

**RESOLUTION AUTHORIZING  
EXECUTION OF BUSINESS DEVELOPMENT AGREEMENT  
ESTOPPEL AND CONFIRMATION**

**Viking-TDC Huntley, LLC**

**Resolution (R)2012-05.19**

WHEREAS, the Village of Huntley and TDC Huntley, LLC entered into a Business Development Agreement on March 1, 2007 for the commercial property known as Huntley Grove; and

WHEREAS, TDC Huntley, LLC intends to assign all of its rights under the Business Development Agreement to Viking-TDC Huntley, LLC (VTH) upon VTH's acquisition of the property known as Huntley Grove; and

WHEREAS, the Business Development Agreement provides for the assignment of all of TDC's rights; and

WHEREAS, VTH has requested the Village execute an Estoppel and Confirmation Agreement prior to acquiring title to the property.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF HUNTLEY as follows:

SECTION I: The Village of Huntley approves the execution of the Business Development Agreement Estoppel and Confirmation.

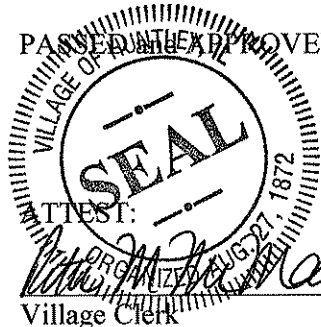
SECTION II: The Village President and Village Clerk are authorized to execute said Business Development Agreement in the form attached hereto and a copy of which is incorporated herein.

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

SECTION IV: All Resolutions and parts of resolutions in conflict herewith are hereby repealed.

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Fender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Hanson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Kanakaris	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trustee Leopold	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Piwko	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this 10<sup>th</sup> day of May, 2012.



APPROVED:

  
Village President

**BUSINESS DEVELOPMENT AGREEMENT**  
**ESTOPPEL AND CONFIRMATION**

**THIS BUSINESS DEVELOPMENT AGREEMENT ESTOPPEL AND CONFIRMATION** (this "Estoppel") is made effective as of the \_\_\_\_ day of May, 2012 (the "Effective Date") by **VILLAGE OF HUNTLEY**, a municipal corporation organized under the laws of the State of Illinois (the "Village") for the benefit of **VIKING-TDC HUNTLEY, LLC**, an Illinois limited liability company ("VTH"), together with any entities with which such entity shall in the future contract to sell any of its assets or business, and any lender providing financing for such entity or any such purchase (collectively the "Beneficiary").

1. **Recitals.** On March 1, 2007, the Village and TDC Huntley, LLC ("TDC") entered into a Business Development Agreement (the "Business Development Agreement") pursuant to which the Village agreed to pay certain tax revenue from the real property described therein (the "Property") to TDC. Following the execution of this Estoppel, VTH intends to acquire title to the Property and accept an assignment of all of TDC's rights under the Business Development Agreement. The Village acknowledges that VTH will rely on the statements contained herein in closing such acquisition.

2. **Village's Estoppel.** The Village hereby certifies to VTH as follows:

(a) As of the Effective Date, a true, correct and complete copy of the Business Development Agreement and all amendments thereto is attached hereto as Exhibit A. The Business Development Agreement is unmodified and in full force and effect.

(b) As of the Effective Date, TDC Huntley, LLC and the Village each are in full compliance with the terms of the Business Development Agreement and no default exists as of the Effective Date.

(c) As of the effective date, the aggregate amount of Rebate Payments (as defined in the Business Development Agreement) paid to TDC under the Business Development Agreement is \$592,993.10. As a result, as of the Effective Date, the outstanding balance of the Rebate Cap (as defined in the Business Development Agreement) is \$3,732,006.90.

(d) Village has received the information required to make Rebate Payments under Section 2.5 of the Business Development Agreement.

(e) All conditions precedent to the Village's obligations to make Rebate Payment obligations contained in the Business Development Agreement, including without limitation, those contained in Section 2.3 thereof, have been fully satisfied and no obligation remains with respect thereto.

(f) TDC has satisfied all of its obligations arising under that Annexation Agreement by and among the Village, TDC and Harris, N.A., as trustee under a Trust Agreement dated July 1, 2005, known as Trust Number 11-5537, dated February, 2007 governing the Property, as amended (the "Annexation Agreement") and no default exists as of the Effective Date.

3. **Notices.** Upon notice from VTH and TDC, the Village will recognize that the notice party for Purchaser under the Business Development Agreement and the address for payments under the Business Development Agreement shall be as follows:

Purchaser: Viking-TDC Huntley, LLC  
4901 Hunt Road  
Suite 102  
Cincinnati, OH 45242

With Copies to: Tedd H. Friedman, Esq.  
Katz, Teller, Brant & Hild  
255 East Fifth Street, Suite 2400  
Cincinnati, OH 45202  
Telephone: 513-721-4532

Cary S. Glenner  
Tucker Development Corp.  
799 Central Ave, Suite 300  
Highland Park, IL 60035  
Telephone: 847-748-3400

4. **Acknowledgement of Assignment.** Village acknowledges that the assignment of all of TDC's rights under the Business Development Agreement to Beneficiary is expressly permitted pursuant to Section 15.2 of the Business Development Agreement and acknowledges that from and after the Effective Date, Beneficiary shall enjoy all of the rights and benefits under the Business Development Agreement, including, without limitation, the right to receive all payments due thereunder, including, without limitation, payments due after the Effective Date that relate to a period prior to the Effective Date

WITNESS:

  
\_\_\_\_\_

VILLAGE OF HUNTLEY, a municipal  
corporation organized under the laws  
of the state of Illinois

By:   
\_\_\_\_\_

EXHIBIT A to Business  
Development Agreement Estoppel and  
Confirmation

**EXECUTION COPY**  
**03.01.07**

**BUSINESS DEVELOPMENT AGREEMENT**

**between**

**VILLAGE OF HUNTLEY**  
**a Municipal Corporation organized under the laws of the State of Illinois**

**and**

**TDC Huntley, LLC**

**March 1, 2007**

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**BUSINESS DEVELOPMENT AGREEMENT**

This Business Development Agreement ("Agreement") made and entered into this 1<sup>st</sup> day of March, 2007, by and between the VILLAGE OF HUNTLEY, an Illinois Municipal Corporation ("Village") and TDC Huntley, LLC ("Purchaser") also "Parties" or "Party."

**RECITALS**

A. The Village is desirous of Purchaser locating a Wal-Mart Super Center and other stores on 36 acres of commercial property located at the southeast corner of Illinois State Route 47 and Kreutzer Road, which has recently been annexed to the Village and which is legally described on Exhibit A (the "Pritzker Commercial Parcel"). The Village desires that such development will service the needs of the Village and its residents, and the Village anticipates that such development would increase employment opportunities in the Village, significantly increase the Village's sales tax base, and stimulate commercial growth in the Village, and, in furtherance thereof, the Village contemplates certain economic incentives under the terms and conditions hereinafter set forth to assist in such.

B. Purchaser is the contract purchaser of the Pritzker Commercial Parcel. A concept plan of the commercial development for the Pritzker Commercial Parcel is attached hereto as Exhibit B.

C. The development of the Pritzker Commercial Parcel would include approximately 300,000 square feet of commercial/retail/restaurant facilities, which would include a Wal-Mart Super Center of approximately 203,000 square feet and/or additional retail development and outlots for additional commercial/retail/restaurant facilities.

D. Purchaser has represented to the Village that the acquisition and development of the Pritzker Commercial Parcel would not be economically feasible at this time without the Village's economic assistance.

E. Pursuant to the Illinois Municipal Code, as amended ("Code"), the Village has authority to enter into this business development agreement relating to the development of land within its corporate limits, including an agreement to share or rebate a portion of the Sales Tax Revenue, as hereinafter defined.

F. The proposed development will create job opportunities in the Village, will serve to further develop adjacent properties throughout the Village, will strengthen the commercial sector in the Village, and will enhance the tax base of the Village.

G. The Parties agree that the timely development of the Property would not be possible at this time without this Business Development Agreement.

H. Purchaser has exhibited high standards of credit worthiness and financial strength sufficient to ensure the development of the Property.

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I. The Village has found that the powers exercised hereunder are in furtherance of a public use and essential to the public interest.

J. The Village has found that the Pritzker Commercial Parcel has remained vacant for over one year. The Village has found it to be in its best interest to enter into this Agreement to further the development of the Pritzker Commercial Parcel.

K. The Village has agreed to approve and execute this Agreement pursuant to that certain Annexation Agreement by and among the Village, Purchaser, and Harris, N.A., as trustee under a Trust Agreement dated July 1, 2005, known as Trust Number HTB 1531 and Trust Agreement dated July 1, 1999, known as Trust Number 11-5537, dated February \_\_, 2007, governing the annexation and development of the Pritzker Commercial Parcel and certain other property (the "Annexation Agreement")

NOW, FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the Parties hereby covenant and agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein by this reference as if fully set forth herein and are considered to be material terms of this Agreement.

2. **Sales Tax Rebate.**

2.1 **Payment Obligation.** To promote development of the Pritzker Commercial Parcel as provided in the Annexation Agreement and in this Agreement, and to foster the continued economic growth of the area, the Village shall (i) retain the "Village Share" of "Sales Tax Revenue"; and (ii) pay to Purchaser the "Purchaser Share" of "Sales Tax Revenue", in accordance with this Agreement, including the following Sales Tax Revenue Sharing Table (the "Rebate Payments"):

### Definitions:

Sales Tax Revenue	The tax revenue received by the Village generated by taxes imposed by the State of Illinois pursuant to (i) the Retailer's Occupation Tax Act, (35 ILCS 120/1 et seq.); and (ii) the Non-Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1.3)(as said Acts may be amended and including any tax intended to replace same) upon retail sales originating from the Pritzker Commercial Parcel. Sales Tax Revenue does not include any tax revenue generated by a tax imposed pursuant to home rule powers.
Commencement Date	The date upon which either (i) a Wal-Mart Super Center; or (ii) a Major Store opens for business on the Pritzker Commercial Parcel
Major Store	A store containing at least 200,000 square feet of floor area with a principal business of retail sales
Year 1	The Commencement Date through the end of the first full calendar year after the Commencement Date
Year 2	The second full calendar year after the Commencement Date

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Year 3	The third full calendar year after the Commencement Date
Future Year	The fourth calendar year after the Commencement Date and each calendar year thereafter
Year 1 Shortfall	If the Village's Actual Base Share for Year 1 equals or exceeds \$350,000, then there shall be no Year 1 Shortfall. If the Village's Actual Base Share for Year 1 is less than \$350,000, then the Year 1 Shortfall shall be \$350,000 minus the Village's Actual Base Share for Year 1
Year 2 Shortfall	If the Village's Actual Base Share for Year 2 equals or exceeds \$450,000, then there shall be no Year 2 shortfall. If the Village's Actual Base Share for Year 2 is less than \$450,000, then the Year 2 Shortfall shall be \$450,000 minus the Village's Actual Base Share for Year 2
Village's Actual Base Share	The actual share of Sales Tax Revenue received and retained by the Village from (i) the first \$700,000 in Sales Tax Revenue for Year 1; or (ii) the first \$900,000 in Sales Tax Revenue for Year 2

**Sales Tax Revenue Sharing Table**

Year 1		
Total Sales Tax Revenue	Village Share	Purchaser Share
Up to \$700,000	50%	50%
Over \$700,000	0%	100%

Year 2		
Total Sales Tax Revenue	Village Share	Purchaser Share
Up to \$900,000	50%	50%
Over \$900,000	Up to, but not more than, any Year 1 Shortfall	100% of any amount over and above any Year 1 Shortfall

Year 3		
Total Sales Tax Revenue	Village Share	Purchaser Share
Up to \$1,000,000	50%	50%
Over \$1,000,000	Up to, but not more than (any Year 1 Shortfall not already retained by the Village + any Year 2 Shortfall)	100% of any amount over and above (any Year 1 Shortfall not already retained by the Village + any Year 2 Shortfall)

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Future Year		
Total Sales Tax Revenue	Village Share	Purchaser Share
Up to \$1,000,000	50%	50%
Over \$1,000,000	Up to, but not more than (any Year 1 Shortfall not already retained by the Village + any Year 2 Shortfall not already retained by the Village)	100% of any amount over and above (any Year 1 Shortfall not already retained by the Village + any Year 2 Shortfall not already retained by the Village)

The Village's obligations to pay Rebate Payments hereunder are expressly subject to the provisions of Sections 2.2 and 2.3.

**2.2 Duration of Rebate Payments.** Subject to Section 2.3, the obligation of the Village to make Rebate Payments hereunder shall begin upon the Commencement Date, continue on a calendar quarterly basis (as provided in Section 2.5), and terminate when the Village has made total Rebate Payments to Purchaser in the aggregate amount of \$4,325,000 (the "Rebate Cap").

**2.3 Conditions Precedent to Rebate Payment Obligations.** The Village shall have no obligation to pay any Rebate Payment to Purchaser unless the following conditions have been satisfied:

(A) In connection with construction on the Pritzker Commercial Parcel, all building permit fees and all other fees and charges then due and payable as required by applicable Village ordinances and the Annexation Agreement, of which this Agreement is a part, have been paid;

(B) Either a (i) Wal-Mart Super Center, constructed in substantial conformance with the elevation plans for the Wal-Mart Super Center included within Exhibit C to the Annexation Agreement; or (ii) Major Store, constructed in substantial conformance with plans approved by the Village Board (which approval shall not be unreasonably withheld, conditioned, or delayed), has obtained a temporary or permanent certificate of occupancy, which will not be unreasonably withheld, conditioned, or delayed by the Village, and has opened for business; a Wal-Mart Super Center or a Major Store will be open for business on or before December 31, 2008, but the Parties acknowledge that such opening may be delayed for causes beyond the control of Purchaser, including but not limited to delays (i) resulting from strikes, labor shortages, unavailability or delays in receiving materials, unusually severe or prolonged bad weather, acts of God, fire or other casualty, litigation commenced by third parties; or (ii) caused by the acts or omissions of any federal, state, or local governmental unit, including, without limitation, the Village and the Illinois Department of Transportation ("IDOT"), or any public utility.

(C) Purchaser shall not be in material default of this Agreement or the Annexation Agreement beyond any applicable cure period (provided, however, that the failure to satisfy the other conditions precedent identified in this Section shall not be deemed a material default);



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(D) Purchaser has completed all required improvements to Route 47, Kreutzer Road, and Regency Parkway as delineated on the "Route 47 Conceptual Drawings" and "Kreutzer Road Conceptual Drawings," defined and described in the Annexation Agreement or in accordance with requirements of IDOT.

### 2.4 Withholding of Rebate Payment Obligations.

The Village may withhold a Rebate Payment to Purchaser if one of the conditions identified in section 2.3 has not been satisfied. Notwithstanding the fact that a portion of a Rebate Payment is being withheld for such reason, the Village shall identify in the "Purchaser Rebate Account," as hereinafter defined, the portion of Purchaser's Share that would otherwise be due to Purchaser pursuant to this Agreement, but has been withheld. Any portion of Purchaser's Share that is not paid shall be included in the first Rebate Payment made after the relevant condition has been satisfied.

### 2.5 Payment Mechanism.

(A) **Release Form.** The Village shall be obligated to make a Rebate Payment for Purchaser's Share of Sales Tax Revenue to the extent that it possesses documentation sufficient to determine that such Sales Tax Revenue did, in fact, arise from a retail sale originating on the Pritzker Commercial Parcel. In furtherance thereof, Purchaser shall exercise reasonable efforts to cause (i) the owner of the Wal-Mart Super Center or a Major Store (collectively, a "Store Owner"); and (ii) each other occupant of the Pritzker Commercial Parcel that conducts retail sales that generate Sales Tax Revenue (a "Sales Tax Generator") to deliver to the Village copies of the "Authorization to Release Sales Tax Information to the Village of Huntley, Illinois," in the form attached hereto as Exhibit C to this Agreement (the "Release Form") so that the Village may receive, on a calendar quarterly basis, from the Illinois Department of Revenue ("IDOR") the information necessary to determine the amount of Sales Tax Revenue attributable to the retail sales of the Wal-Mart Super Center or Major Store and each Sales Tax Generator. If IDOR does not make such documentation available to the Village, Purchaser shall exercise reasonable efforts to obtain such documentation.

(B) **Purchaser Rebate Account.** During the term of this Agreement, the Village will cause to be created for accounting purposes a separate line item and accounting for the Sales Tax Revenue, Purchaser's Share thereof, and the corresponding Rebate Payment due Purchaser, which accounting is to be known as the "Purchaser Rebate Account." Upon receipt of the Sales Tax Revenue, the Village will enter into the Purchaser Rebate Account the amount of such Sales Tax Revenue, Purchaser's Share, any portion of Purchaser's Share being withheld pursuant to Section 2.4, and the corresponding Rebate Payment. All Sales Tax Revenues (whether attributable to sales of retail, business, commercial, service, or other establishments at the Pritzker Commercial parcel) shall be accounted for in the Purchaser Rebate Account.

(C) **Timing of Rebate Payments.** The initial Rebate Payment shall be made on the first day of the first calendar quarter following the Commencement Date and on the first day of each calendar quarter thereafter without interruption until the aggregate Rebate Payments equal the Rebate Cap.

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(D) **No General Obligation.** The amounts due Purchaser hereunder shall not be a general obligation of the Village and the Village shall have no obligation to pay any amounts to Purchaser except from the Sales Tax Revenue actually received from IDOR.

(E) **Transfers; No Adverse Action.** Purchaser's Share of the Sales Tax Revenue, whether due currently or withheld, may be transferred by the Village to its general corporate fund or other funds, subject to the Village's obligations to timely pay Purchaser pursuant to the terms hereof. Until the Rebate Payments equal the Rebate Cap, the Village agrees that it will not take any action or omit to take any action that will affect the continued existence of the Purchaser Rebate Account or the availability of Purchaser's Share of the Sales Tax Revenue to pay Purchaser; and, that it will not reduce or eliminate (but may increase) the Village's share of tax imposed by the Retailers' Occupation Tax Act (35 ILCS 120/1 et seq.), the Service Occupation Tax Act (35 ILCS 115/1 et seq.).

2.6 **Audit - Reconciliation - Village.** Each Rebate Payment by the Village to Purchaser shall be accompanied by a statement executed by the Village Treasurer or the Treasurer's designee, including and describing (i) the calculations of such Rebate Payment; (ii) the Year to which the Rebate Payment relates; (iii) all Rebate Payments made to date to Purchaser; and (iv) the current balance of the Purchaser Rebate Account, including any portion of Purchaser's Share in such Account that has been withheld from the Rebate Payment pursuant to Section 2.4 and the reason for any such withholding. In the event Purchaser shall contest any of the calculations or information contained in such statement, such contest must be made by written notice to the Village not more than forty-five (45) days after Purchaser's receipt of such statement. If such contest shows that the Rebate Payment was less or more than the correct amount, either the Village shall pay the balance of such amount within thirty (30) days after the final resolution of such contest, or Purchaser shall reimburse the Village within thirty (30) days after the final resolution of such contest. If any person files and IDOR approves an amended tax return, the following Rebate Payment shall be adjusted accordingly.

2.7 **Audit - Reconciliation - IDOR.** In the event either the Village or Purchaser questions the amount of Sales Tax Revenues paid to the Village by IDOR, each shall have the right to contest the amount of such Sales Tax Revenue. The Village and Purchaser will cooperate with one another in obtaining access to the necessary books and records evidencing the amount of Sales Tax Revenue and the information used by IDOR to calculate the amount of Sales Tax Revenue payable to the Village pursuant to Illinois law. The Village agrees that, to the extent necessary, it will join in any action by Purchaser or permit Purchaser to prosecute an action in the name of the Village in order to permit Purchaser to bring a good faith challenge to the amount of Sales Tax Revenue due to the Village pursuant to Illinois law.

2.8 **Sales Tax Information/Confidentiality.** The Village acknowledges and agrees that information to be provided by Purchaser, a Store Owner, or a Sales Tax Generator, relating to Sales Tax Revenue and retail sales on the Property, including information to be provided pursuant to Section 2.5, shall be deemed to be proprietary, confidential, and valuable business information and to the extent permitted by state or federal law including but not limited to Section 7(l)(g) of the Illinois Freedom of Information Act, 5 ILCS 140/7(1)(g), the Village agrees to hold in confidence all such information. Specifically, the Village shall be permitted to

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disclose such information (i) to its agents or employees who are reasonably deemed by the Village to have a need to know such information for purposes of this Agreement; provided, that such agents and employees shall hold in confidence such information to the same extent required of the Village hereunder; or (ii) in response to a Freedom of Information Act request, subpoena, court order, demand under state or federal law, or legal action requesting or demanding such information (a "Sales Tax Information Request"), but only if (a) the Village provides notice of such Sales Tax Information Request to (I) Purchaser; and (II) the Store Owner or Sales Tax Generator that provided the information sought in the Sales Tax Information Request (the "Responding Entity"), such that Purchaser and the Responding Entity shall have a meaningful opportunity to object to the release of any such information and to take such action as they deem necessary to protect against the release of such information, including, without limitation, controlling (at their expense) the Village's defense or response to any such Sales Tax Information Request; and (b) either (I) the Purchaser and Responding Entity do not object to such disclosure; or (II) a final and non-appealable court order requires such disclosure. The confidentiality requirements of this Agreement shall survive any expiration, termination, or cancellation of this Agreement and shall continue to bind the Village, its successors, assigns, and legal representatives after the termination, expiration or cancellation of this Agreement. A Responding Entity shall be deemed a third party beneficiary of this Agreement, with the right to enforce this Section 2.8.

### 3. **Representations and Warranties of Purchaser.** Purchaser represents and warrants as follows:

(A) Purchaser is a corporation duly organized and existing under the laws of the State of Illinois, Purchaser has the power to enter into this Agreement and carry out its obligations hereunder and has duly authorized the execution, delivery, and performance of this Agreement. This Agreement is a legal, valid, and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

(B) The execution, delivery, and performance of this Agreement by Purchaser does not conflict with or result in a violation of Purchaser's organizational documents or any judgment, order, or decree of any court or arbiter of any contract to which Purchaser is a party.

(C) In order for Purchaser to acquire and develop the Pritzker Commercial Parcel, and construct the site and infrastructure improvements necessary for the Pritzker Commercial Parcel, Purchaser needs economic assistance from the Village, and, but for the economic assistance to be given Purchaser pursuant to the Rebate Payments provided for herein, the acquisition and development of the Pritzker Commercial Parcel as contemplated in this Agreement and in the Annexation Agreement would not be economically feasible.

(D) The officers of Purchaser who have executed this Agreement warrant that they have been lawfully authorized by Purchaser to execute this Agreement on behalf of Purchaser.

### 4. **Representations and Warranties of the Village.** The Village represents and warrants as follows:

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(A) The Village is a public body corporate and politic duly organized and existing under the laws of the State of Illinois. The Village has the authority to enter into this Agreement and carry out its obligations hereunder and has duly authorized the execution, delivery, and performance of this Agreement. The Village has adopted all necessary ordinances pursuant to the Illinois Municipal Code and taken all other action necessary to authorize the execution, delivery, and performance of this Agreement. This Agreement is a legal, valid, and binding obligation of the Village, enforceable against the Village in accordance with its terms.

(B) The execution, delivery, and performance of this Agreement by the Village does not conflict with or result in a violation of the Village's organizational documents or any judgment, order, or decree of any court or arbiter or any contract to which the Village is a party.

(C) The Village will cooperate as required by the Annexation Agreement with Purchaser with regard to the construction and installation of the site improvements and the Wal-Mart Super Center, Major Store, and other improvements on the Pritzker Commercial Parcel.

(D) The Village hereby warrants that is has been lawfully authorized by the President and Board of Trustees of the Village to execute this Agreement.

5. **Default/Right to Cure.** No Party shall be deemed in default hereunder for a failure to comply with this Agreement until (i) for a failure to make a required payment, ten (10) days after the date upon which such payment was required to be made; or (ii) for any other failure, thirty (30) days after receipt of notice of such failure; provided, however, that (i) if the nature of such other failure is such that it cannot reasonably be cured within such thirty (30) day period; and (ii) such Party commences to cure such failure within such thirty (30) day period, then, so long as the Party diligently prosecutes such cure to completion, such period shall be extended. If the failure has not been cured within the applicable period, then an "Event of Default" shall have occurred under this Agreement.

Upon an occurrence of an Event of Default which has not been cured and except as may be otherwise provided herein to the contrary, the non-defaulting Party's sole and exclusive remedies are to (i) seek specific performance of this Agreement, the Parties hereto specifically declaring it to be their intent that this Agreement may be specifically enforced; and (ii) commence an action to collect any monetary obligations due and owing under this Agreement together with interest thereon from and after the expiration of the cure period for such Event of Default at an interest rate of one percent (1%) per month, but in no event in excess of the maximum rate of interest permitted by Illinois law, until such Event of Default has been cured. In order for either Party to bring an action for specific performance for an Event of Default under this Agreement, such action must be commenced within six (6) months after the Event of Default. The Parties may not pursue any other remedies available at law or equity, it being the intent of the Parties that the remedies set forth in this paragraph and paragraph 13 are the sole and exclusive remedies of the Parties hereto.

6. **No Obligation to Develop, Open or Operate.** Nothing contained in this Agreement shall be deemed to obligate Purchaser to construct any improvement on the Pritzker Commercial

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Parcel or to open, operate or lease any form of business on the Pritzker Commercial Parcel for any period of time or at all.

7. **Notices.** All notices, request, demands, and other communications (collectively, "Notices and, individually, a "Notice") hereunder shall be in writing and given by (i) an established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at other such address as the Parties may designate by Notice in the above manner:

If to the Village:

Village of Huntley  
10987 Main Street  
Huntley, IL 60142  
Attn: Village Manager  
Tel. (847) 669-9600  
Fax (847) 515-5245

With a copy to:

Michael Coppedge  
Cowlin, Curran and Coppedge  
20 Grant Street  
PO Box 188  
Crystal Lake, IL 60039-0188  
Tel: (815) 459-5300  
Fax (815) 459-5305

If to Purchaser:

TDC Huntley, LLC  
799 Central Avenue, Suite 300  
Highland Park, IL 60035  
Attn: Richard H. Tucker & Cary S. Glenner  
Fax No: (847) 926-9996

With a copy to:

Steven M. Elrod  
Holland & Knight LLP  
131 South Dearborn, 30<sup>th</sup> Floor  
Chicago, Illinois 60603  
(312) 263-3600  
Fax: (312) 578-6666

Notices may also be given by fax, provided the Notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery. Payment due Purchaser hereunder shall be made to the address provided above for Notices; provided, however, Purchaser may by Notice to the Village designate a separate address for the delivery of such payments.

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8. **Attorney's Fees; Third Party Challenges.** If a Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party to be fixed by the court in the same action. Neither Party shall have any obligation to defend or to incur legal fees in the defense of a third party challenge of this Agreement, provided that each Party shall otherwise cooperate with the other Party if the other Party defend against such challenge.

9. **Exhibits.** Exhibits A, B, and C attached hereto are incorporated herein by this reference.

10. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be held by a court in an action between the Parties or otherwise affecting this Agreement to be invalid or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those to which its application is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

11. **Relationship of the Parties.** Nothing herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent or of partnership or joint venture between the Parties, it being understood and agreed that no provision herein, nor any acts of the Parties, shall be deemed to create any such relationship between the Parties.

12. **No Waiver.** Except as otherwise provided herein, no delay or omission of the right to exercise any power or remedy by either Party, shall impair any such right, power, or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

13. **Limitation of Liability.**

13.1 **Sole Source of Payment.** The sole source of funds for payments to Purchaser under this Agreement shall be Sales Tax Revenues which are paid by the State to the Village. Purchaser may not compel any exercise of taxing authority by the Village to make Rebate Payments provided for hereunder. The provisions of this Agreement do not constitute a loan of the credit of the Village within the meaning of any constitutional or statutory provision.

13.2 **No Recourse.** No recourse under or upon any obligation, covenant, or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against (a) the Village in excess of any amount agreed by the Village to be paid to Purchaser, or (b) the officers, agents, and employees of the Village. All and any such rights or claims of Purchaser against the Village in excess of the amounts as herein provided and claims against its officers, agents, and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant, or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against (w) Purchaser, in excess of its obligations to the Village hereunder, or (x) the directors, officers, agents, and employees of Purchaser, and no liability, right, or claim at law or in equity shall attach to or shall be incurred by (y) Purchaser in excess of its obligations hereunder, or (z) the directors, officers, agents, and employees of

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03.01.07

Purchaser, and all and any such rights or claims of the Village against Purchaser, in excess of its obligations hereunder, or against its officers, agents, and employees are hereby expressly waived, and released as a consideration for the execution of this Agreement by Purchaser. Nothing in this section 13.2 shall be deemed to limit any remedy that Purchaser or any third party beneficiary has to enforce Section 2.8 of this Agreement.

14. **Term of Agreement.** This Agreement shall be in effect for a term commencing as of the date of this Agreement and terminating on the date upon which the aggregate Rebate Payments received by the Purchaser equal the Rebate Cap, provided that the Parties' rights that accrue prior to such termination shall survive such termination.

### 15. **Miscellaneous.**

15.1 **Binding Effect.** The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, transferees and assigns.

15.2 **Assignment.** Neither Purchaser nor the Village shall assign this Agreement or any rights hereunder to anyone except with the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Purchaser may assign this Agreement and/or its rights, in whole or in part, to the Rebate Payments due hereunder: (i) to any entity controlling, controlled by, or under common control with Purchaser and its shareholders (a "Purchaser Affiliate"); (ii) in connection with a sale or disposal of the assets of Purchaser or a Purchaser Affiliate; (iii) to any third party in connection with the sale of all or any portion of the Pritzker Commercial Parcel; or (iv) to a financial institution. It is understood that any assignment of this Agreement does not include the payment of Rebate Payments to the assignee unless specifically provided for in the assignment and written notice of such assignment is provided to the Village.

15.3 **Entire Agreement.** This Agreement and the Annexation Agreement constitute the entire agreement between the Parties with respect to Rebate Payments and may only be modified by a subsequent writing executed by both Parties.

15.4 **Time of the Essence.** Time is expressly made of the essence of all the provisions of this Agreement.

15.5 **Interpretation.** This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either the Village or Purchaser. When required by context, the singular includes the plural, and the neuter gender includes a person, corporation, firm or association. The headings of the Articles and Sections contained herein are for convenience only and do not define, limit, or construe their contents.

15.6 **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Illinois. The Circuit Court of Kane County shall be the venue for all actions arising under the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

Attest:

BY: Rita M McMahon

Its: Village Clerk

**VILLAGE OF HUNTLEY**

a municipal corporation organized under the Law of the State of Illinois

BY: [Signature]

Its: Village President

**TDC HUNTLEY, L.L.C.**

an Illinois Limited Liability Company

By: **TDC HUNTLEY SELECT, L.L.C.,**

an Illinois Limited Liability Company,

Its Managing Member

By: **TUCKER DEVELOPMENT CORPORATION,**

an Illinois Corporation, its Manager

Witness:

BY: Tabatha Proctor

Its: Executive Admin. Assistant

BY: [Signature]

Cary S. Glenner

Its: Executive Vice President

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**03.01.07**

**EXHIBIT A**

**PROPERTY DESCRIPTION**

### LEGAL DESCRIPTION OF PRITZKER PROPERTY

PIN: 02-04-100-003; Trust: HTB1531

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 4 (EXCEPT THAT PART LYING WESTERLY OF A LINE DRAWN 60 FEET EASTERLY OF, AS MEASURED ALONG A NORMAL LINE, THE CENTER LINE OF FEDERAL AID ROUTE 64) AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, ALL IN TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

### LEGAL DESCRIPTION OF SINCLAIR PROPERTY

PIN's: 02-03-100-010, 02-04-200-011 and 02-04-400-002; Trust Number: 11-5537

#### PARCEL ONE:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 4; AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, ALL IN TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN; (EXCEPTING THAT PART OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY WITH THE NORTH LINE OF SECTION 3, TOWNSHIP AND RANGE AFORESAID; THENCE WESTERLY ALONG THE NORTH LINES OF SAID SECTIONS 3 AND 4 A DISTANCE OF 580.00 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 464.88 FEET TO THE CENTER LINE OF KREUTZER ROAD FOR THE POINT OF BEGINNING; THENCE SOUTHERLY ALONG THE LAST DESCRIBED LINE 700.00 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE 380.00 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE 662.39 FEET TO THE CENTER LINE OF KREUTZER ROAD; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 381.86 FEET TO THE POINT OF BEGINNING), (ALSO EXCEPT PART LYING NORTHERLY OF THE CENTER LINE OF KREUTZER ROAD); PART IN THE TOWNSHIP OF RUTLAND AND PART IN THE VILLAGE OF HUNTLEY, KANE COUNTY, ILLINOIS.

**PARCEL TWO:**

THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 3 (EXCEPTING THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY CO), ALL IN THE TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN; (EXCEPT THAT PART OF THE NORTHWEST QUARTER OF SAID SECTION 3, AND THE NORTHEAST QUARTER OF SAID SECTION 4, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF SAID SECTION 3 WITH THE SOUTHWESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY CO; THENCE WEST ALONG THE NORTH LINE OF SAID SECTIONS 3 AND 4, A DISTANCE OF 580 FEET; THENCE SOUTH AT RIGHT ANGLES TO SAID NORTH LINE 463.33 FEET TO THE CENTER LINE OF A GRAVEL ROADWAY; THENCE NORTH 84 DEGREES 27 MINUTES 40 SECONDS EAST ALONG SAID CENTER LINE 681.96 FEET TO AN ANGLE POINT IN SAID CENTER LINE; THENCE SOUTH 64 DEGREES 30 MINUTES EAST 367.24 FEET TO THE SOUTHWESTERLY LINE OF SAID RAILWAY RIGHT OF WAY; THENCE NORTH 37 DEGREES 45 MINUTES WEST ALONG SAID SOUTHWESTERLY LINE 702.69 FEET TO THE POINT OF BEGINNING); (ALSO EXCEPTING THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF SAID SECTION 3 WITH THE NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO NORTHWESTERN RAILWAY CO; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE 547.33 FEET; THENCE NORTHEASTERLY ALONG A LINE 729.75 FEET TO A POINT LOCATED ON THE EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3 WHICH POINT IS 53.23 FEET SOUTH OF THE INTERSECTION OF SAID EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 3 WITH THE NORTHERN LINE OF SAID SECTION 3; THENCE NORTHERLY ALONG SAID EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3 A DISTANCE OF 53.23 FEET TO THE POINT OF INTERSECTION OF SAID EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3 WITH THE NORTHERN LINE OF SAID SECTION 3; THENCE WESTERLY ALONG SAID NORTHERN LINE OF SAID SECTION 3 A DISTANCE OF 958.87 FEET TO THE POINT OF BEGINNING); IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

Property commonly known as Parcel Identification Numbers (PIN) 02-04-100-003 (Pritzker Parcel) and 02-03-100-010, 02-04-200-011, 02-04-400-002 (Sinclair Parcel), located generally south of Kreutzer Road and east of Route 47.

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EXHIBIT B

CONCEPT PLAN

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**03.01.07**

**EXHIBIT C**

**AUTHORIZATION TO RELEASE SALES TAX INFORMATION  
TO THE VILLAGE OF HUNTLEY, ILLINOIS**

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("IDOR") to disclose to the Village of Huntley, Illinois the amount of the Village's share of sales tax received on behalf of the taxpayer for a period beginning with tax collected by IDOR during July 2008, and ending with tax collected by IDOR during June 2023, provided, however, that only taxes for the store identified below may be disclosed and sales and tax information from Taxpayer's other locations, if any; shall not be disclosed.

This information is to be released to the Village of Huntley, 10987 Main Street, Huntley, IL 60142, Attn: Village Manager.

**BUSINESS INFORMATION:**

\_\_\_\_\_  
(Illinois Business Tax Number)

\_\_\_\_\_  
(Taxpayer/Business Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, Town, Village or County)

**TAXPAYER: The undersigned is an owner/authorized officer of this business.**

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Telephone Number)

Note: All requests must have a beginning and ending date. Incomplete requests will be returned to the local government