

RESOLUTION 13-11

Passed: February 11, 2013

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO ENTER INTO AN AGREEMENT WITH DEBUTANTES REAL ESTATE HOLDINGS FOR REPLACEMENT OF THE MARQUEE SIGN AT 145 NORTH THIRD STREET USING TIF FUNDS IN AN AMOUNT NOT TO EXCEED \$90,500.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an Agreement with Debutantes Real Estate Holdings, LLC for replacement of the marquee sign at 145 North Third Street, using TIF Funds in an amount not to exceed Ninety-thousand, five-hundred dollars and no/100 (\$90,500), a copy of which is attached hereto and made a part hereof as Exhibit "A", subject to such changes as shall be acceptable to the Mayor on the advice of the City Manager.

Section 2. That the City Clerk of the City of DeKalb 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 11th day of February, 2013 and approved by me as Mayor on the same day. Passed on roll call vote 5-1-2. Aye: Lash, Gallagher, Naylor, Baker, Povlsen. Nay: Jacobson. Absent: Teresinski, O'Leary.

ATTEST:


DIANE K, WRIGHT, City Clerk


KRIS POVLSSEN, Mayor

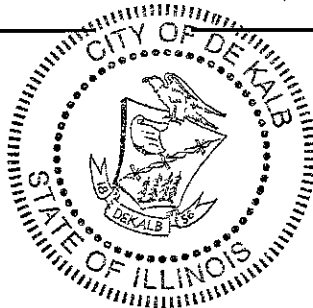


EXHIBIT "1"

DEVELOPMENT AGREEMENT

THIS AGREEMENT entered into this 11th day of February, 2013 between the City of DeKalb, Illinois, a home rule municipality, (hereinafter referred to as "the CITY"), and the following designated owner ("OWNER"), to wit:

Name of Owner: Debutantes School of Cosmetology & Nail Technology, LLC
Address of Property to be improved: 145 North Third Street, DeKalb, IL 60115

WITNESSETH:

WHEREAS, the City is implementing a Tax Increment Redevelopment Plan (hereinafter referred to as the "Plan") pursuant to the Illinois Tax Increment Allocation Redevelopment Act (hereinafter referred to as the "Act"); and,

WHEREAS, the City wishes to assist other agencies with projects that will enhance the overall redevelopment of the project area and the community; and,

WHEREAS, the property located at 145 North Third Street was originally built as a movie theatre in 1949 and the original marquee is still intact but in need of repair; and,

WHEREAS, the Owner is in need of assistance with improvements at the facility located within the Redevelopment Project Area covered by the Plan to restore as much of the sign back to its original condition. Restoration of the art deco marquee will provide educational and visitor opportunities as well as improve the overall landscape of Third street and the Downtown as a whole; and,

WHEREAS, said building improvements are eligible redevelopment project costs under the Act; and,

NOW THEREFORE, in consideration of the mutual covenants and agreement obtained herein, the CITY and the OWNER do hereby agree as follows:

A. That the CITY shall reimburse the costs of the proposed improvements to the subject property, in an amount not to exceed \$90,500 (the Owner has identified additional possible costs ("the Contingency") which may be required to complete the project in an amount not to exceed \$15,000 (which amount is included in the not-to-exceed price of \$90,500, outlined above)). In no event shall the City be responsible for reimbursement of more than \$90,500. In the event that the Owner encounters conditions that invoke the Contingency, the Owner shall notify the City prior to incurring any such expense, and the City Manager shall be authorized to approve City's reimbursement of the expense. Any such authorization, if granted, shall be in writing, and must be issued prior to the Owner's incurring additional costs. The City shall not be obligated to approve such Contingency. The funding paid, provided, waived and/or forgiven by the City to the Owner shall be considered a Forgivable Loan, subject to the following terms:

B. That OWNER agrees to install, or cause to be installed, all improvements set forth within the accompanying application materials, descriptions and drawings, and agrees that all improvements shall be completed within one (1) calendar year from the date of the project's approval by the City Council, and in such a manner as to comply with all conditions of approval of this Agreement, and in accordance with all pertinent regulations, ordinances, or codes of the City of DeKalb or other authority having jurisdiction over subject property;

C. That, upon submittal of appropriate receipts paid, any necessary final lien waivers, certified payroll records of contractors, and verification that the improvements have been completed as proposed and are fully operational and illuminated in accordance with the proposal presented to the DeKalb City Council, the CITY shall pay the actual costs of the improvements, in amounts not exceeding the value stated in Paragraph A, above, as follows:

1. No reimbursements or payments shall be made until the project is paid, documented, completed and operational, as required above, to the satisfaction of the City ("the Completion Date").

2. On or after the Completion Date, the City shall reimburse the OWNER 50% of the cost of the sign and (any associated approved Contingency costs), subject to the not-to-exceed limits described above.

3. On or after the Completion Date, the City shall pay the remaining 50% of the cost of the sign and (any associated approved Contingency costs), subject to the not-to-exceed limits described above directly to the sign contractor performing the work in question. Notwithstanding the foregoing, the Owner agrees and acknowledges that this payment shall be made at its express request and direction (which direction is provided by executing this Agreement), as a payment on behalf of Owner, of funds lent to Owner under the terms of this Agreement, in satisfaction of an agreement solely between Owner and the sign contractor.

All monies allocated by the CITY to the OWNER through its Tax Increment Finance program shall be used solely and exclusively for the installation of the new marquee sign and associated contingency costs that are approved, in advance, by the City of DeKalb. The CITY shall have up to twenty working days to disburse such amounts after receipt and approval of all necessary documentation, subject to standard CITY policies and procedures. The Owner acknowledges that, as a condition precedent to receiving any payment from the City, the improvements must be fully completed and the sign must be in continuous operation in accordance with subparagraph (F), below;

D. That all payments or disbursements made by the CITY shall be considered reimbursements for work completed and paid for by the property OWNER, subject to the other terms and conditions set forth herein, and within the Program Guidelines and standard CITY policies;

E. That any outstanding code violations of the property to which the improvements were made must be repaired prior to the City releasing funds for reimbursement; the Owner agrees to permit access to and inspection of the premises by any City personnel for the purpose of verifying compliance with this requirement at any time prior to the date on which reimbursement is made. Notwithstanding any other provisions of this Agreement, the City shall make no payments to any person, firm, or corporation who is a debtor to the City of DeKalb, as defined in Chapter 54, Section 54.15, Purchasing and Letting of Contracts, Subsection g;

F. OWNER agrees to maintain all improvements for a period of five (5) years from the date of reimbursement by the CITY, except for minor changes such as repainting or other maintenance items, or the continuation of further improvements to the building, provided said improvements do not conflict with or interfere with the improvements funded by this Program. In addition, OWNER agrees to operate the lights on the marquee from dark until twelve p.m. daily and pay all associated utility costs, for a minimum period of five (5) years from the date of reimbursement by the CITY, at its sole cost and expense. Owner further agrees that, in the event it sells or otherwise transfers the building, the requirement that the sign be maintained illuminated and operational as contemplated within this subparagraph (F) shall be binding upon any successor owner(s), and Owner shall undertake all steps necessary to validly execute an assignment of this Agreement in form and content acceptable to the City;

G. OWNER agrees that any minor changes or further improvements, as outlined above, shall only be made after approval by the City Manager, or designee thereof, who may refer the proposed changes to the City Council of the CITY for final approval. Such approval shall not be unreasonably withheld if the proposed changes do not substantially alter the original design concept of the appearance of the subject property as specified in the plans, design drawings and specifications approved pursuant to this Agreement;

H. That in the case of conflicting codes, ordinances, rules, regulations or guidelines, the City Council of the CITY shall make a ruling, and that ruling shall be final;

I. Nothing herein is intended to limit, restrict or prohibit the OWNER from undertaking any other work in or about the subject property, which is unrelated to the architectural improvements provided for in this Agreement;

J. The Owner agrees that it shall maintain its business operations and/or ownership rights of the property for a period of five (5) years from the date of payment for work completed as provided herein. In addition, This Agreement shall be binding upon and inure to the benefit of the CITY and the OWNER, and their heirs, for a period of five (5) years from the date of reimbursement for work completed as provided for herein. Further, a mortgage shall be recorded at the OWNER'S expense with the DeKalb County Recorder of Deeds;

K. If the OWNER fails to complete or cause the completion of the work subject to the terms of this Agreement or fails to comply with any other terms of this Agreement, the CITY will provide written notice to the OWNER, served in person or by certified mail to the address on this Agreement above, and the OWNER will have thirty (30) days to cure the breach. Failure to cure the breach within 30 days will cause this Agreement to be terminated and the financial obligation on the part of the CITY shall cease and become null and void;

L. If the OWNER removes or fails to maintain all improvements for which reimbursement by CITY is provided under the terms of this Agreement, then upon written notice being given by the City Manager to the OWNER, served in person or by certified mail to the address on this Agreement above, the OWNER has thirty (30) days to cure the breach. Should the OWNER fail to cure the breach within 30 days, the OWNER agrees to reimburse the CITY for the full amount of funding provided by the CITY under the terms of this Agreement within sixty (60) days of receipt of aforementioned written notice, with the amount of reimbursement owed to the City reduced by one-fifth (1/5) of the full amount funded by the CITY under this Agreement for every one calendar year the improvements resulting from this Agreement and the aforementioned Program are maintained in accordance with the terms of this Agreement.

M. Upon default of this Agreement by either party, other than default upon the installation of improvements as described in Paragraphs J and K, above, the OWNER and/or the CITY shall have any and all remedies available at law. Jurisdiction and venue for any dispute arising out of the performance of this Agreement shall be exclusively fixed in the Twenty-Third Judicial Circuit, DeKalb County, Illinois.

N. Owner agrees and acknowledges that any work performed that is intended to be funded or reimbursed using funds made available by the City shall be subject to the provisions of the Prevailing Wage Act, and that strict compliance with said Act and any other applicable statutes, regulations or ordinances shall be required as a condition precedent to reimbursement of any expenses incurred. Owner shall be responsible for confirming compliance with all applicable ordinances and regulations, and shall indemnify and hold harmless the City from any claims arising out of the Project, reimbursement of any expenses, or this agreement in any way. Further, Owner agrees and acknowledges that: 1) it shall have all contractors and bidders complete a set of Certifications in the form attached hereto as Exhibit A; and, b) it shall name the City of DeKalb as additional primary insured on any certificates of insurance provided in connection with the

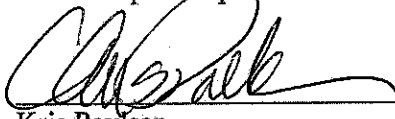
completion of the project contemplated herein.

O. Notwithstanding any contrary provision of this Agreement, no party other than City and the Owner shall be parties to this agreement, and the Owner and City expressly agree and acknowledge that there are no intended or incidental third party beneficiaries. The City shall not be party to any agreement not expressly executed by the City, and shall not be a party to a contract directly with any individual contractor or sign company contracting with Owner.

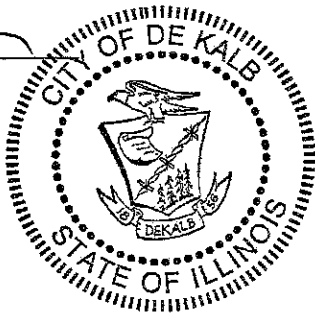
IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date first appearing above.

CITY OF DEKALB, ILLINOIS

A Municipal Corporation



Kris Povisen
Mayor



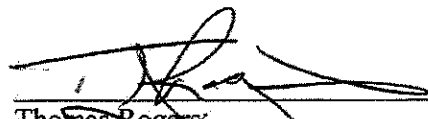
ATTEST:



Diane Wright
City Clerk

PROPERTY OWNER

145 North Third Street, DeKalb, Illinois



Thomas Rogers
Owner

Exhibit A: Certifications

Employment Status : The Bidder certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.

Anti-Bribery : The Bidder certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

Loan Default : If the Bidder is an individual, the Bidder certifies that he/she is not in default for a period of six months or more in an amount of \$600 or more on the repayment of any educational loan guaranteed by the Illinois State Scholarship Commission made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5 ILCS 385/3).

Felony Certification : The Bidder certifies that it is not barred pursuant to 30 Illinois Compiled Statutes 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.

Barred from Contracting : The Bidder certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 Illinois Compiled Statutes 5/33E or similar law of another state.

Prevailing Wage: The Bidder certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from bidding on this proposal by virtue of a past violation of the Act.

Drug Free Workplace : The Bidder certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this contract. The Drug Free Workplace Act requires, in part, that Bidders, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

Non-Discrimination, Certification, and Equal Employment Opportunity : The Bidder agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Bidder shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The Bidder agrees to incorporate this clause into all subcontracts under this Contract.

International Boycott: The Bidder certifies that neither it nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act (30 ILCS 582).

Record Retention and Audits : If 30 Illinois Compiled Statutes 500/20-65 requires the Bidder (and any subBidders) to maintain, for a period of 3 years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the City under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the City and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Bidder agrees to cooperate fully with any audit and to provide full access to all relevant materials.

United States Resident Certification : (This certification must be included in all contracts involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The Bidder certifies that he/she/it is a: United States Citizen or Corporation Resident Alien Non-Resident Alien The Internal Revenue Service requires that taxes be withheld on payments made to non resident aliens for the performance of personal services at the rate of 30%.

Tax Payer Certification : Under penalties of perjury, the Bidder certifies that its Federal Tax Payer Identification Number or Social Security Number is _____ and is doing business as a (check one): Individual Real Estate Agent Sole Proprietorship Government Entity Partnership Tax Exempt Organization (IRC 501(a) only) Corporation Not for Profit Corporation Trust or Estate Medical and Health Care Services Provider Corp.

