

AUTHORIZING A DEVELOPMENT AGREEMENT WITH AMERICAN MARKETING AND PUBLISHING COMPANY.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City and American Marketing and Publishing Company negotiated a redevelopment agreement for public and private roadway and parking improvements in the same or substantially similar form as Exhibit A attached hereto and incorporated herein (the "Agreement"); and

WHEREAS, the City's corporate authorities find that approving the Agreement is in the City's best interests for the protection of the public health, safety, and welfare; and

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

SECTION 1: The recitals to this ordinance are adopted and incorporated herein as Section One to this Ordinance.

SECTION 2: The City's corporate authorities approve, authorize, and direct the City Manager to execute the Agreement attached hereto and incorporated herein as Exhibit A, and further direct the City Manager to perform such acts which may be necessary to effect the Agreement.

SECTION 3: This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent this Ordinance is inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.


SECTION 4: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows: First reading passed at a Regular meeting held on the 26th day of September 2022 and approved by me as Mayor on the same day by a 6-0-2 roll call vote. Aye: Larson, Smith, McAdams, Verbic, Faivre, Barnes. Nay: None. Absent: Morris, Perkins. Second reading passed on October 10, 2022 and approved by me as Mayor on the same day by a 7-0-1 roll call vote. Aye: Morris, Larson, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None. Absent: Smith.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

REDEVELOPMENT AGREEMENT
(American Marketing & Publishing Company)

This Agreement (the “Agreement”) is made and entered on September 26, 2022 (the “Effective Date”), by and between the City of DeKalb (the “City”), an Illinois municipal corporation, and American Marketing & Publishing Company (the “Company”), an Illinois corporation, who are referred to individually as a “Party” and collectively as the “Parties”.

RECITALS:

WHEREAS, City is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, City may contract among corporations in any manner not prohibited by law or ordinance pursuant to Article VII, Section 10, of the Illinois Constitution of 1970; and

WHEREAS, Company serves the marketing and publishing needs of the National marketplace with quality products and services; and

WHEREAS, Company owns and operates several properties in the City which are generally located in the area between East Lincoln Highway, East Locust Street, North 9th Street, and North Tenth Street in the City of DeKalb (the “Existing Property”); and

WHEREAS, Company is agreeable to certain parking and access changes to better serve its employees and customers which require the City’s cooperation; and

WHEREAS, the proposed changes in on-street public parking will diminish traffic congestion and other access conflicts in the neighborhood; and

WHEREAS, the City’s corporate authorities find and determine that it is in the public interest to assist in the Parking Enhancements by the creation of: (1) a restrictive

narrowing of the North Ninth Street roadway at the “neck” of the area dedicated to Nehring Electric Company, between the last perpendicular parking space and E. Locust Street; (2) the creation of approximately 22 perpendicular parking spaces on N. Ninth Street in the area between East Lincoln Highway and East Locust Street; and (3) the creation of two (2) access and egress drives between the existing American Marketing parking lots and N. Tenth Street between East Lincoln Highway and East Locust Street, with the addition of approximately 10 parking stalls, as depicted in conceptual fashion in Exhibit A attached hereto and incorporated herein (the “Parking Enhancements”); and

WHEREAS, City is not prohibited by law or ordinance from exercising its powers and performing its functions as described under this Agreement; and

WHEREAS, City’s corporate authorities find that approving this Agreement is in the City’s best interests to protect the public health, safety, morals, and welfare; and

WHEREAS, the Parties are legally authorized to enter into this Agreement and to perform all of their respective undertakings and covenants set forth herein.

NOW, THEREFORE, in consideration of the promises, undertakings and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the Parties to this Agreement, the City and Company agree to the foregoing recitals.

1.0 Recitals: The following recitals are true, correct, material, adopted, and incorporated into this Agreement as if fully set forth in this section.

2.0 Parking Enhancements:

2.1 N. Ninth Street Parking. No later than one (1) year from the Effective Date, the City shall commence the construction of approximately 22 perpendicular parking stalls on N. Ninth Street in the east parkway between the public sidewalk and roadway at the City’s sole cost and expense.

2.2 N. Tenth Street Access. No later than one (1) year from the Effective Date, the City shall commence the construction of two (2) access points from the Company's parking lots to N. Tenth Street, as depicted in Exhibit A, at the City's sole cost and expense. This work will include the addition of approximately 10 new parking stalls. Company shall allow the City to perform the construction during dates and times that the Parties' respective designees may mutually agree upon.

2.3 Completion of Parking Enhancements. Subject to force majeure as defined by this Agreement, the City shall substantially complete the Parking Enhancements including, but not limited to, the City's within sixty (60) calendar days from then commencement of the construction.

3.0 Indemnification and Release. Each Party agrees to waive, release, discharge, defend, and indemnify the other Party and their respective officers, agents, and employees from and against any and all causes of action, claims, damages, liabilities, losses, costs, and reasonable attorney's fees (the "Losses") arising out of or related to this Agreement and the Parking Enhancements, except for the Losses which are proximately caused by a Party's negligence or intentional conduct. Notwithstanding the foregoing to the contrary and the contractual basis of this Agreement, the Parties shall be entitled to assert any and all defenses and immunities provided by law including, but not limited to, the Illinois Tort Immunity Act, 745 ILCS 10/1, *et seq.* The Parties' obligations under this section shall survive the termination of this Agreement.

4.0 Term: The term of this Agreement shall commence upon the Effective Date and expire two (2) years from the Effective Date, unless terminated earlier pursuant to this Agreement. Except as may otherwise be provided by this Agreement, the Parties' obligations under this Agreement shall terminate upon the expiration of the term of this Agreement.

5.0 Miscellaneous:

5.1 Assignment. During the term of this Agreement, Company may assign this Agreement subject to the City Manager's written consent, which shall not be unreasonably withheld, conditioned or delayed.

5.2 Non-Waiver. The failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect. No action taken by any party to 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 equity.

5.3 Choice of Law. This Agreement shall be governed by Illinois law.

5.4 Default. Upon a breach of this Agreement, any of the parties may secure the specific performance of the covenants and agreements herein contained or may exercise any remedies available at law or equity in an appropriate action, the sole venue for which shall be in the Circuit Court of DeKalb County, Illinois. In the event of a material breach of this Agreement, the Parties agree that the party alleged to be in breach shall have thirty (30) calendar days after written notice of said breach to correct the same prior to the non-breaching party seeking a judicial remedy as provided for herein; provided, however, that said thirty (30) calendar day period shall be extended for a reasonable period of time if the defaulting party has commenced to cure said default and is diligently proceeding to cure the same.

5.5 Force Majeure. If the performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party including, but not limited to, acts of God, war, strikes, inclement weather conditions, inability to secure governmental permits, or similar acts, but expressly excluding the COVID-19 pandemic and a Party's negligent or intentional acts or omissions ("Force Majeure"), the time for such performance shall be extended by the length of such delay; provided, however, that the party that seeks the benefit of this provision shall give the other(s) written notice of both its intent to rely upon this provision and the specific reason which permits the party to avail itself of the benefit of this provision. The Party invoking Force Majeure shall use reasonable efforts to remove or mitigate the Force Majeure.

5.6 Time. Time is of the essence for this Agreement.

5.7 Integration. This Agreement sets forth all agreements, understandings, and covenants between and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties.

5.8 Severability. If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word, or designation contained herein.

5.9 Mutual Cooperation. The Parties stipulate that their mutual cooperation is essential to the performance of their respective duties under this

Agreement. Therefore, the Parties agree to aid each other and to cooperate reasonably with each other in performing their respective duties under this Agreement.

5.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

5.11 Headings. The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

5.12 Copies. This Agreement may be reproduced by means of carbons, xerox process, or otherwise. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

5.13 Terms. Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

5.14 Notices. Notices, including Notices to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City, or the Corporate Authorities:

ATTN: City Manager
City of DeKalb
164 E. Lincoln Hwy
DeKalb, Illinois 60115

with a copy to the City Attorney:


Matthew D. Rose
Donahue and Rose, PC
9501 W. Devon Ave., Ste. 702
Rosemont, Illinois 60018

If to Company:


Abram Andrzejewski
American Market & Publishing Company
915 E. Lincoln Highway
DeKalb, Illinois 60115

(This Space Is Intentionally Omitted; Signature Page To Follow)

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed by their proper officers duly authorized to execute the same as of the Effective Date.

ATTEST: 
By: _____
Title: Ruth A. Scott, Executive Assistant

ATTEST:
By: _____
Title: _____

CITY OF DEKALB
By: 
Its: Bill Nicklas, City Manager

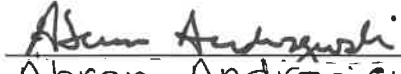
AMERICAN MARKETING
By: 
Its: Abram Andrzejewski
CEO

EXHIBIT A
(Conceptual Rendering of the Improvements)

American Marketing & Publishing Parking Enhancements



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Created: 9/15/2022 DJE



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