

RESOLUTION 11-24 Passed April 11, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO ENTER INTO A PROPERTY TAX REBATE AGREEMENT WITH ALPHA PROPERTY GROUP, LLC AND H. A. PHILLIPS & CO. FOR PROPERTY LOCATED AT 770 ENTERPRISE DRIVE.

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

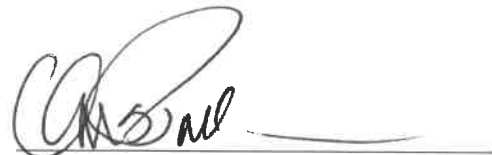
Section 1. That the Mayor of the City of DeKalb, Illinois, is authorized and directed to sign an agreement with Alpha Property Group, LLC and H.A. Phillips and Co. for a property tax rebate for property located at 770 Enterprise Drive, DeKalb, IL, a copy of which is attached hereto and made a part hereof as Exhibit "A".

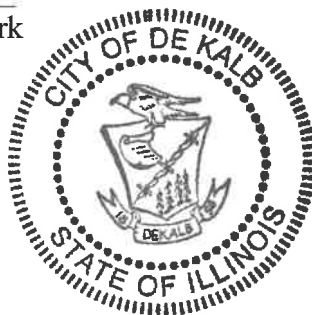
Section 2. That the City Clerk of the City of DeKalb is authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 11th day of April, 2011 and approved by me as Mayor on the same day. Passed in omnibus form, under the consent agenda, on a roll call vote: 8-0. Aye: Simpson, Teresinski, Verbic, Gallagher, Naylor, Baker, Kammes, Povlsen.

ATTEST:


STEVEN C. KAPITAN, City Clerk


KRIS POVLSSEN, Mayor



**CITY OF DEKALB
PROPERTY TAX REBATE AGREEMENT**

THIS AGREEMENT, made this 11TH day of APRIL, 2011, by and between the City of DeKalb, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "City"), Alpha Property Group, LLC (hereinafter referred to as the "Developer"), and H.A. Phillips & Co., (hereinafter referred to as the "Company).

Recitals

WHEREAS, the City is a home rule municipality under the Constitution and laws of the State of Illinois; and

WHEREAS, the City has established various TIF Districts to attract development including the Central Area TIF District established by Ordinance 86-78 which includes property located at 770 Enterprise Drive, the legal description for which is attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, the City has and continues to provide tax rebates and other incentives that encourage the retention and attraction of business and industry in the City; and,

WHEREAS, the purposes of the incentives are intended to help create jobs and build the City's tax base; and,

WHEREAS, said incentives are 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 Central Area TIF Redevelopment Plan and Project Area; and,

WHEREAS, it is generally recognized that jobs are retained and increased by the expansion of existing business and industry; and,

WHEREAS, the Developer has a contract to purchase 770 Enterprise Drive and plans to construct a twenty two thousand (22,000) square foot building (hereinafter referred to as the "Property"); and,

WHEREAS, H.A. Phillips & Co., is a well established, existing Company seeking to relocate its operations to the City on the Property owned by the Developer and intends to relocate approximately twenty six (26) jobs within its existing work force; and,

WHEREAS, the Company will be leasing the Property from the Developer and will be responsible for the payment of the property taxes. The Company has indicated that it can lease the Property only with the provision of appropriate incentives by the City.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The above recitals are incorporated herein as though fully set forth in this Paragraph 1.

2. The City shall provide property tax rebate of its portion of the real estate property taxes to the Company for the Property, parcel identification number 08-24-301-018 referenced herein, in accordance with the terms and conditions of this Paragraph.

a. In the first full tax year following issuance of the final occupancy permit, the City will rebate ninety percent (90%) of the City's portion of the property taxes assessed on the Property. The Company's entitlement to this rebate is contingent on compliance with obligations outlined in paragraphs 3, 4, 5, 6, and 8 of this Agreement.

b. In the second full tax year following issuance of the final occupancy permit, the City will rebate eighty percent (80%) of the City's portion of the property taxes assessed on the Property. The Company's entitlement to this rebate is contingent on compliance with obligations outlined in paragraphs 3, 4, 5, 6, and 8 of this Agreement.

c. In the third full tax year following issuance of the final occupancy permit, the City will rebate fifty percent (50%) of the City's portion of the property taxes assessed on the Property. The Company's entitlement to this rebate is contingent on compliance with obligations outlined in paragraphs 3, 4, 5, 6, and 8 of this Agreement.

d. In the fourth full tax year following issuance of the final occupancy permit, the City will rebate fifty percent (50%) of the City's portion of the property taxes assessed on the Property. The Company's entitlement to this rebate is contingent on compliance with obligations outlined in paragraphs 3, 4, 5, 6, and 8 of this Agreement.

e. In the fifth full tax year following issuance of the final occupancy permit, the City will rebate fifty per cent 50% of the City's portion of the property taxes assessed on the Property. The Company's entitlement to this rebate is contingent on compliance with obligations outlined in paragraphs 3, 4, 5, 6, and 8 of this Agreement.

3. The Developer shall construct the twenty two thousand square foot building on 770 Enterprise Drive, no later than December 31, 2011. Occupancy of the building by the Company shall be within 90 days of the issuance of the final occupancy permit. The Company agrees that it will fully operate or cause to be operated and occupy the Property for the term of this Agreement.

4. The Company and the Developer shall invest at least two million forty five thousand dollars (\$2,045,000) in building and equipment to be installed in or about the Property during the first year of the project, as set forth Exhibit "B," attached hereto and incorporated herein.

5. The Company shall move and retain twenty six (26) full-time permanent jobs from its South Elgin, Illinois facility and shall maintain these positions, at the time of its occupancy of the building and during the pendency of this Agreement and shall supply the City with proof of the number of such positions each year in an affidavit, as set forth in Exhibit "C," and which is attached hereto and incorporated herein, on or before October 1 of each year of this Agreement, beginning with the second full tax year after the issuance of the final occupancy permit. The Company anticipates that the average annual wage for its employees at the Property

will be thirty five thousand dollars (\$35,000) per year. The Company agrees that for its employees³ at the Property, no starting wage shall be less than eleven dollars (\$11.00) per hour and the average hourly wage shall be at least fourteen dollars (\$14.00) per hour.

6. To establish a right of rebate of property taxes for the Property pursuant to Section 2 above, the Developer shall submit proof of its payment of all TIF-Eligible Expenses, allowed under the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et. seq.*), (the "Act) and are consistent with the Project Budget itemized in the Tax Increment Redevelopment Plan for the Central Area Tax Increment Financing District, it incurred in the construction of the building for which it will seek rebate of future TIF property taxes, within 90 days of the date of the final occupancy permit issued for the building. In no event shall the total of future TIF property tax increment rebates exceed the amount of documented and approved TIF-Eligible Expenses submitted by the Developer.

The Company shall submit proof of payment of all TIF property taxes by October 1 of the second full tax year following the issuance of the final occupancy permit and of each subsequent year for which it requests a rebate. The amount of the City's reimbursement to the Company for TIF property taxes paid each year shall be deducted from the total amount of TIF-Eligible Expenses submitted by the Company and approved by the City Manager. At such time as the total of TIF property tax increment rebates equals the amount of documented and approved TIF-Eligible Expenses, the Company shall no longer be entitled to any further rebates. In the event the TIF District expires prior to the TIF property tax rebates equaling documented and approved TIF-eligible expenses, the City shall be under no obligation to provide additional funding or reimbursement to the Company or Developer for these expenses.

7. The Company agrees to comply with all conditions of approval of this Agreement, and shall maintain the building and premises in accordance with all pertinent regulations, ordinances, or codes of the City of DeKalb or such other authority having jurisdiction over the subject property. The Company further agrees that it shall not be a defaulter in any financial obligation that it may have to the City.

8. To establish a right of rebate for a Reimbursable Project Cost, contingent upon the Company and Developer's obligations set forth in Sections 3, 4, 5 and 6 above, the Developer shall submit to the City Manager (or his designee) proof of payment of all TIF-Eligible Expenses it incurred in the construction of the building within 90 days of the date of the issuance of the final occupancy permit for the building. At this time, the Developer shall also submit true and correct copies of such bills, contracts, invoices, final waivers of lien, certified payroll records of contractors, or other documentation as the City shall reasonably require to evidence the Company's right to rebate under this Agreement, a certification of the Developer that the costs reflected have been paid or incurred and that such costs are TIF eligible Redevelopment Project Costs as defined in the Act and are consistent with the Project Budget itemized in the Tax Increment Redevelopment Plan for the Central Area Tax Increment Financing District. The Company shall not be entitled to reimbursement for TIF-Eligible Expenses for which the City has already made reimbursement to the Developer or Company. The City Manager (or his designee) shall have thirty (30) days after receipt of the Developer's TIF-eligible costs list to approve or disapprove each item submitted, and if disapproved, to provide Developer in writing and in detail with an explanation as to why the City Manager (or his designee) is not prepared to approve such item citing with specificity the basis for such disapproval pursuant to the terms of this Agreement.

Within 30 days of the Company submitting proof of payment of its TIF property taxes each year, the City will make payment to the Company for the relevant proportionate amount as described in Section 2. above. At that time, the City will deduct the amount reimbursed for TIF property taxes from the total amount of TIF-Eligible Expenses previously approved by the City Manager.

9. During the term of this Agreement, in the event that the Company ceases operation or fails to comply with the terms of paragraphs 3, 4, 6 or 8 herein, the rebate shall immediately terminate, and the City shall be eligible to receive back the full value of the taxes heretofore rebated under the conditions established in the Revenue Act (35 ILCS 200/18-183). Refund of the rebate shall be remitted to the City within sixty (60) days from the date of the breach.

In the event that the Company fails to comply with the terms of paragraph 5 herein, by reducing the size of the project as defined by this Agreement, the Company agrees to a reduction in the size of the rebate by a ratio equal to the reduction in the size of the project. In the event that there is a reduction in the number of employees greater than 5%, up to a maximum of 25%, from what is referenced in paragraph 5 of this Agreement, the Company agrees that the size of the rebate shall be reduced by a ratio proportionate to the size of the reduction in the number of employees. In the event that there is a reduction in the number of employees greater than 25%, the Company agrees to forfeit all rebate monies for that particular tax year.

10. For the first full tax year following completion of the building and the Property's reassessment by the DeKalb Township Assessor, the Company hereby agrees that it shall not file an objection to the property tax assessment or real estate property taxes levied on the Property. For the remaining term of this Agreement, the Company hereby agrees that it shall not file an objection to the property tax assessment or real estate property taxes levied on the Property, if the Equalized Assessed Valuation is within ten percent (10%) of the prior year's assessment as then determined by the Supervisor of Assessments of DeKalb County.

11. Upon material breach of this Agreement, the City, in any court of competent jurisdiction, by an action or proceeding at law or equity, may secure the specific terms of performance as set forth by this Agreement and may be awarded damages for failure of performance.

In the event of a material breach or failure to perform any of its obligations as defined by the terms of this Agreement, the Non-Defaulting Party shall give written notice of the default to the defaulting party. The party alleged to be in default shall have thirty (30) days after receiving written notice of default to correct the default prior to the Non-Defaulting Party seeking remedy as provided for herein. However, the thirty (30) day period may be extended an additional thirty (30) days by the City if the Defaulting Party has initiated the cure of said default and is diligently proceeding to cure the breach.

In the event that said thirty (30) day period has been extended and the breach has not been cured, the Non-Defaulting Party shall have the right (but not the obligation) to take such action as, in its reasonable discretion and judgment, shall be necessary to cure such default. In such event, the Defaulting Party hereby agrees to pay and reimburse the Party affected by such

default for all reasonable costs and expenses (including attorneys' fees and litigation expenses) incurred by it in connection with any action taken to cure such default.

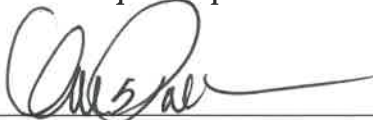
12. The Company agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from this Agreement, the construction, improvement and development activities of the Company, its agents, contractors and subcontractors with respect to the development or improvement of its property, and to defend and indemnify and save, the City and its respective officers, elected and appointed, agents, employees, engineers and attorneys (the "Indemnitees") harmless of, from and against such claims, damages, demands, expenses, liabilities and losses, except to the extent such claims, damages, demands, expenses, liabilities and losses arise by reason of the gross negligence or willful or wanton act or omission of the City.

13. The terms of this Agreement shall bind, and inure to the benefit of, the parties hereto and their agents, successors and assignees.

14. This Agreement shall be in effect for a period equal to the full duration of the tax rebate as defined herein.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date so shown at the beginning.

CITY OF DEKALB
A Municipal Corporation



Kris Povlsen, Mayor

THE COMPANY:
H.A. Phillips & Co.



President

H.A. Phillips & Co.

ATTEST:



Steven C. Kapitan, City Clerk



Secretary
H.A. Phillips & Co.



THE DEVELOPER
Alpha Property Group, LLC



Name
Member

EXHIBIT "A"

LEGAL DESCRIPTION
770 ENTERPRISE DRIVE
PIN #08-24-201-018-0000

LOT 10 IN AIRPORT NORTH INDUSTRIAL PARK, UNIT THREE, A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 1ST, 1997 AS DOCUMENT NO.97003712, IN BOOK "Z" OF PLATS, PAGE 237, IN DEKALB COUNTY, ILLINOIS.

EXHIBIT "B"

PROJECT SUMMARY AND COSTS

Description	Cost	TIF Eligible Expense
Land Purchase, 770 Enterprise Drive	\$150,000.00	Yes
Phase I Environmental Assessment	\$0.00	
Engineering	\$53,000.00	Yes
Building Construction (22,000 sqft)	\$1,720,000.00	
Equipment	\$0.00	
Bridge Crane	\$145,000.00	
Relocation Costs		
TOTAL	\$2,068,000.00	

EXHIBIT "C"

PROJECT INVESTMENT AND EMPLOYMENT AFFIDAVIT

AFFIDAVIT OF H.A. PHILLIPS & CO.

Affiant, _____, being first duly sworn and upon oath, states as follows:

1. I am of legal age and under no legal disabilities.
2. If called upon, I could competently and truthfully testify to the facts stated herein.
3. I am the _____ of H.A. Phillips & Co.
4. I am submitting this affidavit per the requirements of Paragraphs 3, 4, 5, 6 and 8 in the development agreement between H.A. Phillips & Co. and the City of DeKalb, dated _____, 2011.
5. H.A. Phillips & Co. completed the construction of a 22,000 square foot building located at 770 Enterprise Drive by December 31, 2011 and the building has been in occupied since _____.
6. As of October 1, 2013, H.A. Phillips & Co. has invested at least two million sixty eight thousand dollars (\$2,068,000) in building and equipment for the project located at 770 Enterprise Drive.
7. To establish a right of rebate of the property taxes for H.A. Phillips & Co.'s TIF property, H.A. Phillips & Co. has submitted proof to the City of DeKalb of all TIF-eligible expenses allowed under the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et. seq.*) incurred during the construction of the warehouse located at 770 Enterprise Drive, DeKalb, IL, a copy of which is attached hereto and made a part hereof as Exhibit "A".
8. The total amount of TIF-eligible expenses allowed under the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et. seq.*) incurred during the construction of the warehouse located at 770 Enterprise Drive, DeKalb, IL is \$ _____.
9. As of October 1, 2013, H.A. Phillips & Co. has relocated and maintained twenty six (26) full-time permanent positions since the completion of the building, whose average annual wage is at least \$35,000.

AFFIANT FURTHER SAYETH NAUGHT.

Name
H.A. Phillips & Co.

Subscribed and sworn to before me this ____ day of _____, 201_.

Notary Public