

**RESOLUTION 2019-**

**APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE PROJECT HAMMER DEVELOPMENT.**

**WHEREAS**, the City of DeKalb (the “City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

**WHEREAS**, the Project Hammer Development involves the re-development of a 1,222,400 square foot food distribution center and a 466,560 square foot packing center for a food manufacturing and distribution company on approximately 106 acres of the Chicago West Business Center property located between Route 23, Gurler Road, Crego Road and I-88 within the City’s corporate limits (the “Subject Property”); and

**WHEREAS**, the City’s Corporate Authorities find that the Project Hammer Development will further the growth of the Subject Property and its surrounding area, increase the assessed valuation of real estate situated within the Subject Property, increase the economic activity within the City’s boundaries, provide jobs and employment opportunities, and otherwise be in its best interests by positively impacting the health and welfare of its citizens and taxpayers; and

**WHEREAS**, the City, County of DeKalb, DeKalb Community Unit School District 428, DeKalb Library District, DeKalb Park District, DeKalb Township, Kishwaukee Community College District 523, and Kishwaukee Water Reclamation District 523 (collectively referred to herein as the “Taxing Agencies”) consist of all the entities that have the ability to levy property taxes against the Subject Property; and

**WHEREAS**, the Article VII, Sec. 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize the Taxing Agencies to enter into intergovernmental agreements to jointly exercise, combine, transfer, and enjoy their powers, privileges, functions, and authority including, but not limited to, the City’s home rule power to abate any portion of its property tax levy; and

**WHEREAS**, the Subject Property is located within the DeKalb County Enterprise Zone (the “Zone”); and

**WHEREAS**, the Taxing Agencies have the statutory power to abate property taxes for any property in the Zone in an amount that cannot exceed the amount of property taxes attributable to the improvements on the Subject Property pursuant to 35 ILCS 200/18-170; and

**WHEREAS**, the Illinois Constitution, state law, and the intergovernmental agreement for the Zone do not prohibit the Taxing Agencies from extending additional tax incentives or reimbursements for business enterprises in the Zone or throughout their respective territories by separate ordinances or agreements; and

**WHEREAS**, the City's Corporate Authorities find that the local tax abatement benefits currently provided by the Zone are not sufficient to incentivize the Project Hammer Development for the Subject Property; and

**WHEREAS**, the Taxing Agencies and the developer of the Project Hammer Development have negotiated an intergovernmental agreement (the "IGA"), a copy of which is attached hereto and incorporated herein as Exhibit A, to incentivize the Project Hammer Development by agreeing to abate 50% of the property taxes on each of the parcels that make up the Subject Property for a period of 15 years as more fully set forth in the IGA; and

**WHEREAS**, the City's Corporate Authorities find that approving the IGA is in the public interest and promotes the City's public health, safety, and welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**SECTION 1:** The City's Corporate Authorities find that the recitals to this resolution are true, accurate, and material to this resolution, and are adopted and incorporated herein.

**SECTION 2:** The City's Corporate Authorities approve the IGA in the same or substantially similar form as attached hereto and incorporated herein as Exhibit A, and the Mayor is authorized and directed to execute the IGA, subject to such revisions as shall be acceptable to him with the recommendation of City staff, and the City Clerk or Executive Assistant shall be authorized and directed to attest the Mayor's Signature.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a Regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_ 2019 and approved by me as Mayor on the same day.

**ATTEST:**

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**JERRY SMITH, Mayor**

**EXHIBIT A  
(INTERGOVERNMENTAL AGREEMENT FOR  
THE PROJECT HAMMER DEVELOPMENT)**

**[December 5, 2019]**

This Intergovernmental Agreement (this “Agreement”) is between the County of DeKalb (“County”), the City of DeKalb (“City”), DeKalb Community Unit School District 428 (“School District”), DeKalb Library District (“Library District”), the DeKalb Park District (“Park District”), DeKalb Township (“Township”), Kishwaukee Community College District 523 (“College District”), Kishwaukee Water Reclamation District (“KWRD”), and \_\_\_\_\_ (“Developer”) and is effective as of the date it is last executed by one of the parties. Hereinafter the County, the City, the School District, the Library District, the Park District, the Township, the College District, and the KWRD may be collectively referred to as the “Taxing Agencies”.

### RECITALS

- A. Article VII, Sec. 10 of the Illinois Constitution of 1970 authorizes units of local government and school districts to: (1) contract among themselves to exercise, combine, or transfer any power or function in any manner not prohibited by law; and (2) contract with individuals, associations and corporations in any manner not prohibited by law.
- B. Section 5 of the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorizes cooperative agreements between any Illinois public agencies and authorizes public agencies to exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform as follows:

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.

(5 ILCS 220/5)

- C. \_\_\_\_\_ (the “Developer”) is the \_\_\_\_\_ of the property legally described in Exhibit A (the “Subject Property”). The Developer desires to acquire the Subject Property and redevelop it as described in this Agreement.
- D. The County is a duly constituted county that operates under the Constitution and Statutes of the State of Illinois. The County, through its DeKalb Chief County Assessment Officer, is responsible for certifying the assessment roll for property located within the entirety of DeKalb County. The County, through its Treasurer/Collector, is responsible for the extension, billing and collection of property taxes for all taxing agencies within the County. The County further levies and extends property taxes upon the Subject Property and all other taxable property within the County for and behalf of itself and on behalf of its Forest

Preserve District fund. The tax rates and the amount of the taxes extended for the County and its Forest Preserve fund appear separately on the County property tax bills. The Subject Property is located within the County.

- E. The City is a home rule municipality under the Constitution and statutes of the State of Illinois. The Subject Property is located within the City. The City levies property taxes (which are extended and collected by the County) for itself and on behalf of the Library District on taxable property within its jurisdiction. The property tax rates and amounts for the City and the Library District are shown separately on the property tax bills issued by the County.
- F. The School District is a public school district that is organized and operated pursuant to the Constitution and Statutes of the State of Illinois. The Subject Property is located within the boundaries of the School District. The School District levies property taxes (which are extended and collected by the County) upon the Subject Property and all other property within its boundaries.
- G. The Library District is a library district under the Constitution and Statutes of the State of Illinois. It is operated by a Board of Trustees that is appointed by the Mayor of the City of DeKalb and serves boundaries that are co-extensive with the City. The Subject Property is located within the boundaries of the Library District. Property taxes for the Library District are levied by the City and extended and collected by the County upon the Subject Property and all other taxable property within the City.
- H. The Park District is a park district organized and operated pursuant to the Constitution and the Statutes of the State of Illinois by an elected Board of Park Commissioners. The Subject Property is located within the Park District. The Park District levies property taxes (which are extended and collected by the County) upon the Subject Property and all other taxable property within its boundaries.
- I. The Township is a township that is organized and operated pursuant to the Constitution and the Statutes of the State of Illinois. The Subject Property is located within the Township. The Township, through its elected Township Assessor, determines the initial assessed value of the Subject Property and forwards his/her determination to the DeKalb Chief County Assessment Officer who may then make adjustments to the assessed value as allowed by law prior to certifying the assessment roll for the County. The Township levies property taxes (which are extended and collected by the County) upon the Subject Property and all other taxable property within the Township for and behalf of itself and on behalf of its Township Road and Bridge Fund.
- J. The College District is a community college district that is organized and operated pursuant to the Constitution and Statutes of the State of Illinois. The Subject Property is located within the boundaries of the College District. The College District levies property taxes (which are

extended and collected by the County) upon the Subject Property and all other taxable property within its boundaries.

- K. KWRD is organized pursuant to the Constitution and Statutes of the State of Illinois and operated by a Board of Trustees appointed by the County. The Subject Property is located within the boundaries of the KWRD. The KWRD levies property taxes (which are extended and collected by the County) upon the Subject Property and all other taxable property within its boundaries.
- L. The Taxing Agencies consist of all the entities that have the ability to levy property taxes against the Subject Property.
- M. The Subject Property is located within the DeKalb County Enterprise Zone (the “Zone”) Pursuant to the certification given by the Illinois Department of Commerce and Economic Opportunity (“DCEO”), the Zone commenced on January 1, 2016, and may exist for an initial term of 15 years (until December 31, 2030). The Redevelopment Project (defined below) requires the benefits that are available in the Zone.
- N. The Taxing Agencies, after due and careful consideration, have concluded that completion of the Developer’s Redevelopment Project for the Subject Property will further the growth of the Subject Property and its surrounding area, increase the assessed valuation of real estate situated within the Subject Property; increase the economic activity within their respective boundaries; provide jobs and employment opportunities; and otherwise be in each of their best interests by positively impacting the health and welfare of its citizens and taxpayers
- O. The Taxing Agencies, after due and careful consideration, find that it is in each of their best interests to incentivize the redevelopment and improvement of the Subject Property with the Redevelopment Project by agreeing to abate 50% of its property taxes on each of the parcels that make up the Subject Property for a period of 15 years as detailed in this Agreement.
- P. The local tax abatement benefits currently available through the Zone are not sufficient to provide for the abatement of property taxes for a 15 year time period that is necessary to incentivize the development of the Subject Property.
- Q. The Intergovernmental Agreement pertaining to the Zone (“Zone IGA”) provides that each of the signatories to the Zone IGA “reserves all of its rights and authority under local and State law, unless otherwise expressly limited” in the Zone IGA. The Zone IGA contains no express limitation that would prohibit its signatories from taking advantage of other available legal and statutory basis to allow for the abatement of property taxes for the Subject Property.
- R. The Illinois Enterprise Zone Act further provides that its terms do “not prohibit a municipality or county from extending additional tax incentives or reimbursement for

business enterprises in Enterprise Zones or throughout their territory by separate ordinance.”  
20 ILCS 655/5(d).

- S. The Taxing Agencies, after due and careful consideration, find that it is in each of their best interests to incentivize the Redevelopment Project described in this Agreement in order receive the economic benefits and the extensive job creation benefits resulting from the Redevelopment Project by utilizing their respective express and implied powers to abate 50% of their property taxes on each of the parcels that make up the Subject Property for a period of 15 years.
- T. As a Home Rule municipality, the City has the power to abate any portion or all of its tax levy pursuant to Article VII, Section 6(a) of the Illinois Constitution which provides as follows:

Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Article VII, Section 6(a) of the Illinois Constitution does not limit the ability that a Home Rule municipality has to abate any portion of its tax levy. The Illinois Statutes do not otherwise pre-empt the power of Home Rule Municipalities to abate their tax levy.

- U. Pursuant to the authority granted by 5 ILCS 220/5, the County, the School District, the Library District, the Park District, the Township, the College District, and the KWRD, by entering into this Agreement, have the power to “exercise any powers, functions, privileges, or authority which” the City is authorized to perform, including the power to abate any portion of its property tax levy.
- V. Additionally, the County, the City, the School District, the Library District, the Park District, the Township, the College District, and the KWRD have the statutory power to abate property taxes for any property in an Enterprise Zone in an amount that cannot exceed the amount of property taxes attributable to the improvements on the Subject Property pursuant to the authority granted by 35 ILCS 200/18-170 which states in relevant part as follows:

[A]ny taxing district, upon a majority vote of its governing authority, may order the county clerk to abate any portion of its taxes on property, or any class thereof, located within an Enterprise Zone created under the Illinois Enterprise Zone Act .... and upon which either new improvements have been constructed or existing improvements have been renovated or rehabilitated after December 7, 1982. However, any abatement of taxes on any parcel shall not exceed the amount attributable to the construction of the improvements and the renovation or rehabilitation of existing improvements on the parcel...

A copy of an abatement order adopted under this Section shall be delivered to the county clerk and to the board of review or board of appeals not later than July 1 of the assessment year to be first affected by the order. If it is delivered on or after that date, it will first affect the taxes extended on the assessment of the following year. The board of review or board of appeals shall, each time the assessment books are delivered to the county clerk, also deliver a list of parcels affected by an abatement and the assessed value attributable to new improvements or to the renovation or rehabilitation of existing improvements.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**ARTICLE I**  
**RECITALS PART OF AGREEMENT**

**1.1 Incorporation of Recitals.** The recitations set forth in the foregoing recitals are true, correct and material to this Agreement. The foregoing recitals are and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

**ARTICLE II**  
**MUTUAL ASSISTANCE**

**2.1 Cooperation.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Taxing Agencies, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**ARTICLE III**  
**THE REDEVELOPMENT PROJECT**

**3.1 Redevelopment Project.** The “Redevelopment Project” shall be defined as the Developer’s completion of the redevelopment of the Subject Property that is described below in substantial conformance with the concept plans attached in Exhibit A.

The Developer shall subdivide the Subject Property into 3 parcels, said parcels hereinafter referred to as “Building Parcel A”, “Building Parcel B”, and “Building Parcel C”. The Developer intends to redevelop the Subject Property in one or more phases, as follows (such phases referred to collectively or individually as a “Phase” or “Phases”):



(a) **Phase 1 – Building Parcel A:** The Developer shall construct a distribution center containing approximately 1,000,000 square feet of enclosed building under roof, together with any other necessary or desired additional structures or improvements on the parcel Developer designates as Building Parcel A (the construction of such distribution center is hereinafter referred to as “Phase 1”).

(b) **Phase 2 – Building Parcel B:** The Developer shall construct a packaging facility containing approximately 400,000 square feet of enclosed building under roof, together with any other necessary or desired additional structures or improvements on the parcel Developer designates as Building Parcel B (the construction of such packaging facility is hereinafter referred to as “Phase 2”).

(c) **Phase 3 – Building Parcel C:** The Developer may elect, but shall not be required, to construct a manufacturing facility containing approximately 1,000,000 square feet of enclosed building under roof, together with any other necessary or desired additional structures or improvements on the parcel Developer designates as Building Parcel C (the construction of such manufacturing center is hereinafter referred to as “Phase 3”).

The total cost for development of all phases of the Redevelopment Project is estimated to exceed \$100 million.

#### **ARTICLE IV** **DEVELOPER’S REQUIRED APPROVALS**

**4.1 Plan Approval.** The Developer shall (or cause its contractors to) submit complete permit applications to the City and to any other agencies having any jurisdiction over the construction of any portion of the Redevelopment Project with all required documentation including engineering, development and other required plans. The application for the permits and the construction of the Redevelopment Project may be done in phases. However, no work requiring a permit shall be commenced until the Developer or its contractors have obtained all requisite governmental permits and approvals for such work in accordance with City ordinances and codes as well as the requirements of any other governmental body or agency having any having jurisdiction over any aspect of the Redevelopment Project work.

#### **ARTICLE V** **CONSTRUCTION OF THE REDEVELOPMENT PROJECT**

**5.1 Construction of Redevelopment Project.** The Developer shall commence construction of the Redevelopment Project promptly after issuance of the permits necessary for the work to be performed. Once construction of a Phase has commenced, the Developer agrees to cause construction of the Redevelopment Project to proceed in a timely manner and substantially in accordance with the objectives of the Redevelopment Project as it may be modified or revised from time to time. The Developer shall undertake or cause to be undertaken the Redevelopment Project in accordance with the Plans to be filed with, and approved by, the City, and any other appropriate governmental or regulatory agency having jurisdiction of the Redevelopment Project. The Developer shall expeditiously construct or cause to be constructed the Redevelopment Project in a good and workmanlike manner in accordance with all applicable

federal, state and local laws, ordinances and regulations, including, but not limited to any applicable Illinois Prevailing Wage requirements. The Developer shall not cause or permit any material deviation from the approved engineering and construction plans and specifications without the prior consent of the City or any other governmental agency having jurisdiction over the relevant portion of the work. The Developer agrees to pay any and all costs and expenses necessary for the timely and lien free completion of the Redevelopment Project, even if said costs and expenses exceed the project budget or any amendments thereto. Nothing in this Agreement shall be construed or intended to be a waiver of any rights that any governmental agency having any jurisdiction over the portion of the Redevelopment Project may have to require code compliance and/or issue stop work orders or violation notices.

**5.2 Scheduling.** The beginning and substantial completion of the construction of Phase 1 and Phase 2 of the Redevelopment Project shall comply with the following deadlines:

| <b>PHASE</b> | <b>DATE BY WHICH CONSTRUCTION ON THE PARCEL MUST BEGIN</b> | <b>DATE BY WHICH SUBSTANTIAL COMPLETION OF ALL IMPROVEMENTS MUST BE ACHIEVED</b> |
|--------------|--|--|
| Phase 1      | June 30, 2020  | March 1, 2021  |
| Phase 2      | June 30, 2020  | May 1, 2021  |

**5.3 Indemnification.**

(a) Indemnification by Developer. The Developer covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses resulting from the construction and development activities of the Developer, its agents, contractors and subcontractors with respect to the Redevelopment Project and to indemnify and save the Taxing Agencies and their officers, agents, employees, engineers and attorneys (the “Indemnitees”) harmless of, from and against such claims, damages, demands, expenses, liabilities and losses. The Developer shall provide satisfactory proof of insurance covering such indemnity or, if Developer is self-insured, proof of adequate security for such indemnity.

(b) Indemnification by Taxing Agencies. Each of the Taxing Agencies, jointly and severally, covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses arising out of the execution of this Agreement or the performance by the Taxing Agencies of their respective obligations hereunder, including without limitation any breach of its representations and warranties herein and actions challenging the enforceability of the Agreement or the authority of the Taxing Agencies to perform their respective obligations, and to defend, indemnify and save the Developer and its officers, agents, employees, tenants and attorneys (the “Indemnitees”)

harmless of, from and against such claims, damages, demands, expenses, liabilities and losses.

**5.4 No Liens.** No mechanics' or other liens shall be established against the Redevelopment Project, or the Subject Property in connection with the Redevelopment Project for labor or materials furnished in connection with any acquisition, demolition, site preparation, construction, additions, modifications, improvements, repairs, renewals or replacements so made; provided, however, that the Developer shall not be in default hereunder if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens. In such event the mechanics' or other liens may remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, Developer shall not be in violation of this Section if the Developer posts a bond or a letter of credit in an amount sufficient to cover any liens, and the Developer sends written notice to the City advising of the type and amount of the security posted for such liens. In no event, however, shall the Developer allow the foreclosure of any mechanics' or other liens. The Developer shall pay in full any and all liens for which it is found liable.

**5.5 Conditions Precedent.** The Taxing Agencies acknowledge and agree that Developer's obligations under this Agreement with respect to the acquisition of the Subject Property and the construction of the Redevelopment Project are expressly conditioned on the receipt of other incentives and assistance necessary for the Redevelopment Project, including without limitation the incentives and assistance set forth in that certain letter dated September 20, 2019 from the DeKalb County Economic Development Corporation regarding "Project Hammer Incentives." In the event any such incentives or assistance are withheld or delayed for any Phase of the Redevelopment Project, the deadlines for such applicable Phase set forth in Section 7.3 below shall be automatically extended one day for each day of such delay.

## **ARTICLE VI** **STATE ENTERPRISE ZONE**

**6.1 State Enterprise Zone Benefits.** Developer shall contact and coordinate with the Zone Administrator of the Zone to apply for and obtain all the State Enterprise Zone benefits for which it is eligible and desires to receive, which may include a sales tax exemption on building materials incorporated into the Redevelopment Project. Developer, for and on behalf of itself and each of its contractors, shall be responsible for making the necessary applications and meeting all the requirements for the receipt of any State Enterprise Zone Benefits for which the Developer and or its contractors may be eligible.

**6.2 Enterprise Zone Extension.** The Developer's obligations under this Agreement are conditioned on the term of the Zone being extended through at least December 31, 2041. Promptly following the effective date of this Agreement, the Taxing Agencies shall take all action necessary to cause the extension of the term of the Zone, including obtaining approvals required from other governmental bodies and agencies, including without limitation the Illinois Department of Commerce and Economic Opportunity, the Illinois State Enterprise Zone Board, and, as the case may be, the Illinois General Assembly.

**ARTICLE VII**  
**PROPERTY TAX ABATEMENTS**

**7.1 Taxing Agency Abatements.** Each Taxing Agency pursuant to its authority under either 5 ILCS 220/5 or 35 ILCS 200/18-170 shall abate 50% of its property taxes on Building Parcel A, Building Parcel B and Building Parcel C for a period of 15 years for each parcel pursuant to the terms of this Article. The dollar amount abated by each Taxing Agency for a parcel of property in any year shall not exceed the amount of the Taxing Agency’s property taxes that are attributable to the construction of the improvements on the parcel.

**7.2. Abatements to be applied separately to each parcel.** The 15 year period for the abatement of property taxes by each Taxing Agency shall be separately applicable to each of the 3 Parcels that make up the Subject Property, namely, Building Parcel A; Building Parcel B; and Building Parcel C. The application of the property tax abatements may commence on different assessment years for Building Parcel A, Building Parcel B and Building Parcel C.

**7.3 Commencement of the Abatement.** Subject to the maximum deadlines set forth in Section 7.4 below, the first assessment year in which the Taxing Agencies shall begin abating their property taxes pursuant to Section 7.1 for each parcel (Building Parcel A, Building Parcel B, or Building Parcel C) shall be the calendar year in which the first occupancy permit is issued for that parcel if the occupancy permit is issued prior to May 1<sup>st</sup> of the calendar year. If the first occupancy permit for a parcel is issued after May 1<sup>st</sup>, the first assessment year in which taxes shall be abated for the parcel shall be the calendar year immediately following the calendar year in which the first occupancy permit was issued. Once the tax abatement commences for a parcel, the Taxing Agencies shall annually continue to abate their property taxes pursuant to Section 7.1 for each subsequent tax year until the tax abatement has been applied annually for a total of 15 property tax assessment years. The City shall in writing notify each Taxing Agency of the date the first occupancy permit is granted for Building Parcel A, Building Parcel B and Building Parcel C.

**7.4 Deadlines for the Commencement of the Abatement Schedule.** Notwithstanding the provisions of Section 7.3, the first assessment year for which each Taxing Agency shall commence the abatement of its property taxes pursuant to Section 7.1 for each of the 3 parcels making up the Subject Property shall begin no later than the assessment years set forth below:

| <b>PARCEL</b>     | <b>ASSESSMENT YEAR BY WHICH THE SECTION 7.1 ABATEMENT SCHEDULE MUST COMMENCE</b> |
|-------------------|--|
| Building Parcel A | 2024   |
| Building Parcel B | 2025   |

|                   |      |
|-------------------|------|
| Building Parcel C | 2026 |
|-------------------|------|

**7.5 Abatement Process.** On or before July 1<sup>st</sup> of the assessment year for which any parcel is entitled to a property tax abatement pursuant to this Article VII each Taxing Agency shall perform and complete each and every one of the following actions for each parcel entitled to a property Tax Abatement:

1. Have its governing Board, Corporate Authorities or Body pass and approve an Ordinance or Resolution abating its property tax levy against the parcel pursuant to this Article VII (the “Abatement Order”). **However, each Taxing Agency’s Abatement Order shall further provide that the dollar amount of its property taxes that are to be abated shall not exceed the amount of the Taxing Agency’s property taxes that are attributable to the construction of the improvements on the parcel.** A separate Abatement Order for each parcel (Building Parcel A, Building Parcel B and Building Parcel C) entitled to an Abatement shall be prepared; and
2. File a certified copy of each Abatement Order with the DeKalb County Clerk, the DeKalb County Board of Review and the DeKalb County Chief County Assessment Official on or prior to July 1<sup>st</sup> of the assessment year for which the Abatement Order is to be effective; and
3. Forward a certified copy of its Abatement Order to the owner of the property upon which it has abated property taxes.

**7.6 Tax Abatement Errors.** In the event any error occurs which results in a Taxing Agency receiving more property taxes from any one or more of the 3 parcels that make up the Subject Property than otherwise would have occurred if all the abatements required by this Article VII would have been properly made, the Taxing Agency shall rebate the excess amount it received to the Developer within a reasonable time after it has been determined that excess property tax revenues have been received.

**7.7 Developer Obligations.** Notwithstanding any other provision of this Agreement, the Taxing Agencies’ abatement of property taxes shall be contingent upon the Developer’s compliance, at all times with each and every one of the following requirements:

- A. Payment of Taxes.** The payment of all real estate tax bills for all portions of the Subject Property promptly on or before the due date of such tax bills.
- B. Completion of Improvements.** The timely substantial completion of all improvements required to be constructed on the applicable portions of the Subject Property in accordance with the terms of this Agreement, the concept plans attached as Exhibit A and the approved plans and specifications by each governmental agency having any jurisdiction over any portion of the work. The Developer may apply for an extension of the deadline to complete any portion of

the work, and the City is hereby authorized to approve such extension for itself and on behalf of the Taxing Agencies, which shall not be unreasonably denied to the extent it is caused by one or more of the following: (1) a delay in the issuance of any required permit from any governmental agency having jurisdiction over any portion of the work, but only to the extent such delay exceeds 30 calendar days; (2) adverse weather conditions that preclude or prevent the performance of work; (3) strikes; (4) the unavailability of key building components that is not the fault of the Developer; (5) Acts of God; (6) damage or causality to work that has already been completed; (7) war or national emergency; or (8) any other occurrence that precludes the completion of the work that is unrelated to any action or inaction of the Developer and over which the Developer has no control.

C. **Agreement.** The Developer shall comply with all the terms of this Agreement.

D. **Job Creation.** The parties anticipate that construction of all phases of the Redevelopment Project will result in the creation of approximately 1,000 temporary construction jobs during the construction periods, and at least 1,000 full-time equivalent permanent jobs at the Subject Property. Within two years after issuance of a certificate of occupancy for each Building Parcel (the “Ramp-Up Period”), the following minimum job thresholds will be achieved at the various parcels:

**Building Parcel A:** 195 direct and indirect (contracted) jobs;

**Building Parcel B:** 105 direct jobs;

**Building Parcel C:** 700 direct jobs.

Following the Ramp-Up Period, if employment levels drop to between 80% and 50% of the full-time equivalent employment counts set forth above (combined direct and indirect) for Building Parcels, A, B, or C, a pro-rata reduction of the property tax abatement will be implemented for the following tax year or until employment levels return to the agreed minimum thresholds. If employment levels drop below 50% of the minimum employment counts set forth above, the abatement for the affected parcel will be suspended for the next tax year or until the employment levels return to the 50% threshold. For purposes of this paragraph, employment at all of the Building Parcels A, B, and C may be counted in the aggregate, such that the reduction and/or suspension, as the case may be, would not apply so long as the employment counts are met in the aggregate, even though there may be a deficiency at one or more other parcels.

## **ARTICLE VIII** **GENERAL PROVISIONS**

**8.1 No New taxing Agencies.** The parties to this Agreement shall not in any manner pursue, support, encourage or otherwise take any action that will result in any portion of the

Subject Property being annexed into or included into any governmental or other entity that has, or can have, the ability to levy property taxes against the Subject Property, or that will result in any portion of the Subject Property being included in a designated area or district that would prevent the Taxing Agencies from abating taxes in accordance with this Agreement. The parties to this Agreement shall not in any manner pursue, support, encourage, petition for or otherwise take any action that can result in the creation or formation of any new governmental body or agency that can have the ability to levy property taxes against the Subject Property.

**8.2 Time of Essence.** Time is of the essence for this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**8.3 Default.**

**A.** A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. In addition, a Party shall also be in default and in breach of this Agreement upon: (1) the filing or execution or occurrence of a petition filed by either party seeking any nature of debtor relief, the making of an assignment for the benefit of creditors by either party, either party's execution of any instrument for the purpose of effecting composition of the party's creditors, the filing for bankruptcy or if either party is adjudicated bankrupt; and (2) the cessation of either party conducting business in the normal course or any admission of its inability to meet its debts as they become due.

**B.** Before any failure of any Party to this Agreement to perform its obligations under this Agreement shall be deemed a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. Upon a breach of this Agreement, the non-defaulting Party may: (1) terminate the Agreement; (2) pursue an action in any court of competent jurisdiction at law or in equity to secure the specific performance of the covenants and agreements herein contained; and/or (3) pursue any of its remedies at law and be awarded damages for failure of performance. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies, and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. The foregoing notwithstanding, the Taxing Agencies hereby waive the provisions and requirements set forth in Section 18-183 of the Illinois Property Tax Code (35 ILCS 200/18-183), including without limitation any remedies that would otherwise be available or arise thereunder.

**8.4 Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual agreement of the Parties evidenced by a written amendment, by the adoption of an ordinance, resolution or motion of the governmental entities approving such

written amendment, as provided by law, and by the execution of such written amendment by the Parties or their successors in interest; provided, however, that the City may approve, on its own behalf and on behalf of all the Taxing Agencies, such amendments to this Agreement that do not substantially, in the judgment of the City, alter the terms of this Agreement and so long as such amendments do not increase the percentage of abatement applicable to another Taxing Agency, as set forth in Section 7.1 above.

**8.5 Entire Agreement.** This Agreement sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This Agreement supersedes all prior written agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties.

**8.6 Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

**8.7 Illinois Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.

**8.8 Notice.** Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by telecopy facsimile; or (iii) sent by a nationally recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with such an overnight courier service or (c) four (4) business days after deposit in the United States mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance with this Section. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered mail, return receipt requested.

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| If to the Developer:       | If to the County:           | If to City:              |
| If to the School District: | If to the Library District: | If to the Park District: |



|                     |                             |                 |
|---------------------|-----------------------------|-----------------|
| If to the Township: | If to the College District: | If to the KWRD: |
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**8.9 Assignment.** The Developer agrees that it shall not sell, assign or otherwise transfer its rights and obligations under this Agreement, except to (i) an entity having common ownership or control with the Developer, (ii) an entity succeeding the Developer in title to any portion of the Subject Property, (iii) an entity holding a leasehold interest in any portion of the Subject Property; (iv) a successor entity acquiring all or substantially all of the assets of Developer; or (v) an entity who will conduct business operations at the Subject Property in accordance with the terms of this Agreement.

**8.10 Successors and Assigns.** The agreements, undertakings, rights, benefits and privileges set forth in this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives (including successor Corporate Authorities) as limited by section 8.9.

**8.11 Commencement/Termination.** This Agreement shall commence on the date that it is last signed by one of the parties. This Agreement shall terminate, upon the earlier of the following: (1) the completion of all the performance that is due by the any one of the Parties; or (2) upon the termination of this Agreement as result of a default or the operation of any other provision herein.

**8.12 Interpretations.** This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

**8.13 Exhibits.** All exhibits attached hereto are declared to be a part of this Agreement and are incorporated herein by this reference.

**8.14 Counterparts.** The parties do not need to sign the same copy of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**8.15 Opinion of Counsel; Defense.** Prior to execution of this Agreement by Developer, the City shall furnish Developer with an opinion of counsel, in a form acceptable to Developer, confirming the legal authority of each and all of the Taxing Agencies to enter into and perform their respective obligations under, and the legal enforceability of, this Agreement.

The Taxing Agencies represent and warrant that all notices, meetings, and hearings required by law have been properly given and held by the Taxing Agencies with respect to the

approval of this Agreement, and the Taxing Agencies agree not to challenge such approval on the grounds of any procedural infirmity or any denial of any procedural right in connection with this Agreement. If any challenge is asserted with respect to any such alleged procedural infirmity or denial of any procedural right with respect to any review, approval, permit, or certificate under this Agreement, then the parties hereto agree to cooperate with each other in any manner reasonably necessary or appropriate to take corrective action to address any such asserted infirmity or denial. The Taxing Agencies shall defend against any challenges relating to the procedural or substantive sufficiency of any approvals of, or relating to the enforceability of, this Agreement. The Taxing Agencies will not oppose any intervention petition by Developer in any suit or action in which the procedural or substantive sufficiency of approvals relating to, or the enforceability of, this Agreement is at issue.

**8.16 Representation and Warranty.** Each of the parties to this Agreement, for itself, represents and warrants to the other parties, as of the date of this Agreement and for the duration of the term of this Agreement, that it has the fully power and authority to enter into and perform the obligations under this Agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the dates set forth below.

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| <p><b>DEVELOPER</b></p> <p>By: _____</p> <p>ATTEST:</p> <p>By: _____</p> <p>Date: _____</p> | <p><b>COUNTY OF DEKALB</b></p> <p>By: _____<br/>Mark Pietrowski<br/>DeKalb County Chairman</p> <p>ATTEST:</p> <p>By: _____</p> <p>Date: _____</p> |
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| <p><b>CITY OF DEKALB</b></p> <p>By: _____<br/>Mayor Jerry Smith</p> <p>ATTEST:</p> <p>By: _____<br/>Lynn Fazekas, Clerk</p> | <p><b>DEKALB COMMUNITY UNIT SCHOOL DISTRICT 428</b></p> <p>By: _____<br/>Samantha McDavid, President</p> <p>ATTEST:</p> <p>By: _____<br/>Sarah Moses, Secretary</p> |
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| Date: | Date: |
|-------|-------|

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| <p><b>DEKALB LIBRARY DISTRICT</b></p> <p>By: _____<br/>Bill Cummings, President</p> <p>ATTEST:</p> <p>By: _____<br/>Gary Vander Meer, Secretary</p> <p>Date:</p> | <p><b>DEKALB PARK DISTRICT</b></p> <p>By: _____<br/>Phil Young, President</p> <p>ATTEST:</p> <p>By: _____<br/>Secretary</p> <p>Date:</p> |
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| <p><b>DEKALB TOWNSHIP</b></p> <p>By: _____<br/>Jennifer Jeep Johnson, Supervisor</p> <p>ATTEST:</p> <p>By: _____</p> <p>Date:</p> | <p><b>KISHWAUKEE COMMUNITY COLLEGE DISTRICT 523</b></p> <p>By: _____<br/>Robert B. Johnson, Chairman</p> <p>ATTEST:</p> <p>By: _____<br/>Kathleen Spears, Secretary</p> <p>Date:</p> |
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| <p><b>KISHWAUKEE WATER RECLAMATION DISTRICT</b></p> <p>By: _____<br/>Dennis J. Collins, President</p> <p>ATTEST:</p> <p>By:</p> |
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Carol B. Zar, Clerk

Date:

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