes of the City, except for minor and ancillary alterations or additional work.

ARTICLE II: DEVELOPMENT OF THE PROJECT

- 2.1 **Development of the Project.** The Redeveloper will utilize its best efforts to develop the Project in a manner that is compatible with the Redevelopment Plan and Applicable Law.
- 2.2 **Progress Reports.** During the development process, the Redeveloper shall submit monthly reports to the City commencing on the first day of July, 2013, and

on the first day of each month thereafter until Substantial Completion of the Project which will provide the City with information concerning costs of the Project, leasing and sales activities, design of the Project, financing efforts and other matters relevant to the development and construction of the Project

- 2.3 **Plans.** The Project is subject to final approval of all Plans, including Preliminary and Final Site Plans, as per requirements of the City of Decatur.
- 2.4 **Changes in Plans.** Any substantial deviation from the Preliminary Plans will require City approval.
- 2.5 **Final Site Plan.** But no later than the submission of the Construction Plans, the Redeveloper shall submit to the City a Final Site Plan. The City shall review the Final Site Plan for the purpose of determining compliance with the Preliminary Plans, the Redevelopment Plan, this Agreement and Applicable Law.
- 2.6 **Construction Plans.** The Redeveloper shall submit to the City no later than forty-five (45) days prior to the commencement of construction, the construction plans for the Project (the "Construction Plans"). The City shall, within thirty (30) days from receipt, approve or disapprove the Construction Plans for the Project, after reviewing said plans for compliance with Applicable Law, including but not limited to the life safety and zoning regulations, and conformance with the Preliminary Plans and Final Site Plan. If the City disapproves the Construction Plans, the Redeveloper shall submit revised plans within a reasonable time from the date of rejection. Upon resubmission, the City shall review and approve or disapprove such revised plans within ten (10) days of submittal. This process shall repeat until the plans are approved by the City.
- 2.7 **Amended Construction Plans.** Prior to completion of the Project, if the Redeveloper desires to make any substantial change in the Construction Plans which significantly affects the appearance, function, or structural integrity of the Project, the Redeveloper shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of the Redevelopment Plan and this Agreement, meet Applicable Law and do not create a fundamental change in the nature, size or aesthetics of the Project, the City shall approve the proposed change and notify the Redeveloper in writing of its approval. If the City disapproves of such change, it shall notify the Redeveloper in writing with specificity as to the reasons for the disapproval, in which event the Redeveloper may submit a revised change within a reasonable time thereafter. This process shall repeat until the revised plans are approved by the City or the change is abandoned by the Redeveloper. If such change is not so approved or rejected in writing within ten (10) working days of receipt of the submission to the City from the Redeveloper, such change will be deemed approved.
- 2.8 **Commencement and Completion Requirements.**

- 2.8.1 Commencement.** The Redeveloper shall commence construction of the Project no later than April 1, 2014.
- 2.8.2 Completion.** The Redeveloper shall Substantially Complete construction of the Project within eighteen (18) months after commencement of construction or other mutually agreeable date.
- 2.9 Certificate of Completion.** Promptly after Substantial Completion of construction of the Project and upon request of the Redeveloper, the City will execute and deliver to the Redeveloper a certificate of completion. Said instrument of certification by the City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction with respect to the obligations of the Redeveloper and its successors and assigns that the construction of the Project has been Substantially Complete in accordance with the provisions of this Agreement.
- 2.10 Form of Certification.** The certification provided for in Section 2.9 shall be in such form as will enable it to be recorded in the Office of the Recorder of Deeds, Macon County, Illinois. If the City refuses or fails to provide any certification in accordance with the provisions of this Agreement, the City shall, within fifteen (15) days after written request by the Redeveloper, provide the Redeveloper with a written statement indicating in adequate detail in which respects the Redeveloper has failed to Substantially Complete construction of the Project in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or steps will be necessary, in the opinion of the City, for the Redeveloper to take or perform in order to obtain such certification. Said certification as provided herein shall not be unreasonably withheld by the City and the Project shall be deemed approved if the City fails to conform to the provisions of Section 2.7 and this Section 2.9.
- 2.11 Quality of Construction and Conformance to Federal, State and Local Requirements.** All work with respect to the Project shall conform to Applicable Law including, but not limited to, design standards, environmental codes and life safety codes. The Redeveloper shall cause the construction of the Project to be commenced and to be prosecuted with due diligence and in good faith in accordance with the terms of this Agreement, and without delay and shall cause the Project to be constructed in a good and workmanlike manner in accordance with the Construction Plans and the Final Site Plan. If the Project is constructed in compliance with the Construction Plans as approved pursuant to Section 2.6 above, it will be deemed to be in conformance with Building Codes of the City.
- 2.12 Utilities.** Except as otherwise provided in this Agreement, all arrangements for utilities must be made by the Redeveloper with the applicable utility company. The City makes no representations whatsoever with respect to the adequacy or availability of utilities with respect to the Project or Project Site; however, the

City, if requested by the Redeveloper, shall make reasonable efforts to assist in obtaining utility rights, approvals and permits.

2.13 Insurance.

2.13.1 Liability Insurance Prior to Completion. Prior to commencement of construction of the Project, the Redeveloper or the Redeveloper's contractor shall procure and deliver to the City, at the Redeveloper's or such contractor's cost and expense, and shall maintain in full force and effect until each and every obligation of Redeveloper contained herein has been fully paid, or performed, a policy or policies of comprehensive liability insurance and during any period of construction, contractor's liability insurance, structural work act insurance and workmen's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than One Million (\$1,000,000) Dollars each occurrence and Five Million (\$5,000,000) Dollars total, all such policies to be in such form and issued by such companies as shall be reasonably acceptable to the City to protect City and Redeveloper against any liability incidental to the use of or resulting from any accident occurring in or about the Project or the improvements or the construction and improvement thereof. Each such policy shall name the City as coinsureds and shall contain an affirmative statement by the issuer that it will give written notice to the City at least thirty (30) days prior to any cancellation or amendment of its policy.

2.13.2 Builder's Risk Prior to Completion. During the construction of the Project as certified by the City, the Redeveloper shall keep in force at all times builder's completed value risk insurance, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of work performed and equipment, supplies and materials furnished for the Project. Such insurance policies shall be issued by companies reasonably satisfactory to the City, and shall name the City as a coinsured. All such policies shall contain a provision that the same will not be cancelled or modified without a thirty (30) day written notice to the City.

2.14 Lien Waivers. All contracts for construction of the Project shall provide that all contractors and subcontractors shall furnish contractor's affidavits in the form provided by state statute and that waiver of liens be required for all payments made.

2.15 Rights of Inspection. During construction of the Project, the City or its designee shall have the right at any time and from time to time to enter upon the Project for the purposes of inspection. Inspection by the City of the Project shall not be construed as a representation by the City that there has been compliance with the Construction Plans or any building or life safety codes adopted by the City; or that the Project will be or is free of faulty materials or workmanship, or a waiver of

any right the City or any other party may have against the Redeveloper or any other party for noncompliance with the Construction Plans, Preliminary Plans, building or life safety codes or any other ordinances of the City or the terms of this Agreement.

ARTICLE III: CITY OBLIGATIONS

- 3.1 **Public Investment.** The City shall provide the Public Investment pursuant to Article IV below.
- 3.2 **Easements.** The City agrees to grant such temporary easements to the Redeveloper as necessary for the construction and completion of the Project.

ARTICLE IV: PUBLIC INVESTMENT

4.1 Public Investment. The City will provide a reimbursement for Project Costs to be paid from Real Estate Tax Increment and Project Revenues for each calendar year received by the City from the Project and the Project Site as set forth below. The Real Estate Tax Increment and Project Revenues shall be utilized to reimburse the Redeveloper for those eligible Project Costs that are set forth in Section 3 of the Act which are more fully described on Exhibit 3 attached hereto and made a part hereof, including the cost of acquisition of Real Property:

- (a) Subject to reimbursement of eligible Project Costs, commencing in the year following the year in which substantial completion of the Project has occurred and continuing until and including the year 2037, the Redeveloper shall receive no later than March 15th of each year an amount equal to One Hundred (100%) Percent of the Real Estate Tax Increment for the previous calendar year actually received by the City.
- (b) Commencing in the year following the year in which substantial completion of the Project has occurred and continuing until and including the year 2037, the Redeveloper shall receive no later than March 15th of each year an amount equal to Fifty (50%) Percent of Project Revenues for the previous calendar year actually received by the City.
- (c) The obligation for the annual reimbursement of Project Costs from both Real Estate Tax Increment and Project Revenues shall terminate upon the receipt by the Redeveloper of an amount equal to Two Million, Five Hundred Thousand Dollars (\$2,500,000) as reimbursement for eligible Project Costs incurred or upon the expiration of this agreement, whichever occurs first.

4.2 **Adjustment of Public Investment.** Upon completion of the Project, the Redeveloper shall submit to the City a Final Project Cost Analysis of all costs connected with the construction of such building and if the actual cost is less than ninety (90%) percent of the Project Cost Analysis, at the time of the adoption of

the Redevelopment Agreement, then the maximum amount of Project Revenue to be paid to the Redeveloper shall be reduced by one (1%) percent for each percent that the actual costs are below 90% of the projected costs

ARTICLE V: PROJECT REVENUE FINDINGS

5.1 Economic Incentive Agreement. In connection with the **Project Revenues** under the Agreement, the Agreement is determined to constitute an "**economic incentive agreement**" under Section 8-11-20 of the Illinois Municipal Code and the City's Home Rule powers, and the City Council makes related findings, as follows:

5.2 Findings. Project Site is not vacant and has development thereon and:

(A) the buildings on the Project Site do not, at the time of the adoption of this Agreement, any longer comply with current building codes;

(B) the Project, as set forth in this Agreement, is expected to create or retain job opportunities within the City;

(C) that the Project will serve to further the development of adjacent areas;

(D) that without this Agreement's economic incentive features, the Project will not have been possible;

(E) that the Developer who is a party to this Agreement, meets high standards of creditworthiness and financial strength as demonstrated by: specific evidence of equity financing for not less than 10% of the total project costs;

(F) that the Project, will strengthen the commercial sector of the City;

(G) that the Project, will enhance the tax base of the City; and

(H) that this Agreement's economic incentive agreement feature is made in the best interest of the City.

ARTICLE VI: CONDITIONS PRECEDENT TO CITY OBLIGATIONS AND ONGOING BENEFITS

6.1 Conditions Precedent to Transaction. The City's obligations under this Agreement (including, without limitation, the obligation for Public Investment) shall, for the Project, be subject to:

(a) **Insurance.** Proof that the policies of insurance of the types and coverages specified in Section 2.13 hereof have been obtained and are in force with regard to the Project.

- (b) **Plans.** Approval of the Plans and construction plans for the pursuant to Article II hereof.
- (c) **Construction Contracts.** Executed construction contracts covering the construction of the Project.
- (d) **Declaration of Covenants, Uses and Restrictions.** Declarations of Covenants, Uses and Restrictions in the form attached hereto as Exhibit 4 executed by the Redeveloper covering the Project and the Project Site.
- (e) **Project Financing.** Evidence of equity and/or debt financing for the Project in an amount sufficient to complete the Project.
- (f) **Approvals.** A certificate by the manager or authorized officer of the Redeveloper, as the case may be, that all of the approvals necessary to proceed with the Project as intended herein have been obtained including the approval of this Agreement

6.2 **Conditions Precedent to Public Investment.** The City's obligations with regard to the Project Revenues and Real Property Tax Increment portion of the Public Investment are subject to the adoption by the City of Tax Increment Financing for the Redevelopment Area.

ARTICLE VII: OPERATION OF THE PROJECT

7.1 **Operation and Maintenance of the Project.** The Redeveloper for itself and its successors and assigns to the extent it retains ownership covenants that it will maintain the Project in good condition (reasonable wear and tear excepted) during the term of this Agreement. The Redeveloper shall operate the Project in a professional manner and will do all things reasonably necessary to operate the Project in substantial compliance with Applicable Law.

ARTICLE VIII: REDEVELOPER COVENANTS AND RESTRICTIONS

8.1 **Project Subject to Redevelopment Plan and Agreement.** The Redeveloper agrees to comply with the terms and conditions of this Agreement and to use its best efforts to construct the Project subject to the terms, covenants, building and use restrictions, and other conditions in the Redevelopment Plan and this Agreement.

8.2 **Non-discrimination.** The Redeveloper shall not discriminate in violation of any applicable federal, state or local laws or regulations upon the basis of race, color, religion, sex, age, or national origin or other applicable factors in the sale, lease or rental, or in the use or occupancy of the Project or any part thereof.

8.3 Property Taxes. Redeveloper acknowledges that the City in executing this Agreement has relied upon its reasonable expectation that the construction and operation of the Project will increase the amount of real property taxes with respect to the Project and the Project Site. The Redeveloper covenants that in the event it applies for, seeks, or authorizes any exemption from the imposition of general real property taxes on the Project or Project Site, or any portion thereof, and, as a result thereof, the property taxes are not or will not be paid with respect to the Project or the Project Site, or a portion thereof, the City, no less than sixty (60) days after written notice to the Redeveloper, shall be entitled to rescind the grant of benefits by the City to the Redeveloper pursuant to this Agreement and after such rescission the Redeveloper shall promptly reimburse the City for the cost of all the benefits granted by the City to the Redeveloper pursuant to this Agreement that have theretofore been received by the Redeveloper. Notwithstanding the above, if, within sixty (60) days following the receipt of the written notice from the City to the Redeveloper, the Redeveloper takes such action as is necessary to void such application for, attempt for, or authorization of such exemption from the imposition of general real property taxes on the Project or the Project Site, or a portion thereof, the City's right to rescind, pursuant to this provision, the grant of benefits shall be null and void and the Redeveloper shall not be obligated to convey, repay or otherwise reimburse the City for any benefits granted and received pursuant to this Agreement. Nothing herein shall be construed so as to prevent the City from enforcing any other rights it may have pursuant to this Agreement. Also, nothing herein shall be construed so as to prevent the Redeveloper from otherwise contesting the assessment or collection of any real property taxes under procedures set forth in the laws of the State of Illinois or any political subdivision thereof, provided that the Redeveloper gives the City fifteen (15) days prior written notice of its intent to contest the assessment or collection of real property taxes; provided, however, that the Redeveloper covenants and agrees that nothing contained herein shall relieve the Redeveloper from complying with all laws, rules and regulations of the State of Illinois and any political subdivision thereof pertaining to the levy and collection of said general real estate taxes. This Section 8.3 shall be an obligation of the Redeveloper (or assignee of the Redeveloper or subsequent Owner of the Project or Project Site or any portion thereof, as the case may be) only during the period that the Redeveloper (or assignee of the Redeveloper or subsequent Owner of the Project or Project Site or any portion thereof, as the case may be) owns a direct or indirect interest in the Project or Project Site or any portion thereof.

8.4 Duration of Covenants. It is intended and agreed that the covenants provided in Sections 8.1 and 8.3 of this Agreement shall remain in effect until the earlier of (i) termination of the Redevelopment Plan, or (ii) December 31, 2037 and that the covenants provided in Sections 8.2 hereof shall remain effective without any time limitation; provided, that all such covenants shall be binding on the Redeveloper only for such period as the Redeveloper maintains a direct interest in the Project Site or the Project or part thereof (excluding, for example, an interest therein

solely as a creditor or mortgagee), and only with respect to such direct interest in the Project Site or the Project or part thereof.

- 8.5 Covenants Running with the Land.** Subject to Section 8.4, it is intended and agreed that the covenants set forth in Sections 8.1, 8.2, and 8.3 above shall be covenants running with the land and Sections 8.1 and 8.3 shall in any event be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by the City, and with regard to Section 8.2 hereof, the City, the State of Illinois and the United States of America. Provided, however, this Agreement is not intended to create any obligations for a bona fide purchaser of a condominium unit beyond the ownership of that unit.
- 8.6 Covenants Binding for the Benefit of City.** Subject to Section 8.4, it is also intended and agreed that the foregoing covenants set forth in Sections 8.1, 8.2, and 8.3 above shall in any event, and without regard to technical classification or designation as legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit of the City and enforceable by the City, the State of Illinois and the United States of America as provided in Sections 8.4 and 8.5.
- 8.7 Forms of Covenants and Restrictions.** Certain of the covenants, uses and restrictions referred to in this Article IX shall substantially be in the form of the Declaration of Covenants, Uses and Restrictions attached hereto and made a part hereof as Exhibit 4, which shall be executed and recorded with the Macon County Recorder of Deeds on or before the date that the Redeveloper commences construction of the.

ARTICLE IX: INDEMNIFICATION

- 9.1 Redeveloper Indemnification of the City.** So long as the Redeveloper maintains a direct interest in the Project or Project Site or any part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), the Redeveloper agrees to indemnify and save the City and its officers and employees harmless against all claims by or on behalf of any person, firm or corporation arising from (i) the Redeveloper's operation or management of the Project, or from any work or thing done by the Redeveloper on the Project Site, or any work or activity of the Redeveloper connected to the construction of the Project; (ii) any breach or default on the part of the Redeveloper in the performance of any of its obligations under or in respect of this Agreement; (iii) any act of negligence or willful or wanton misconduct of the Redeveloper or any of its agents, contractors, servants or employees; (iv) any violation by the Redeveloper of any easements, conditions, restrictions, building regulations, zoning ordinances, environmental regulations or land use regulations affecting the Project Site or the Project; (v) any violation of Applicable Law or (vi) any violation by the Redeveloper of state or federal securities law in connection with the offer and sale of interests in the Redeveloper, its affiliates or any part of the Project. The Redeveloper agrees to indemnify and save the City harmless from and against all costs and expenses

incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Redeveloper, upon receipt of notice in writing from the City setting forth the particulars of such claim or action, the Redeveloper shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the City. It is agreed and understood that the aforesaid indemnities in this Article shall be binding on the Redeveloper only for such period as the Redeveloper maintains a direct interest in the Project or Project Site or part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), and only with respect to such direct interest in the Project or Project Site or part thereof. Provided, notwithstanding the foregoing, the Redeveloper shall not be liable to indemnify and hold the City harmless from any portion of any such loss, liability, cost or expense which results from the negligence or willful misconduct of the City, its officials, agents, or employees.

- 9.2 City Indemnification of the Redeveloper.** To the extent not prohibited by law, the City of Decatur, so long as the Redeveloper maintains a direct interest in the Project or Project Site or any part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), shall indemnify and hold harmless the Redeveloper and its directors, officers, members, managers, employees and agents from any and all claims, damages, costs, and expenses, including without limitation, reasonable attorney's fees and reasonable cost of suit caused by the City of Decatur or any of its agents, contractors, officials or employees arising from: (i) any act of negligence or willful and wanton misconduct of the City or any of its agents, contractors, officials or employees; (ii) any breach or default on the part of the City in the performance of any of its obligations under or in respect of this Agreement; or (iii) any violation of Applicable Law. The City agrees to indemnify and save the Redeveloper harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the City, upon receipt of notice in writing from the Redeveloper setting forth the particulars of such claim or action, the City shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The Redeveloper shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Redeveloper. Notwithstanding the foregoing, the City of Decatur retains any and all defenses and immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* In addition, neither party intends this paragraph to waive its rights to limited liability under the Illinois Worker's Compensation Act or *Kotecki* line of cases (146 Ill 2d

155, 585 NE 2d 1023 (1991)). Provided, further, notwithstanding the foregoing, the City shall not be liable to indemnify and hold the Redeveloper harmless from any portion of any such loss, liability, cost or expense which results from the negligence or willful misconduct of the Redeveloper, its officials, agents, or employees.

ARTICLE X: PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

10.1 Prohibition Against Transfer of Project and Project Site Prior to Completion of Construction. The Redeveloper represents and agrees that prior to the Substantial Completion of construction of the Project as certified by the City (in accordance with Sections 2.9 and 2.10 hereof) the following prohibitions and restrictions shall apply to the transfer of the Project:

10.1.1 Prohibitions. Except only by way of security for a mortgage, deed of trust or other facility only for the purpose of obtaining equity or debt financing necessary to enable the Redeveloper to construct the Project, the Redeveloper has not made or created, and will not, prior to the Substantial Completion of construction of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement, the Project, the Project Site or any part thereof or any interest therein, or any contract agreement to do any of the same, except for utility, support, ingress and egress and similar easements, leases with Project tenants and sales or pre-sales agreements for the residential condominium units being a part of the Project, without the prior written approval of the City.

10.1.2 Conditions for Approval. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval pursuant to this Section 10.1, that:

- (a) Any proposed transferee shall have the qualifications and financial responsibility and capacity, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper (or, in the event the transfer is of or related to part of the Project, such obligations to the extent that they relate to such part).
- (b) Any proposed transferee, by instrument in writing reasonably satisfactory to the City and in a form recordable among the land records, shall expressly assume all of the obligations of the Redeveloper under this Agreement and agree to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event that the transfer is of or relates to part of the Project, such obligations, conditions and restrictions to the extent

that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project, or any part thereof, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project or Project Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the City of any rights or remedies or controls regarding the Project and the construction thereof that the City would have had, had there been no such transfer.

- (c) There shall be submitted to the City for review all instruments and other legal documents involved in effecting the transfer.
- (d) The Redeveloper and its transferee shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Redevelopment Plan and this Agreement.
- (e) The consideration payable for the transfer or assignment by the transferee or assignee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper of the Project (or allocable part) and the purpose of this provision is to preclude assignment of this Agreement or transfer of the Project or the Project Site (or any parts thereof) for pecuniary gain or profit prior to Substantial Completion of the Project and to provide that in the event any such assignment or transfer is made (and is not cancelled), the City shall be entitled to increase the purchase price of the Project Site to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this Section 10.1.2(e) and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the City at the same time as or prior to the transfer.

10.2 Transfer of Project After Completion of Construction. After Substantial Completion of construction of the Project as certified by the City (in accordance

with Sections 2.9 and 2.10 hereof), the Redeveloper (and any subsequent Owner) may transfer the Project (or any portion thereof) without the consent of the City by instrument in writing reasonably satisfactory to the City, and in a form recordable among the land records, pursuant to which the transferee shall expressly assume with regard to the Project (or any portion thereof) all of the obligations of the Redeveloper under this Agreement and agree to be subject to all the conditions and restrictions to which the Redeveloper is subject with regard to the Project or any portion thereof. Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project (or any portion thereof), shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project (or any portion thereof), or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the City of any rights or remedies or controls regarding the Project and the construction thereof that the City would have had, had there been no such transfer. No such transfer shall be deemed to transfer any rights of the Redeveloper to the reimbursements set forth under Article IV above, unless such rights are expressly set forth in the instrument of assignment.

- 10.3 Status of Assignee.** Any assignee of the Redeveloper prior to Substantial Completion, who is approved under the terms of 10.1 above, shall be considered the "Redeveloper" for all purposes of this Agreement as to such portion of the Project that has been assigned.
- 10.4 Assignment to Affiliated Entity.** Nothing herein shall be construed to prevent the Redeveloper from assigning its interest in this Agreement to an affiliated entity owned or controlled by the Redeveloper or a majority of the owners of the Redeveloper, provided that such entity or its guarantors has the financial capacity to perform the obligations of the Redeveloper pursuant to this Agreement and such entity in writing assumes such obligations and conditions in compliance with the terms and conditions set forth in Section 10.1.2(a) through (d) of this Agreement.
- 10.5 No Release of Redeveloper.** Any consent by the City to any total or partial transfer of the Project or the Project Site shall not be deemed a release of the Redeveloper from any of its obligations hereunder, or from any conditions or restrictions to which the Redeveloper is subject, unless the Redeveloper is expressly released in writing by the City.

ARTICLE XI: DEFAULT AND REMEDIES

11.1 Events of Default. The following shall be events of default (the "Events of Default") with respect to this Agreement:

11.1.1 Misrepresentation. If any material representation made by the Redeveloper or the City in this Agreement, or in any certificate, notice, demand or request made by the Redeveloper or the City in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or

11.1.2 Breach. Breach by the Redeveloper or the City of any material covenant, warranty or obligation set forth in this Agreement.

11.2 Remedies Upon Default. In the case of an Event of Default by either party hereto or any successors to such party, such party or successor shall, upon written notice from the other party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice (or within a reasonable time if the Event of Default can not be diligently cured within such sixty (60) day period). If, in such case action is not taken, or not diligently pursued, or the Event of Default shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Event of Default, including but not limited to, proceedings to compel specific performance by the party in default of its obligations.

In case the City or the Redeveloper shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the Redeveloper and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Redeveloper and the City shall continue as though no such proceedings had been taken.

11.3 Other Rights and Remedies of City and Redeveloper: Delay in Performance Waiver.

11.3.1 No Waiver by Delay. Any delay by the City or the Redeveloper in instituting or prosecuting any actions or proceedings or otherwise asserting their rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that the City or the Redeveloper should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because

of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by the City or the Redeveloper with respect to any specific Event of Default by the Redeveloper or the City under this Agreement be considered or treated as a waiver of the rights of the City or the Redeveloper under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by the City or the Redeveloper.

11.3.2 Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by either such party with respect to the performance, nor the manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

11.3.3 Delay in Performance. For the purposes of any of the provisions of this Agreement except with regard to payment of real estate taxes as provided herein, neither the City, nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or in default of, its obligations with respect to the beginning and completion of construction of the Project, the Public Projects or the Public Improvements or progress in respect thereto, in the event of enforced delay in the performance of such obligation due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to acts of God, acts of the public enemy, acts of federal, state or local government, acts of the federal or state judiciary, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, acts of nature, unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City or the Redeveloper with respect to the beginning and completion of the construction of the Project, the Public Projects or the Public Improvements shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section, shall within thirty (30) days after the beginning of any such enforced delay have first notified the other party thereof in writing, of the cause or causes thereof, and requested an extension of the period of

enforced delay. Such extensions of schedule shall be agreed to in writing by the parties hereto.

ARTICLE XII: TERMINATION OF AGREEMENT

- 12.1 Termination by the City.** The City has the right to terminate all or part of this Agreement upon ten (10) days prior written notice to the Redeveloper as follows if any Event of Default by the Redeveloper is not cured within the time frame set forth in Article XI above.
- 12.2 Termination by the Redeveloper.** The Redeveloper has the right to terminate all or part of this Agreement upon ten (10) days prior written notice to the City as follows if any Event of Default by the City is not cured within the time frame set forth in Article XI above.

ARTICLE XIII: EQUAL EMPLOYMENT OPPORTUNITY

The Redeveloper, for itself and its successors and assigns, agrees that during and with respect to construction of the Project provided for in this Agreement that the following will apply:

- 13.1 Non-Discrimination.** The Redeveloper will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, creed, disability, age or national origin. The Redeveloper will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
- 13.2 Advertising.** The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

ARTICLE XIV: REPRESENTATIONS OF THE REDEVELOPER

The Redeveloper represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

- 14.1 Organization.** The Redeveloper is an Illinois limited liability company and is in good standing with the State of Illinois.

- 14.2 Authorization.** The Redeveloper has power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Agreement.
- 14.3 Non-Conflict or Breach.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Redeveloper is now a party or by which the Redeveloper is bound.
- 14.4 Pending Lawsuits.** There are no lawsuits either pending or threatened that would materially, adversely affect the ability of the Redeveloper to proceed with the construction and development of the Project on the Project Site.
- 14.5 Location of Project.** The Project will be located within the Project Site.
- 14.6 Conformance with Requirements.** The Redeveloper represents and warrants that the Construction Plans and construction of the Project in accordance with the Construction Plans will in all respects conform to and comply with all covenants, conditions, restrictions, zoning ordinances, environmental regulations and land use regulations affecting the Project Site.

ARTICLE XV: REPRESENTATIONS OF THE CITY

The City represents, warrants and agrees as a basis for the undertakings on its part contained herein that:

- 15.1 Organization and Authorization.** The City is a municipal corporation organized and existing under the laws of the state of Illinois, and has the power to enter into and by proper action has been duly authorized to execute, deliver and perform this Agreement.
- 15.2 Non-Conflict or Breach.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound.
- 15.3 Pending Lawsuits.** There are no lawsuits either pending or threatened that would affect the ability of the City to perform this Agreement.

ARTICLE XVI: MISCELLANEOUS

16.1 Prevailing Wages. If the redeveloper receives public investments as set forth in article IV above in the construction of the Project, the Redeveloper shall pay prevailing wages as determined pursuant to the Prevailing Wage Act of the State of Illinois, 820 ILCS 130 *et seq* and the Prevailing Wage Ordinance of the City subject to the following:

- (a) A listing of the current prevailing wage rates is available through the City.
- (b) Contractors must comply with provisions of Public Act 93-38 which requires certain language pertaining to prevailing wage be inserted into subcontracts. A list of prevailing wages in effect must be posted at the Project Site.
- (c) The Redeveloper must submit certified payrolls, on a monthly basis, to assure the payment of prevailing wage. This requirement applies to all contractors and subcontractors working on the Project. Certified payrolls shall be submitted to the Assistant City Manager For Development Services. The City reserves the right to interview contractor's employees on the job to ascertain compliance with this requirement.

16.2 Authorized Representatives.

16.2.1 Redeveloper. By complying with the notice provisions hereof, the Redeveloper shall designate an authorized representative from time to time, who, unless applicable law requires action by the Board of Directors of the Redeveloper, shall have the power and authority to make or grant or do all things, requests, demands, approvals, consents, agreements and other actions required or described in this Agreement for and on behalf of the Redeveloper.

16.2.2 City. By complying with the notice provisions hereof, the City shall designate an authorized representative from time to time, who shall communicate with the Redeveloper on behalf of the City. Such representative shall not have the authority to make agreements on behalf of the City.

16.3 Entire Agreement. The terms and conditions set forth in this Agreement and exhibits attached hereto supersede all prior oral and written understandings and constitute the entire agreement between the City and the Redeveloper with respect to the subject matter hereof.

16.4 Binding Upon Successors in Interest. This Agreement shall be binding upon all the parties hereto and their respective heirs, successors, administrators, assigns or other successors in interest.

16.5 Titles of Paragraphs. Titles of the several parts, paragraphs, sections or articles of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any provision hereof.

16.6 Notices. Notices or demands hereunder shall be in writing and shall be served (a) by personal delivery; or (b) by certified mail, return receipt requested to:

the City:

City Clerk
1 Gary K. Anderson Pl.
Decatur, IL 62523

with copies to:

Assistant City Manager for Development Services
1 Gary K. Anderson Plaza
Decatur, IL 62523

Corporation Counsel
1 Gary K. Anderson Plaza
Decatur, IL 62523

the Redeveloper:

Niemann Holdings, LLC
Attn: Richard Niemann Jr.
1501 N. 12th St.
P.O. Box C-847
Quincy, IL 62306-2847

with a copy to:

Schmiedeskamp, Robertson, Neu &
Mitchell, LLP
Attn. Ted N. Niemann
525 Jersey St.
P.O. Box 1069
Quincy, IL 62306

or to the last known address of either party or to the address provided by any assignee if such address has been given in writing. In the event said notice is mailed, the date of service of such notice shall be deemed to be two (2) business days after the date of delivery of said notice to the United States Post Office.

16.7 Severability. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.

16.8 Project Sign. Prior to commencement of construction of the Project, the Redeveloper shall place at the front of the Project a Project identification sign which sign shall contain the following:

- (a) A colored elevation view of the Project being constructed;
- (b) A listing of the Project team including the City; and
- (c) A brief two (2) or three (3) line description of the Project.

16.9 Memorandum of Agreement. At either party's request, the parties shall execute and record a Memorandum of Agreement with respect to the Project and the Project Site in the form attached as Exhibit 5.

16.10 Further Assistance and Corrective Instruments. The City and the Redeveloper agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required by the parties hereto for carrying out the intention of or facilitating the performance of this Agreement.

ARTICLE XVII: REDEVELOPER'S CONDITONS

17.1.1 Redeveloper's Conditions. Redeveloper's obligations pursuant to this Agreement shall be conditioned on the following:

- (a) City's vacation of that portion of Hill Street in Decatur, Illinois between Grand Avenue and West Leafland Avenue and title thereto becoming vested in Redeveloper;
- (b) Conveyance to Redeveloper of fee simple title in all real estate comprising the Project to the satisfaction of Redeveloper;
- (c) Redeveloper's obtaining a written commitment from a lender, acceptable to Redeveloper, committing to make a construction loan to Redeveloper for the construction of the Project;

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused their respective seals to be affixed and attested thereto as of the date first above written.

CITY OF DECATUR
an Illinois municipal corporation

By: _____

Attest:

By: _____

NIEMANN HOLDINGS,
LLC _____
An Illinois Limited Liability
Company _____

By: _____

Print Name: Richard H. Niemann
Jr. _____

Title: Member _____

Attest:

By: _____

Print Name: Christopher J.
Niemann _____

Attest:

By: _____

Print Name: Christopher J.
Niemann _____

Title: Member _____

By: _____

Print Name: Christopher J. Niemann

Title: Member

**CITY OF DECATUR/GRAND AVENUE TIF
REDEVELOPMENT AGREEMENT**

EXHIBITS

- 1. Project and Project Site**
- 2. Project Costs**
- 3. Tax Increment Eligible Project Costs**
- 4. Declaration of Covenants, Uses and Restrictions**
- 5. Memorandum of Agreement**

EXHIBIT 1

Project

A: General Narrative Description of Project

Developer will construct at its expense a new shopping center containing approximately 38,000 square feet consisting of a new County Market grocery store, associated C-Store and other retail uses. Project shall include all associated public infrastructure improvements and improvements to Leafland Avenue, Oakland Avenue and Illinois Route 48, if required.

(1) Construction (including renovation, repair and remodeling)	
a. Estimated Costs	\$12,287,000
b. Estimated Eligible Redevelopment Project Costs	\$8,237,000
c. Maximum Reimbursable Costs	\$2,500,000

B. OWNER/DEVELOPER-MUNICIPALITY SHARES OF TIF PROCEEDS

	OWNER/ DEVELOPER*	MUNICIPALITY
(a) Real Estate Increment	100%	0%
(b) Sales Tax	50%	50%

-
- Subject to sufficiency of Redevelopment Project Costs

C. DEVELOPMENT AREA

- (1) DEVELOPER'S INTEREST IN DEVELOPMENT AREA:
(if other than fee ownership, describe and attach lease or other Applicable Document)

- (2) PREMISES:

Legal Description: All of Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), of County Clerk's subdivision in the North East ¼ of the south east ¼ of Section 9, Township 16 North, Range 2 East of the 3rd P.M., as per Plat recorded in Book 1575, Page 127 of the records in the recorder's office Of Macon County, Illinois.

And

All of Lots Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15) of Hill's 2nd Addition as per Plat recorded in Book 536, Page 24 of the Records in the Recorder's Office of Macon County, Illinois

And

The adjacent Right-Of-Ways

Exhibit 1 Project Site

Decatur Development
C-Store Separated Option
8-7-12 JAV

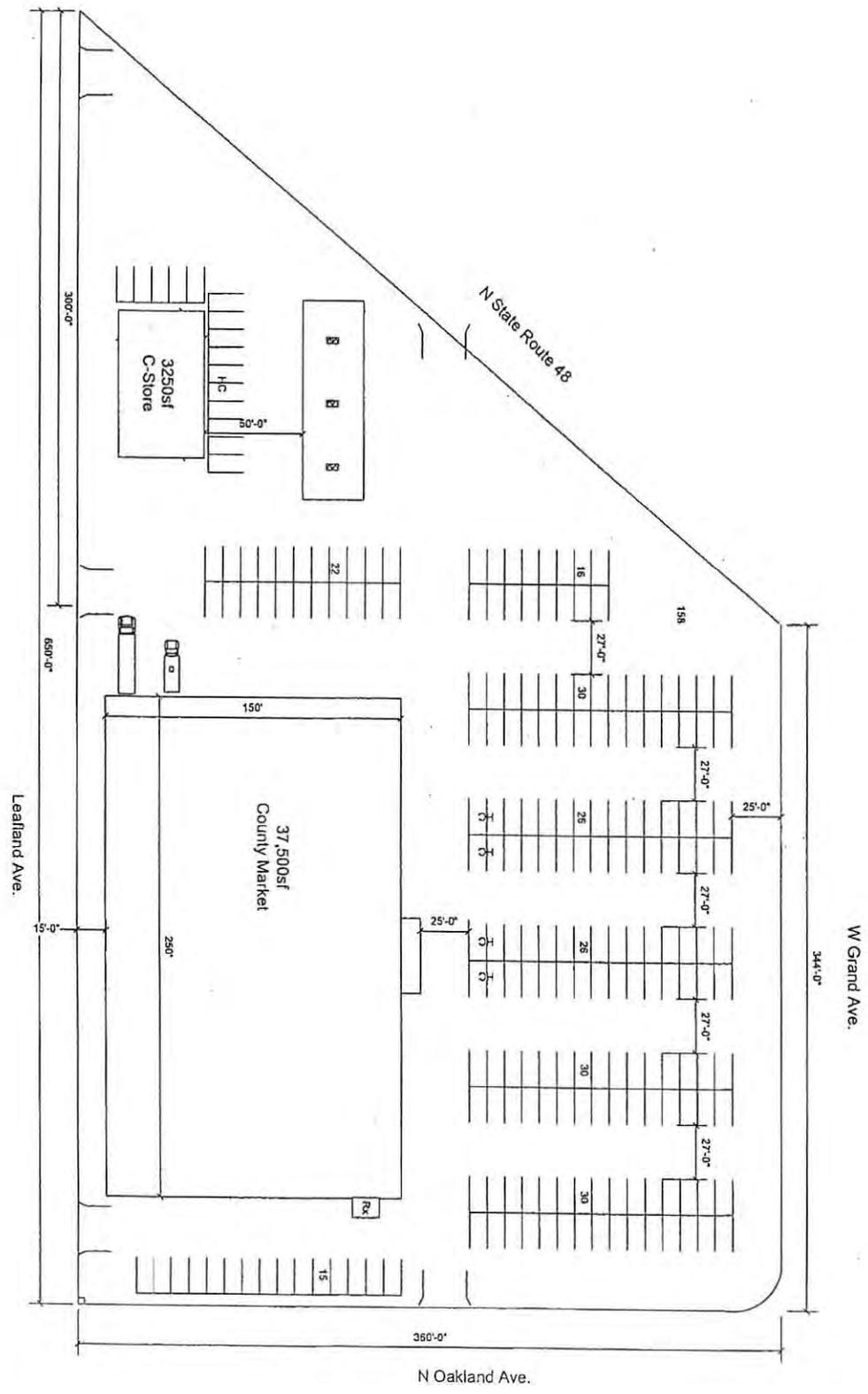



EXHIBIT 2

Project Costs

Land Acquisition	\$1,485,000
Demolition	\$500,000
Site Prep/A&E	\$1,644,000
Water Detention/Sanitary Sewer/ IDOT Requirements	\$120,000
Mortgage Interest	\$725,000
Job Training	\$3,733,000
	\$30,000
Total:	\$8,237,000
Construction Costs/equipment Cost:	\$6,616,000
Total Project Cost:	\$14,853,000

EXHIBIT 3

Tax Increment Eligible Project Costs

1. Property Acquisition
2. Site Preparation
3. Demolition of Buildings, Structures and Site Improvements
4. Thirty (30%) Interest Subsidy on First Mortgage
5. Public Utilities
6. Environmental Remediation
7. Relocation Costs
8. Professional Costs Related to the Above

EXHIBIT 4

Prepared By:

Jack B. Teplitz
Jack B. Teplitz & Associates
331 Fulton St., Ste. 525
Peoria, Illinois 61602

After recording return to:

Wendy Morthland
Corporation Counsel
City of Decatur 62523

DECLARATION OF COVENANTS, USES AND RESTRICTIONS

Niemann Holdings, LLC_ an Illinois limited liability company_(the "Declarant"), is the owner of certain real property located in the City of Decatur, the County of Macon, the State of Illinois, more fully described in Exhibit A attached hereto and made a part hereof (the "Project Site").

The Declarant has entered into the City of Decatur/Grand Avenue TIF Redevelopment Agreement (the "Agreement") dated as of _____, 2013, with the City of Decatur (the "City"). The Agreement provides that the Declarant shall develop a project as described in the Agreement (the "Project") on the Project Site, which Project will further the development of the City of Decatur, Illinois Grand Avenue TIF Tax Increment Redevelopment Plan adopted by the City _____, 2013 (the "Plan"). The Plan was recorded with the Macon County Recorder on _____, 2013 as Document No. _____. For the purpose of enhancing and protecting the value, the attractiveness and the desirability of the Project as developed pursuant to the terms of the Agreement; for the purpose of protecting the rights of the City pursuant to the terms of the Agreement; and for the purpose of enhancing and protecting the purposes of the Plan as aforementioned, the Declarant hereby declares that all of the Project and Project Site and each part thereof shall be held, sold, and conveyed only subject to the following covenants, uses and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any rights, title or interest in said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. The Project Site and the Project shall be subject to the Agreement and the terms, covenants, building and use restrictions, and conditions in the Plan.

2. The Declarant agrees that the Declarant shall not discriminate in violation of all applicable federal, state or local laws or regulations upon the basis of race, color, religion, sex, age, national origin or other applicable factors in the sale, lease or rental or in the use or occupancy of the Project Site or Project or any part thereof.

EXHIBIT 4

3. The Declarant covenants that it will pay all real estate taxes with respect to the Project Site or Project when due; and shall not apply for, seek, or authorize any exemption from the imposition of general real estate taxes on said Project Site or Project without first obtaining the prior written approval of the City of Decatur. Nothing herein shall be construed so to prevent Declarant from contesting the assessment or collection of any taxes under statutory procedures set forth in the Illinois Compiled Statutes; provided that the Declarant, its successors and assigns shall give the City of Decatur fifteen (15) days prior written notice of its intent to contest the assessment or collection of taxes.

GENERAL PROVISIONS

4. It is intended and agreed that the covenants provided in Sections 1 and 3 of this Declaration shall remain in effect until the earlier of (i) termination of the Plan or (ii) December 31, 2037; and the covenants provided in Sections 2 and 4 shall remain effective without any time limitation; provided, that all such covenants shall be binding on the Declarant only for such period as the Declarant maintains a direct ownership interest in the Project Site or Project or part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), and only with respect to such direct ownership interest in the Project Site or Project or part thereof. The termination of the covenants in Sections 1 and 3 shall be effective upon the happening of the events described in this Section 5 without any further action by either Declarant or the City and without the recording of any release or other document.

5. Subject to Section 4 above, it is intended and agreed that the covenants set forth in Sections 1 through 3 above shall be covenants running with the land and that they shall in any event and without regard to technical classification or designation as legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by the City and with regard to Section 2 above, the City, the State of Illinois, and the United States of America.

6. Failure by the City or as the case may be, by the State of Illinois or the United States of America to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

7. Invalidation of any one of these covenants or restrictions by judgment or court order, shall in no way affect any other provisions, which shall remain in full force and effect.

8. Covenants and restrictions of this Declaration may be amended by the Declarant only by duly recording an instrument, executed and acknowledged by the City.

Executed at Decatur, Illinois, on the date first above written.

Niemann Holdings
LLC _____
an Illinois limited liability company

By: _____
Print Name: Richard H. Niemann
Jr. _____

Title: Member _____

By: _____
Print Name: Christopher J. Niemann
Title: Member

EXHIBIT 4

EXHIBIT 4

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the members of Niemann Holdings LLC, , an Illinois Limited Liability Company, and personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act as such members, and as the free and voluntary act of said company, for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

GIVEN under my hand and notarial seal this ____ day of _____, 2013.

Notary Public

EXHIBIT 4
EXHIBIT A

Project Site

All of Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), of County Clerk's subdivision in the North East $\frac{1}{4}$ of the south east $\frac{1}{4}$ of Section 9, Township 16 North, Range 2 East of the 3rd P.M., as per Plat recorded in Book 1575, Page 127 of the records in the recorder's office Of Macon County, Illinois.

And

All of Lots Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15) of Hill's 2nd Addition as per Plat recorded in Book 536, Page 24 of the Records in the Recorder's Office of Macon County, Illinois

And

The adjacent Right-Of-Ways

EXHIBIT 5

Prepared By:

Jack B. Teplitz
Jack B. Teplitz & Associates
331 Fulton St., Ste. 525
Peoria, Illinois 61602

After recording return to:

Wendy Morthland
Corporation Counsel
City of Decatur 62523

MEMORANDUM OF AGREEMENT

Niemann Holdings LLC, an Illinois limited liability company (the "Redeveloper") and the City of Decatur (the "City") have entered into a City of Decatur/Grand Avenue TIF Redevelopment Agreement dated as of _____, 2013 (the "Agreement") with respect to certain real property located in the City of Decatur, the County of Macon, the State of Illinois, more fully described in Exhibit A attached hereto and made a part hereof (the "Project Site"). The Agreement provides that the Redeveloper, subject to certain terms and conditions set forth in the Agreement, shall develop a project as described in the Agreement (the "Project") on the Project Site.

Dated: _____, 2013

CITY OF DECATUR
an Illinois municipal corporation

NIEMANN HOLDINGS
AN Illinois limited liability company

By: _____
Its City Manager

By: _____
Print Name: Richard H. Niemann
Jr. _____

Attest:
By: _____
Its City Clerk

Title:
Member _____

Attest:
By: _____
Print Name: Christopher J.
Niemann _____

Title: Member _____

EXHIBIT 5

By:

Print Name: Richard H. Niemann Sr.

Title: Member

EXHIBIT 5

STATE OF ILLINOIS)
) SS
COUNTY OF MACON)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the City Manager and City Clerk, respectively, of the City of Decatur, an Illinois municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such City Manager and City Clerk, respectively, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act as such City Manager and City Clerk, respectively, and as the free and voluntary act of said municipal corporation for the uses and purposes therein set forth; and on their respective oaths stated that they were duly authorized to execute said instrument.

GIVEN under my hand and notarial seal this ____ day of _____, 2009.

Notary Public

STATE OF ILLINOIS)f
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the members of Niemann Holdings LLC, an Illinois limited liability company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, appeared before me this day in person and severally acknowledged that he signed, sealed and delivered the said instrument as their free and voluntary act as such members and as the free and voluntary act of said company for the uses and purposes therein set forth; and on their respective oaths stated that they were duly authorized to execute said instrument.

GIVEN under my hand and notarial seal this ____ day of _____, 2013.

Notary Public

EXHIBIT 5
EXHIBIT A

Project Site

All of Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), of County Clerk's subdivision in the North East $\frac{1}{4}$ of the south east $\frac{1}{4}$ of Section 9, Township 16 North, Range 2 East of the 3rd P.M., as per Plat recorded in Book 1575, Page 127 of the records in the recorder's office Of Macon County, Illinois.

And

All of Lots Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15) of Hill's 2nd Addition as per Plat recorded in Book 536, Page 24 of the Records in the Recorder's Office of Macon County, Illinois

And

The adjacent Right-Of-Ways