

Ordinance No. 07- 70

**AN ORDINANCE APPROVING AN ECONOMIC INCENTIVE AGREEMENT
WITH NIEMANN FOODS, INC.**

WHEREAS, pursuant to Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, the corporate authorities of the Village may enter into an economic incentive agreement relating to the development or redevelopment of land within the corporate limits of the Village and may agree to share a portion of the State retailers' occupation taxes received by the Village that are generated by the development or redevelopment over a finite period of time; and

WHEREAS, Niemann Foods, Inc. ("NFI") has represented to the Village that with the economic assistance to be provided pursuant to an economic incentive agreement, a copy of which is attached hereto, (the "Agreement"), NFI will be able to open and thereafter operate a retail grocery store (the "Store") in a building owned by Niemann Holdings, LLC, ("Holdings") in the Foxx Creek Plaza at 1099 Jason Place, Chatham, Illinois;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:

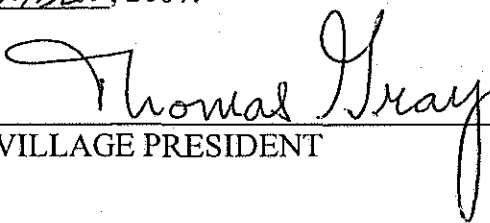
SECTION 1: The corporate authorities of the Village have investigated the circumstances of NFI's request for the Agreement, and pursuant to Section 8-11-20 of the Illinois Municipal Code, the corporate authorities of the Village hereby make the following findings:

- a. the buildings in Foxx Creek Plaza, including the building owned by Holdings, have been underutilized for a period of at least one year;
- b. the Store is expected to create job opportunities within the Village;
- c. the Store will serve to further the development of adjacent areas;
- d. without this Agreement, the Store would not be possible
- e. NFI meets acceptably high standards of creditworthiness and financial strength;
- f. the Store will strengthen the commercial sector of the Village;
- g. the Store will enhance the tax base of the Village; and
- h. this Agreement is in the best interest of the Village.

SECTION 2: The Agreement is hereby approved. The Village President is hereby authorized to execute the Agreement, and the proper officers of the Village are hereby authorized to carry out the Agreement according to its terms.

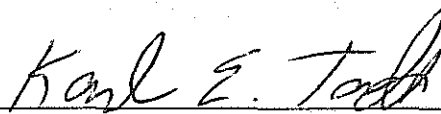
SECTION 3: This Ordinance is effective immediately.

PASSED this 13 day of NOVEMBER, 2007.



VILLAGE PRESIDENT

ATTEST:



Village Clerk

AYES: 5 KAVANAGH, HERR, SCHATTEMAN, MCGRATH, REYNOLDS

NAYS:

0

PASSED:

11-13-07

APPROVED:

11-13-07

ABSENT:

1 BOYLE

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF CHATHAM AND NIEMANN FOODS, INC.**

THIS AGREEMENT is entered into this 13 day of November, 2007 by and between the VILLAGE OF CHATHAM, ILLINOIS, a municipal corporation ("Village") and Niemann Foods, Inc., an Illinois corporation, d/b/a County Market ("NFI").

WHEREAS, pursuant to Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, the corporate authorities of the Village may enter into an economic incentive agreement relating to the development or redevelopment of land within the corporate limits of the Village and may agree to share a portion of the State retailers' occupation taxes received by the Village ("MT") that are generated by the development or redevelopment over a finite period of time; and

WHEREAS, NFI has represented to the Village, and hereby confirms that:

a. with the economic assistance to be provided pursuant to this Agreement, NFI will be able to open and thereafter operate a retail grocery store (the "Store") in a building owned by Niemann Holdings, LLC, an Illinois limited liability company ("Holdings") in the Foxx Creek Plaza at 1099 Jason Place, Chatham, Illinois;

b. without this Agreement, the Store opening would be delayed indefinitely;
and

WHEREAS, the corporate authorities of the Village have made and hereby confirm the following findings:

- a. the buildings in Foxx Creek Plaza, including the building owned by Holdings, have been underutilized for over a year;
- b. the Store is expected to create job opportunities within the Village;
- c. the Store will serve to further the development of adjacent areas;
- d. without this Agreement, the Store would not be possible
- e. NFI meets acceptably high standards of creditworthiness and financial strength;
- f. the Store will strengthen the commercial sector of the Village;
- g. the Store will enhance the tax base of the Village; and
- h. this agreement is in the best interest of the Village;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and conditions set forth herein, the parties agree as follows:

1. The preambles set forth above are an integral part of this Agreement and are hereby incorporated into and made part of this Agreement.

2. a. As used herein, "Tax Base" refers to the total of MT received by the Village which was generated by food retailers (Standard Industrial Classifications assigned to group 2 by the Illinois Department of Revenue) and drug and miscellaneous retailers (Standard Industrial Classifications assigned to group 8 by the Illinois Department of Revenue) during the four calendar quarters immediately prior to the month in which the Store is first opened to the public for business ("Opening Month"), as reported to the Village by the Illinois Department of Revenue.

b. As used herein, the "Store MT" refers to the portion of the MT generated by the Store that the Village is entitled to receive from the Department of Revenue.

3. During the term of this Agreement, the Village shall pay NFI, as an economic incentive pursuant to Section 8-11-20 of the Illinois Municipal Code, a portion of the Store MT, as follows:

a. Beginning with the first calendar quarter following the Opening Month, as reported by the Illinois Department of Revenue, and thereafter for a total of 12 calendar quarters, NFI shall, quarterly, provide to the Village Treasurer, an accounting of the Store MT paid to the Illinois Department of Revenue for the calendar quarter, and proof of payment thereof.

b. The Village shall calculate the amount by which the MT generated by food retailers (SIC group 2) and drug and miscellaneous retailers (SIC group 8) for the calendar quarter exceeds one-quarter of the Tax Base (the "Quarterly Increment").

c. After deducting \$2,500 from the Quarterly Increment, the Village shall pay to NFI a sum equal to 60% of the remaining amount or 60% of the Store MT for the quarter, whichever is less (the "Economic Incentive Payment"). However, Economic Incentive Payments shall not exceed \$30,000 in any of the three 12 month periods set forth in subparagraph f below.

d. The Village shall calculate and pay the Economic Incentive Payment within 30 days of receipt by the Village from the State of the data required to make the

calculations in 'b' and 'c', above, for the calendar quarter, or 30 days of receipt of the accounting and proof of payment by NFI of the Store MT, whichever is later.

e. The Village's obligation to calculate the Quarterly Increment and make the Economic Incentive Payment shall cease upon the earliest of the following events or dates:

i. upon payment by the Village of a total of \$90,000 in Economic Incentive Payments; or

ii. the passage of 12 calendar quarters following the Opening Month.

f. If in any calendar quarter the calculation of the Economic Incentive Payment results in a negative number, the number shall be subtracted from the Economic Incentive Payment in the succeeding calendar quarters. For purposes of this reconciliation there shall be three twelve-month periods, beginning with the first calendar quarter following the Opening Month. If, in the final calendar quarter of any twelve-month period, the calculation of the Economic Incentive Payment results in a negative number, then NFI shall be liable to the Village in such amount, or the total of Economic Incentive Payments paid to NFI by the Village for earlier calendar quarters during the twelve-month period, whichever is less. A negative balance at the end of any twelve-month period shall not be carried forward to the succeeding twelve-month period.

4. This Agreement shall be effective upon its execution by both parties and shall terminate on December 1, 2010, unless it is terminated prior to that date as set out herein or by either party for cause, which shall be defined as only as the following:

a. the filing by the other party of any petition for relief under the bankruptcy laws of the United States;

b. after the Opening Month, the failure of NFI to keep the Store open for business for any period of time exceeding 30 successive days unless the failure to keep the Store open is the result of reasons beyond NFI's control (e.g. as a result of fire);

c. any other material breach which is not cured within 30 days of written notice by the non-breaching party to the breaching party.

In the event of termination for cause, all further obligations pursuant to this Agreement shall cease, except as provided in paragraph 5.

5. NFI shall operate the Store as a retail grocery establishment through December 1, 2010. In the event NFI breaches this provision, NFI shall be liable to the Village, as liquidated damages, in the amount of 1/2 of all Economic Incentive Payments made to NFI pursuant to this Agreement as the Village's sole remedy, and NFI shall make payment to the Village within 30 days of the Village's written demand. The obligations of this paragraph shall survive any termination of this Agreement for any other reason.

6. NFI shall notify the Village when the Store is first opened for business. The Village shall notify NFI upon its calculation of the Tax Base, and shall provide NFI with a copy of its calculations upon NFI's request. These notices, and other notices required by this Agreement, shall be sufficient if sent by certified mail, return

receipt requested, to the parties at the following addresses, or at such other addresses as are designated by the parties from time to time:

Village of Chatham
Attn: Village Clerk
116. E. Mulberry
Chatham IL 62629

Niemann Foods, Inc.
Attn: Richard H. Niemann, Jr., C.E.O.
1501 North 12th Street
PO Box C-847
Quincy IL 62306-2847

7. This Agreement is the entire agreement of the parties with respect to its subject matter, and all prior agreements and representations are hereby disclaimed. This Agreement may only be amended by in writing, signed by the parties and approved by the Village by ordinance. This Agreement shall be construed in accordance with Illinois law and enforced only in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois. This Agreement may not be assigned by NFI without the written consent of the Village, which may be withheld by the Village in its sole discretion.

AGREED:
VILLAGE OF CHATHAM, ILLINOIS

BY: Thomas Gray
Village President

Attest: Karl E. Todd
Village Clerk

NIEMANN FOODS, INC.,
An Illinois corporation,

By:

Richard H. Niemann, Jr.
Its C.E.O. and President

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 07-70, adopted by the President and Board of Trustees of said Village on the 13 day of NOVEMBER, 2007, said Ordinance being entitled:

**AN ORDINANCE APPROVING AN ECONOMIC INCENTIVE AGREEMENT
WITH NIEMANN FOODS, INC.**

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Village this 13 day of NOVEMBER 2007.



Karl E. Tard
Village Clerk

DEC 10 2007

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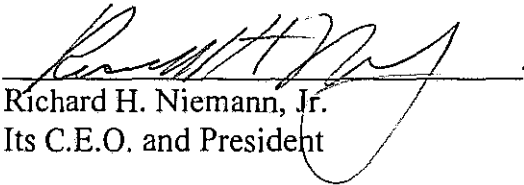
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An Illinois corporation,

By: 
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Its C.E.O. and President