

RESOLUTION 11-11

Passed February 14, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN AN AGREEMENT FOR THE PURPOSE OF SECURING A RENEW DEKALB, INC., PHASE III ARCHITECTURAL IMPROVEMENT PROGRAM PROJECT WITH PROPERTY LOCATED AT 260 EAST LINCOLN HIGHWAY.

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, Illinois, is authorized and directed to sign an agreement with the following party to secure a project previously authorized through the City of DeKalb/ReNew DeKalb, Inc., Phase III Architectural Improvement Program located at 241 East Lincoln Highway:

**Universal Restaurant Group, Inc.
260 East Lincoln Highway**

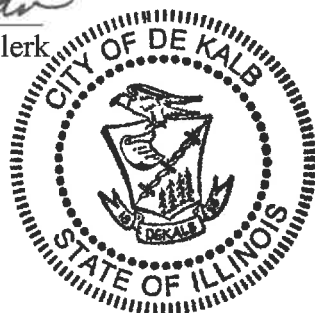
Section 2. That the terms and conditions of the agreement shall follow the form in the copy of the Funding Agreement attached as Exhibit "1".

Section 3. That the City Clerk of the City of DeKalb is 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 14th day of February, 2011 and approved by me as Mayor on the same day. Passed on roll call vote: 6-1. Aye: Simpson, Teresinski, Verbic, Gallagher, Baker, Kammes. Nay: Naylor.

ATTEST:


STEVEN C. KAPITAN, City Clerk





KRIS POVLSSEN, Mayor

EXHIBIT "1"

**CITY OF DEKALB / RE:NEW DEKALB INC.
ARCHITECTURAL IMPROVEMENT PROGRAM**

ARCHITECTURAL IMPROVEMENT FUNDING AGREEMENT

THIS AGREEMENT entered into this 15th day of February, 2011 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: Universal Restaurant Group, Inc.
Address of Property improved: 241 East Lincoln Highway, DeKalb, Illinois 60115
and secured by property located at 241 East Lincoln Highway and 260 East Lincoln Highway, DeKalb Illinois 60115

WITNESSETH:

WHEREAS, the City has established an Architectural Improvement Program ("Program") for application within a portion of the City of DeKalb Central Business District ("District"); and,

WHEREAS, said Program is administered by ReNew DeKalb, Inc., with funding decisions made by the CITY with the advice of the Architectural Improvement Review Committee; and,

WHEREAS, said Program is funded from TIF funds for the purpose of controlling and preventing blight and deterioration within the District, and to encourage the further redevelopment of properties in the District in accordance with the general guidelines set forth in the Program; and,

WHEREAS, on October 8, 2007, the DeKalb City Council approved a Phase III Architectural Improvement Project in an amount not to exceed \$25,000 for property located at 241 East Lincoln Highway, DeKalb, which is located within the defined Program area; and,

WHEREAS, pursuant to the Program the CITY agreed to financially participate, subject to its sole discretion, the Program Guidelines, and the terms and conditions set forth in the Architectural Improvement Agreement between the CITY and the OWNER dated November 30, 2007; and,

WHEREAS, the OWNER desired to participate in the Program, subject to the Program Guidelines and the terms and conditions set forth in the Architectural Improvement Agreement between the CITY and the OWNER dated November 30, 2007; and,

WHEREAS, the OWNER now desires to sell the business "The Upper Deck" which is located inside the property at 241 East Lincoln Highway. The sale of the business is considered a default of the aforementioned agreement and the remaining \$9,825.60 balance on the Architectural Improvement Project Loan is now due and payable; and,

WHEREAS, the OWNER has requested that in lieu of default, the \$9,825.60 balance on the Architectural Improvement Project Loan be further secured by property located at 260 East Lincoln Highway; and,

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

A. The \$9,825.60 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 all previous payments or disbursements made by the CITY shall be considered reimbursements for work completed at 241 East Lincoln Highway 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;

C. OWNER agrees to maintain all improvements at 241 East Lincoln Highway for a period of twenty two (22) months from the date of this agreement, except for minor changes such as repainting or other maintenance items, or the changing of sign panels and such due to changes in tenants, 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;

D. OWNER agrees that any minor changes or further improvements at 241 East Lincoln Highway, 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;

E. 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;

F. Nothing herein is intended to limit, restrict or prohibit the OWNER from undertaking any other work in or about at 241 East Lincoln Highway, which is unrelated to the architectural improvements provided for in this Agreement;

G. The Owner agrees that it shall maintain its ownership rights at 241 East Lincoln Highway and 260 East Lincoln Highway for a period of twenty two (22) months from the date of this agreement. The Owner further agrees that both properties shall be operated as a restaurant/bar holding a valid liquor license issued by the City of DeKalb with no lapse in continuous operation of such business for a period of more than one hundred eighty (180) days, without prior written consent of the City of DeKalb. This Agreement shall be binding upon and inure to the benefit of the CITY and the OWNER, and their heirs, for a period of twenty two (22) months from the date this Agreement. Further, a mortgage shall be recorded on property locate at 260 East Lincoln Highway with the DeKalb County Recorder of Deeds;

H. If the OWNER fails to comply with any 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, this Agreement shall be terminated and the financial obligation on the part of the CITY shall cease and become null and void and any sums due and owing shall be payable under the terms of the Notes and Mortgages herewith;

I. If the OWNER removes or fails to maintain all improvements at 241 East Lincoln Highway for which reimbursement by CITY was provided, 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 agrees to reimburse the CITY for the full amount of funding provided by the CITY under the terms of this Agreement within thirty (30) days of receipt of aforementioned written notice, with the

amount of reimbursement owed to the City reduced by one-half (1/2) of the amended full amount secured by the CITY under this Agreement on November 30, 2011 and that the balance of the amended full amount secured by the City shall equal Zero Dollars and No Cents (\$0.00) on November 30, 2012 as long as the improvements resulting from this Agreement and the aforementioned Program are maintained in accordance with the terms of this Agreement.

J. Upon default of this Agreement by either party, other than default upon the installation of improvements, the OWNER and/or the CITY shall have any and all remedies available at law.

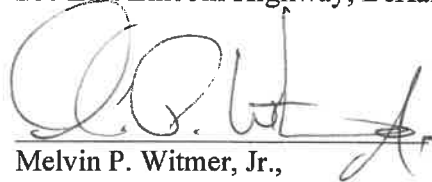
IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date first appearing above.

CITY OF DEKALB, ILLINOIS
A Municipal Corporation



Kris Povlsen
Mayor

PROPERTY OWNERS
Universal Restaurant Group, Inc.,
260 East Lincoln Highway, DeKalb, Illinois

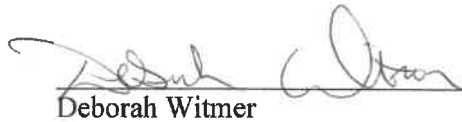


Melvin P. Witmer, Jr.,

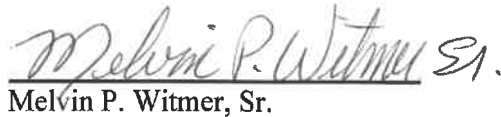
ATTEST:



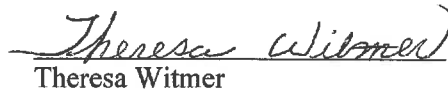
Steven Kapitan
City Clerk



Deborah Witmer



Melvin P. Witmer, Sr.



Theresa Witmer

11 MAY 26 AM 10: 15

Prepared by and
Return to:
City of DeKalb
Economic Development
Department
223 South Fourth Street
DeKalb, IL 60115

33-
8 pgs


DEKALB COUNTY RECORDER

2011005635

MORTGAGE

THIS MORTGAGE is made on this 15th day of February, 2011. The mortgagors are Melvin P. Witmer, Sr. and Melvin P. Witmer, Jr. ("Borrower"). This Security Instrument is given to the CITY OF DEKALB, Illinois, an Illinois municipal corporation, and whose address is 200 South Fourth Street, DeKalb, Illinois ("Lender"). Borrower owes Lender the principal sum of Nine Thousand Eight Hundred Twenty Five and 60/100's (\$9,825.60), which will otherwise be considered a grant from the Lender to the Borrower if Borrower complies with all the conditions contained in Borrower's Note attached hereto as Exhibit "A" dated the same date as this Security Instrument ("Mortgage") and with all the conditions stated in Borrower's Agreement attached hereto as Exhibit "I" dated the same date as this Security Instrument ("Mortgage").

If Borrower fails to comply with the conditions in the Note, then the principal sum above shall be paid within thirty (30) days of such default, or if the Borrower's conveyance or transfer of any right, title or interest in the secured property occurs within the time limits indicated in the Note.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note; and (b) the performance of the Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following legally described property located in DeKalb, Illinois:

Legal:

LOT 51 OF BLOCK 11 OF THE COUNTY CLERK'S SUBDIVISION OF BLOCKS 11, 12, 14 AND 15 OF THE ORIGINAL VILLAGE (NOW CITY) OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN THE RECORDER'S OFFICE OF DEKALB COUNTY, ILLINOIS IN BOOK "C" OF PLATS, PAGE 42, SITUATED IN DEKALB COUNTY, ILLINOIS.

Commonly known as: 260 East Lincoln Highway, DeKalb, Illinois 60115
PIN:08-23-163-011

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

2011005635

It is expressly understood by the Borrower, who is the maker of the Note, that upon compliance by the Borrower with the terms and conditions of the Note and upon payment in full of said Note (if required under conditions in the Note), the Note together with this Mortgage shall be released.

If all or part of the secured property or any interest therein is sold or transferred without the City of DeKalb's prior written consent, the Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. If the Lender exercises this option, the Lender shall give the Borrower notice of such action. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which the Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums before the expiration of this period, the Lender will invoke all remedies permitted by this Mortgage without further notice or demand on Borrower.

If default is made in the payment of said Note secured by this Mortgage or the conditions above-mentioned, the Lender may enter into or upon and take possession of the premises hereby granted, or any part thereof, and may collect rents, issues and profits thereof, and in its own name or otherwise, may file a complaint against the Borrower, his/her/their/its heirs, executors, administrators and assigns, to obtain a decree of foreclosures and for the sale and conveyance of the whole or any part of said premises for the purposes herein specified, by said Lender, under order of court, and out of the proceeds of any such sale shall first pay the costs of such suit, all costs of advertising sale and conveyance, including reasonable attorney's fees.

Any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing it by certified mail unless applicable law requires use of another method. The notice shall be directed to the property address or any other address Borrower designates by notice to the Lender. Any notice to the Lender shall be given by certified mail to the City Manager, 200 South Fourth Street, City of DeKalb, Illinois, 60115, or any other address the Lender designates by notice to the Borrower. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or the Lender when given as provided for in this paragraph.

In witness whereof, the Borrower has executed this Mortgage on the day and year first above written.

PROPERTY OWNERS:

Melvin P. Witmer Sr.
 Melvin P. Witmer, Sr.

STATE OF ILLINOIS)
) SS
 COUNTY OF DEKALB)

I, VICTORIA J. MAUER, a Notary Public in and for the County of DeKalb, in the State of Illinois, do hereby certify that Melvin P. Witmer, Sr., personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that he/she/their signed, sealed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes

therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notary seal, given this 8th day of February 2011.

Victoria J. Maurer
Notary Public



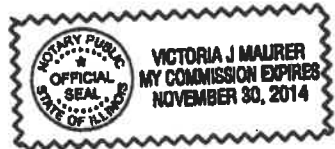
Melvin P. Witmer, Jr.
Melvin P. Witmer, Jr.

STATE OF ILLINOIS)
) SS
COUNTY OF DEKALB)

I, VICTORIA J. MAURER, a Notary Public in and for the County of DeKalb, in the State of Illinois, do hereby certify that Melvin P. Witmer, Jr., personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that he/she/their signed, sealed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notary seal, given this 8th day of February 2011.

Victoria J. Maurer
Notary Public



UNOFFICIAL

EXHIBIT "A"

**PROMISSORY NOTE
CITY OF DEKALB, ILLINOIS**

February 14, 2011

\$9,825.60

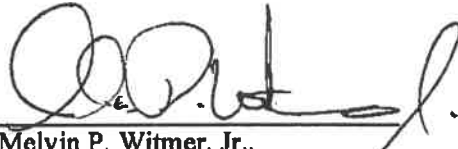
FOR VALUE RECEIVED, Universal Restaurant Group, Inc., as owners of the real property located at 260 East Lincoln Highway DeKalb, Illinois, out of that portion of the real estate mortgaged to secure the payment hereof, TO PAY TO THE ORDER OF the CITY OF DEKALB, or BEARER in the manner hereinafter and in said Mortgage provided, the balance of the principal sum of Nine Thousand Eight Hundred Twenty Five and 60/100's (\$9,825.60). The balance of the principal sum owed the BEARER shall be reduced by one-half (1/2) of the original principal sum on November 30, 2011, such that the balance of the principal sum for this Note shall equal Zero Dollars and No Cents (\$0.00) on November 30, 2012.

The payment of the balance of the principal sum is to be made at the principal offices of the City of DeKalb, Illinois.

The payment of this Note is secured by a Mortgage, bearing even date herewith, to CITY OF DEKALB, on real estate in the City of DeKalb, DeKalb County, Illinois. It is agreed that at the election of the holder or holders hereof and without notice, the principal sum remaining unpaid hereon shall become at once due and payable at the place of payment aforesaid in case of default in the payment of principal or interest when due in accordance with the terms hereof or in case at any time hereafter the right to foreclose said Mortgage shall accrue to the legal holders hereof under any of the provisions contained in said Mortgage. All costs and expenses of collection, including reasonable attorneys' fees, shall become additional indebtedness secured by said Mortgage.

If, prior to November 30, 2011, all or any part of the property or any interest in it is sold or transferred (or if beneficial interest in undersigned is sold or transferred and undersigned is not a natural person) or the property ceases to be the primary business location of undersigned, without prior written consent of the City of DeKalb, or if the property owner fails to comply with any provision in the Architectural Improvement Funding Agreement, attached here to as Exhibit "1", the City of DeKalb may, at its option, require immediate payment in full of all sums secured by said Mortgage. City of DeKalb may elect to declare default and may elect to shall abate all collection and cancel said Promissory Note in the event of involuntary transfer or conveyance. Involuntary transfer shall mean a transfer, assignment or conveyance arising by death, bankruptcy, act of God or operation of law, in which this obligation shall become the liability of the heirs, devisees, or assignees to which the property has been involuntarily transferred. All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest.

PROPERTY OWNERS
260 East Lincoln Highway, DeKalb, Illinois



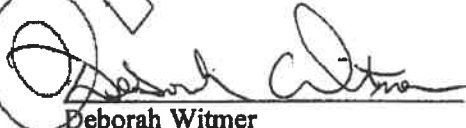
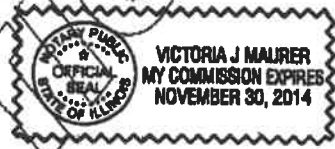
Melvin P. Witmer, Jr.,
President, Universal Restaurant Group

STATE OF ILLINOIS)
) SS
COUNTY OF DEKALB)

I, VICTORIA J. MAURER, a Notary Public in and for the County of DeKalb, in the State of Illinois, do hereby certify that Melvin P. Witmer, Jr., personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that he/she/their signed, sealed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notary seal, given this 8th day of February, 2011.

Victoria J. Maurer
Notary Public



Deborah Witmer
Secretary, Universal Restaurant Group

STATE OF ILLINOIS)
) SS
COUNTY OF DEKALB)

I, VICTORIA J. MAURER, a Notary Public in and for the County of DeKalb, in the State of Illinois, do hereby certify that Deborah Witmer, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that he/she/their signed, sealed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notary seal, given this 8th day of February, 2011.

Victoria J. Maurer
Notary Public

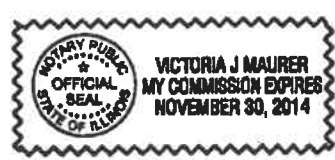


EXHIBIT "1"

**CITY OF DEKALB / RE:NEW DEKALB INC.
ARCHITECTURAL IMPROVEMENT PROGRAM**

ARCHITECTURAL IMPROVEMENT FUNDING AGREEMENT

THIS AGREEMENT entered into this 15th day of February, 2011 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: Universal Restaurant Group, Inc.
Address of Property improved: 241 East Lincoln Highway, DeKalb, Illinois 60115
and secured by property located at 241 East Lincoln Highway and 260 East Lincoln Highway, DeKalb Illinois 60115

WITNESSETH:

WHEREAS, the City has established an Architectural Improvement Program ("Program") for application within a portion of the City of DeKalb Central Business District ("District"); and,

WHEREAS, said Program is administered by Renew DeKalb, Inc., with funding decisions made by the CITY with the advice of the Architectural Improvement Review Committee; and,

WHEREAS, said Program is funded from TIF funds for the purpose of controlling and preventing blight and deterioration within the District, and to encourage the further redevelopment of properties in the District in accordance with the general guidelines set forth in the Program; and,

WHEREAS, on October 8, 2007, the DeKalb City Council approved a Phase III Architectural Improvement Project in an amount not to exceed \$25,000 for property located at 241 East Lincoln Highway, DeKalb, which is located within the defined Program area; and,

WHEREAS, pursuant to the Program the CITY agreed to financially participate, subject to its sole discretion, the Program Guidelines, and the terms and conditions set forth in the Architectural Improvement Agreement between the CITY and the OWNER dated November 30, 2007; and,

WHEREAS, the OWNER desired to participate in the Program, subject to the Program Guidelines and the terms and conditions set forth in the Architectural Improvement Agreement between the CITY and the OWNER dated November 30, 2007; and,

WHEREAS, the OWNER now desires to sell the business "The Upper Deck" which is located inside the property at 241 East Lincoln Highway. The sale of the business is considered a default of the aforementioned agreement and the remaining \$9,825.60 balance on the Architectural Improvement Project Loan is now due and payable; and,

WHEREAS, the OWNER has requested that in lieu of default, the \$9,825.60 balance on the Architectural Improvement Project Loan be further secured by property located at 260 East Lincoln Highway; and,

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

- A. The \$9,825.60 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 all previous payments or disbursements made by the CITY shall be considered reimbursements for work completed at 241 East Lincoln Highway 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;
- C. OWNER agrees to maintain all improvements at 241 East Lincoln Highway for a period of twenty two (22) months from the date of this agreement, except for minor changes such as repainting or other maintenance items, or the changing of sign panels and such due to changes in tenants, 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;
- D. OWNER agrees that any minor changes or further improvements at 241 East Lincoln Highway, 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;
- E. 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,
- F. Nothing herein is intended to limit, restrict or prohibit the OWNER from undertaking any other work in or about at 241 East Lincoln Highway, which is unrelated to the architectural improvements provided for in this Agreement;
- G. The Owner agrees that it shall maintain its ownership rights at 241 East Lincoln Highway and 260 East Lincoln Highway for a period of twenty two (22) months from the date of this agreement. The Owner further agrees that both properties shall be operated as a restaurant/bar holding a valid liquor license issued by the City of DeKalb with no lapse in continuous operation of such business for a period of more than one hundred eighty (180) days, without prior written consent of the City of DeKalb. This Agreement shall be binding upon and inure to the benefit of the CITY and the OWNER, and their heirs, for a period of twenty two (22) months from the date this Agreement. Further, a mortgage shall be recorded on property locate at 260 East Lincoln Highway with the DeKalb County Recorder of Deeds;
- H. If the OWNER fails to comply with any 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, this Agreement shall be terminated and the financial obligation on the part of the CITY shall cease and become null and void and any sums due and owing shall be payable under the terms of the Notes and Mortgages herewith;
- I. If the OWNER removes or fails to maintain all improvements at 241 East Lincoln Highway for which reimbursement by CITY was provided, 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 agrees to reimburse the CITY for the full amount of funding provided by the CITY under the terms of this Agreement within thirty (30) days of receipt of aforementioned written notice, with the

amount of reimbursement owed to the City reduced by one-half (1/2) of the amended full amount secured by the CITY under this Agreement on November 30, 2011 and that the balance of the amended full amount secured by the City shall equal Zero Dollars and No Cents (\$0.00) on November 30, 2012 as long as the improvements resulting from this Agreement and the aforementioned Program are maintained in accordance with the terms of this Agreement.

J. Upon default of this Agreement by either party, other than default upon the installation of improvements, the OWNER and/or the CITY shall have any and all remedies available at law.

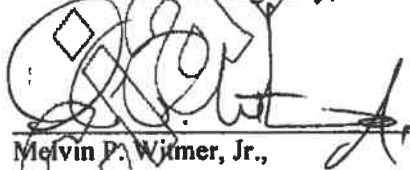
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CITY OF DEKALB, ILLINOIS
A Municipal Corporation



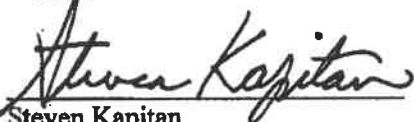
Kris Povlsen
Mayor

PROPERTY OWNERS
Universal Restaurant Group, Inc.,
260 East Lincoln Highway, DeKalb, Illinois

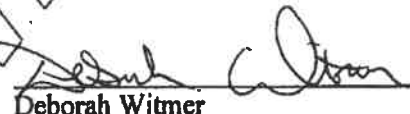


Melvin P. Witmer, Jr.,

ATTEST:




Steven Kapitan
City Clerk



Deborah Witmer



Melvin P. Witmer, Sr.



Theresa Witmer