

Ordinance No. 09- 17

AN ORDINANCE APPROVING AN AGREEMENT FOR PRIVATE REDEVELOPMENT BETWEEN THE VILLAGE OF CHATHAM AND K & S FUEL MART

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

SECTION 1: That certain Agreement For Private Redevelopment Between the Village of Chatham and the K & S Fuel Mart, attached hereto, is hereby approved.

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

SECTION 3: This Ordinance is effective immediately.

PASSED this 28 day of APR, 2009.

Thomas D Gray
VILLAGE PRESIDENT

ATTEST:
Pat Schaal
VILLAGE CLERK

AYES: 6 HERR SCHATTEMAN BOYLE
REYNOLDS M-GRATH KAUNACH
NAYS: 0

PASSED: 4-28-09
APPROVED: 4-28-09
ABSENT: 0



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 hereby certify that the ordinance attached hereto is a full, true, and exact copy Of Ordinance 09-17, adopted by the President and Board of Trustees of said Village on the 28 day of APR, 2009, said Ordinance being entitled:

**AN ORDINANCE APPROVING AN AGREEMENT FOR PRIVATE
REDEVELOPMENT BETWEEN THE VILLAGE OF CHATHAM AND
THE K & S FUEL MART**

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 28 day of APR, 2009.



Village Clerk



This space for Recorder of Deeds

MEMORANDUM OF CONTRACT AFFECTING REAL PROPERTY

Please Take Notice that on 4-28, 2009, The K & S Fuel Mart entered into a contract with the VILLAGE OF CHATHAM, ILLINOIS, an Illinois Municipal Corporation entitled "Redevelopment Agreement for Private Redevelopment between the Village of Chatham and the K & S Fuel Mart". The contract contains covenants that affect the real property legally described as set forth hereto. The contract provided by its terms that a memorandum thereof would be filed with the Recorder of Deeds of Sangamon County, Illinois.

Dated this 28 day of APR, 2009.

VILLAGE OF CHATHAM, ILLINOIS

By: Thomas Gray
Thomas Gray, Village President
Village of Chatham

REDEVELOPER

Mir Kahn, Owner
K & S Fuel Mart

AGREEMENT FOR PRIVATE REDEVELOPMENT BETWEEN THE VILLAGE OF CHATHAM AND K&S Fuel Mart

This Agreement is entered into on this 28th day of April, 2009 by and between the Village of Chatham, Illinois, a municipal corporation (hereinafter referred to as "Village"), and K&S Fuel Mart Inc. DBA Chatahm BP (hereinafter referred to as "Redeveloper").

WHEREAS, pursuant to the Tax increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., (the "Act"), the Village adopted the Village of Chatham Tax Increment Redevelopment Project Area and Redevelopment Plan and Project dated November 24, 1992 (the "Redevelopment Plan").

WHEREAS, the Redevelopment Plan includes an area referred to therein as the "Redevelopment Project Area"; and

WHEREAS, Redeveloper is the record owner of 300 North Main, Chatham, Illinois hereto (the Property), and the Property is within the Redevelopment Project Area; and

WHEREAS, Redeveloper, after first consulting with the Village regarding the Tax Increment Financing Program, will construct a retail and office rental facility (hereinafter referred to as the "Redevelopment Project"), which project is located upon the Property; and

WHEREAS, in connection with the Redevelopment Project, the Redeveloper will incur certain estimated project costs totaling \$34,810 which are eligible for reimbursement under Section 11.74-4-3 of the Illinois Municipal Code; (the "Eligible Project Costs"); these costs are detailed in Exhibit "A" hereto; and

WHEREAS, but for reimbursement by the Village of such costs, Redeveloper would not be able to complete the Redevelopment Project, since the proposed redevelopment would not be financially feasible nor yield to Redeveloper a reasonable return on their investment of time, money, and material; and

WHEREAS, the Redevelopment Project is consistent with the Redevelopment Plan; and,

WHEREAS, in view of financial projections presented to the Village by the Redeveloper, it does not appear that the redevelopment would occur without the Village's assistance from its Tax Increment Financing Program; and

WHEREAS, the Village believes that the completion of the Redevelopment Project pursuant to the plan is in the vital and best interests of the Village and the health, safety, morals, and welfare of the residents of the Village of Chatham and it is in accord with public purposes, the Act, and any other applicable provisions of federal, state, and local laws;

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

1. The preambles and premises set forth above are an integral part of this agreement and are hereby incorporated into and made a part of this agreement. During the term of this agreement, the Village shall reimburse Redeveloper for Eligible Project Costs as follows. Upon execution of this agreement, Redeveloper shall make application for reimbursement of costs of development plans and specifications, as listed in appendix "A".
Annually, after making payment of real estate taxes due on the Property to the Chatham Township and/or Sangamon County collectors, Redeveloper shall make application for reimbursement in accordance with paragraph 7 below. If such application for reimbursement is not made by Redeveloper to the Village by March 31 of year immediately following the year in which the real estate taxes on the Property were due and payable, Redeveloper forfeits the reimbursement for that year.
2. The Village shall calculate a sum known as the Tax Increment. The Tax Increment is equal to the annual real estate taxes for the Property, minus the sum of \$13,983, which was the tax on the property for 2008 taxes payable in 2009 (detailed in Exhibit "B" hereto). Annually, the Village shall pay Redeveloper a sum equal to one-half of the Tax Increment or a pro rata portion of the Tax Increment calculated in accordance with paragraph 3, whichever is less. Payment shall be made in any year within 30 days after the date that the Village receives the second installment of

real estate taxes from the Sangamon County Treasurer, or 30 days after the application for reimbursement is received by the Village from the Redeveloper, whichever is later. Payments shall be made annually until the entire amount of the approved Eligible Project Costs is paid.

3. Redeveloper recognizes that the Village has entered into and will enter into redevelopment agreements with other developers for property within the Redevelopment Project Area. Redeveloper also recognizes that the Village has issued bonds and has borrowed money from other Village Funds in order to fund infrastructure and other improvements within the Redevelopment Project Area; that principal and interest payments for such bonds and inter-fund borrowing are secured by or pledged from tax increment revenues; that such bonds issued prior to the execution of this agreement provide that security for the bond payments are superior to all other obligations of the Village with respect to tax increment revenues; and that it may be necessary to repay money previously borrowed from other Village funds prior to payment of obligations accrued under private redevelopment agreements. Redeveloper also recognizes that the Village may be required to issue additional bonds, borrow additional money in order to fund infrastructure and other improvements within the Redevelopment Project Area. Accordingly, Redeveloper agrees that in the event that, after payment (or sequestration of funds for payment) of obligations pursuant to any aforementioned bond issues, repayments of any aforementioned inter-fund borrowings or payments for any other aforementioned financing arrangements, there are insufficient revenues in the Village's Tax Increment Allocation Fund for the Village to pay all sums due to all persons who have entered or may enter into redevelopment agreements with the Village, then the Village may make *pro rata* payments to the Redeveloper and all other such persons of remaining funds available for disbursement in the Tax Increment Allocation Fund. Payment to Redeveloper shall be made in the proportion of available funds that the Tax Increment bears to the sum of all tax increments for all

properties in the Redevelopment Project Area that are subject to redevelopment agreements. The Village may schedule and make inter-fund obligation repayments in its sole discretion.

4. In the event the Village allocates funds in the Tax Increment Allocation Funds *pro rata* among developers in accordance with paragraph 3, the Village shall calculate for each tax year an amount still due to the Redeveloper and each other developer. Unpaid amounts due Redeveloper and other developers shall be paid in subsequent years when there are sufficient funds on hand after payment of all other obligations. Payments will be made by tax year, with the oldest obligations being paid first. If for any tax year there are sums on hand sufficient to pay some, but not all amounts due to all developers, the Village shall allocate funds on hand *pro rata* according to the same formula as set forth in paragraph 3. The Village will continue to carry forward all unpaid obligations until the termination of its tax increment financing program. The Village shall not voluntarily terminate its tax increment financing program prior to November 22, 2015, which is 23 years after the effective date of Ordinance No. 92-47; or for so long as eligible project costs due and payment to the Redeveloper under this agreement remain outstanding and payable, whichever is sooner. However, if the Village's tax increment financing program is involuntarily terminated or expires by its terms, the Village shall have no further obligation under this agreement.
5. The total to be paid to Redeveloper under this agreement shall not exceed the sums set forth in Exhibit "A". There shall be no obligation to reimburse the Redeveloper for any Eligible Project Costs in excess of this amount. Redeveloper shall in no event be reimbursed in excess of any project costs actually incurred and paid by Redeveloper.
6. Reimbursements to Redeveloper are subject to the following additional conditions:

- A. Any reimbursement for interest costs is subject to the limitations set forth in 65 ILCS 5/11-74.4-3(q)(11) as of the date of this agreement or as subsequently amended.
 - B. Redeveloper recognizes that tax increment financing is subject to statutory and regulatory changes beyond the control of the Village. In the event that the reimbursable project costs to be paid to the Redeveloper under this agreement are deemed ineligible for payment by law, the Village shall be relieved of any obligation to make any such reimbursements. Any such determination of ineligibility or with respect to any proposed payment shall not relieve or modify the obligation of the Village to make remaining payments due to Redeveloper under this agreement unless such remaining payments are likewise determined to be ineligible payments.
7. The following procedures shall govern applications for reimbursement:
- A. Redeveloper shall submit to the Village Treasurer a written request for payment setting forth specific Eligible Project Costs (Exhibit "A") for which payment or reimbursement is sought. This request for payment or reimbursement shall be accompanied by such contracts, invoices, engineering or architectural estimates, architects' certifications, contractors' sworn statements, lien waivers, or other such evidence as the Village shall reasonably require to evidence Redeveloper's right to payment or repayment for eligible costs pursuant to this agreement.
 - B. The Village Treasurer shall recommend approval or disapproval of the payment request to the President and Board of Trustees for Board action at the first regular meeting of the Board occurring not less than thirty (30) calendar days from receipt of the request for payment.
 - C. In the event the Village Treasurer recommends disapproval of the request or any portion thereof, the Village Treasurer shall promptly

communicate such recommendation to Redeveloper by specifying the error or disagreement and requesting appropriate correction or modification.

- D. The Village reserves the right to examine Redeveloper's records at any time relating to all project costs, and to obtain from such consultants or experts as the Village determines to be appropriate, other information as may be necessary for the Village to evaluate Redeveloper compliance with the terms of this agreement.
8. Redeveloper warrants that he has the power to execute, enter into and perform all covenants, conditions and obligations contained in this agreement, and Redevelopers further covenants that they are the owner in fee simple of the Property, and that the property is not subject to any lien or encumbrance except for a real estate mortgage by Redeveloper with United Community Bank.
 9. The funds advanced to Redeveloper under this agreement shall be used solely for reimbursement for the project costs itemized in Exhibit "A", and Redeveloper shall, within 60 days of a written from the Village, furnish to the Village a certified audit showing that the project costs for which Redeveloper seeks reimbursement have in fact been incurred and paid by Redeveloper prior to the receipt of any reimbursement by Redeveloper under this agreement.
 10. Redeveloper's right to receive any payment under this agreement shall be assignable at the discretion of Redeveloper, subject only to the following conditions:
 - A. Any assignment may be made only after the improvements to the Property contemplated by this agreement are completed and paid in full.
 - B. Any assignment shall be in writing, shall be provided to the Village, shall be recorded with the Recorder of Deeds of Sangamon County, and shall contain the following provision:

Assignee agrees that this Assignment is subject in all respects to the terms and conditions of a certain Redevelopment Agreement between Assignor and the Village of Chatham dated April 28th, 2009. That Redevelopment Agreement provides, among other things, that the Village of Chatham is under no obligation to make any payment pursuant to the Redevelopment Agreement unless application for such payment is made in accordance with the Redevelopment Agreement; and that the Village of Chatham's obligations thereunder may be subordinate to certain bond issues and obligations to other redevelopers, as set forth therein.

11. This agreement shall in no way make Redeveloper and the Village partners, joint venturers, or in any way obligate the Village for any obligations of Redeveloper to any third party.
12. The terms, conditions, covenants and obligations of this agreement shall run with the Property, and shall be binding on and shall inure to the benefit of the successors, heirs, and assigns of the parties. Redeveloper shall record a memorandum or notice of the existence of this agreement with the Recorder of Deeds, Sangamon County, Illinois, in substantially the form set forth in Exhibit "C" hereto.
13. Redeveloper have already submitted or shall submit to the Village for review, all development plans for structures and improvements located on the Property for the purpose of determining compliance with applicable laws, statutes, ordinances, rules and regulations, including but not limited to zoning and building code regulations, parking requirements and related matters.
14. Redeveloper shall pay and keep current all taxes and all Village fees in the nature of utility charges, permit fees and the like, that may from time to time apply to the Property. The Village may deduct any such charges which are past due from payments to Redeveloper under this agreement, provided, however, Redeveloper may after giving notice to the Village and

after posting bond or other security satisfactory to the Village in its reasonable judgment, at its own expense, contest in good faith such taxes or fees, in which event it may permit such taxes or fees to remain unpaid during the period of such contest and any appeal therefrom.

15. Redeveloper shall, at the request of the Village, furnish the following, all to be satisfactory in both form and substance, to the Village:
 - A. Organization documents and filings for the Redevelopers if appropriate, and all resolutions necessary to effect the obligations of the Redevelopers pursuant to this agreement.
 - B. Firm commitments for financing necessary to complete construction of the Redevelopment Project from sources and in the form acceptable to the Village, or a demonstration of financial capability sufficient to complete the work.
 - C. Evidence, in a form and manner acceptable to the Village, that the Redevelopers have acquired fee simple title to the Property.
 - D. Internal Revenue Service taxpayer identification numbers, or social security numbers, as the case may be, for Redeveloper.
 - E. Such other documents, resolutions and other items reasonably required by the Village, its legal counsel and or bond counsel.
 - F. Opinion of independent counsel for Redeveloper, reasonable in form and content, regarding the completeness and accuracy of the representations of Redeveloper.
 - G. Current financial statements of Redeveloper which set forth Redeveloper ability to financially proceed with Redeveloper's obligation under this agreement.
 - H. Such individual guarantees of performance as are deemed necessary by the Village to ensure Redeveloper's performance of the covenants, promises, and conditions contained in this agreement.
16. Redeveloper shall comply with all applicable statutes of the State of Illinois and ordinances of the Village of Chatham with respect to

construction of the improvements to be placed upon the Property, and all contracts for work in connection with the construction of said improvements shall be in compliance with applicable statutes and ordinances.

17. Redeveloper agrees to indemnify and save the Village and its officers and employees harmless against all claims by or on behalf of any third party with respect to the Property or business operations carried on in or with respect to the Property, including any costs and expenses, and attorney fees, incurred by the Village in any litigation brought by a third party.
18. The following shall constitute events of default with respect to this agreement:
 - A. Any material misrepresentation made by Redeveloper in this agreement, or in any certificate, notice, demand, or request made by Redeveloper in writing and delivered to the Village, which misrepresentation is not cured within 30 days of demand by the Village;
 - B. Material failure to perform any covenant, warranty or obligation contained in this agreement, which is not cured within 30 days of demand by the non-breaching party;
 - C. The entry of a decree of foreclosure or the placement of a mortgage in possession with respect to the Property;
 - D. The commencement of bankruptcy proceedings by or against a party.
19. In event of breach by a party, the other party may at its option (1) terminate this agreement by delivering a written notice of termination to the breaching party; or (2) bring an action for specific performance; or (3) if the non-breaching party is the Village, bring an action for damages, limited, however, to the total amounts paid by the Village to Redevelopers prior to the breach. In no event shall the Village be liable for damages to Redevelopers for breach of contract or otherwise. No waiver by a party hereto of a default by the other party section shall be deemed a waiver of

the rights of the waiving party with respect to any other defaults by the other party.

20. Redeveloper certifies that during the site preparation and completion of the Redevelopment Project, he complied with the following:
 - A. He did not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age or national origin. Redeveloper took necessary action to ensure that applicants were employed and treated during employment without regard to race, color, religion, sex, age or national origin, including but not limited to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay, and other forms of compensation and selection for training, including apprenticeship. Such action included but was not limited to the following: Employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
 - B. He did and will during the term of this agreement, in all solicitations or advertisements for employees placed by or on behalf of Redeveloper state that all qualified applicants would receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
 - C. He included or shall include, where required by law, the provisions of subsections A and B of this section in every contract or purchase order and shall require the inclusion of these provisions in every subcontract entered into by any of his contractors, unless exempted by law, rules or regulations, so that such provisions will be binding upon each contractor, subcontractor or vendor, as the case may be.
21. All notices and demands herein required or given hereunder shall be in writing. The mailing of such notice or demand to the Village or to

Redeveloper at their respective addresses hereinafter set forth shall be considered sufficient service thereof.

Village of Chatham
Municipal Building
116 East Mulberry
Chatham, IL 62629

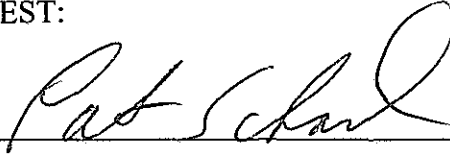
K&S Fuel Mart Inc.
DBA Chatham BP
300 N. Main Street
Chatham, IL 62629

22. This agreement is the entire agreement of the parties with respect to its subject matter. All prior agreements and understandings are expressly disclaimed. This agreement may be amended only in writing signed by all the parties and approved by ordinance of the Village.
23. If all or part of any section of this agreement shall be ruled invalid by a court of law, the agreement shall nevertheless be carried out in all other respects as fully as possible, and all other provisions shall remain in full force and effect insofar as possible. If any part of the redevelopment costs scheduled herein to be reimbursed to Redeveloper is ruled to be ineligible, the Village shall nevertheless pay the remaining eligible project costs to Redeveloper under the terms and conditions of this agreement.
24. The provisions of the Act are herein incorporated by reference. In the event that any provision in this agreement conflicts with the Act, the Act shall control.

VILLAGE OF CHATHAM, ILLINOIS,

By: Thomas Gray 4/28/09
Thomas Gray, Village President Date

ATTEST:



Patrick Schad, Village Clerk



REDEVELOPER

 _____

4/28/09

Mir Kahn, President

Date

Exhibit A

Eligible Project Costs

- | | | |
|----|---|----------|
| 1. | Property assembly costs, including land acquisition | \$34,800 |
|----|---|----------|

Exhibit B

**Estimated base year tax on the Tax Parcel No. 29-07.0-152-053 is \$6,514.
Estimated base year tax on the Tax Parcel No. 29-07.0-152-055 is \$7,469.**