THE CITY OF
NOBLESVILLE
EST. 1823

TO: NOBLESVILLE BOARD OF PUBLIC WORKS AND SAFETY

FROM: JONATHAN HUGHES, CITY ATTORNEY

SUBJECT: ROAD IMPACT FEE AND SEWER AGREEMENT FOR THE RELOCATION OF A DAIRY QUEEN

DATE: November 28, 2023

The Dairy Queen that was located at the corner of Pleasant and 10th Street (the "Prior Dairy Queen") is looking to relocate to 1007 S. 10th Street. This relocation was caused by the City's Pleasant Street project. As a result, the City is proposing to provide credits to the property in two separate ways. First, the City proposes to provide impact fee and sewer fee credits based on the existing development on the 1007 S. 10th Street property. The idea here is that those impact fees and sewer fees have already been paid by the existing development. Second, the City proposes to provide relocation fee credits for the impact and sewer fees that would otherwise be do above and beyond the existing development credits. The idea here is that the City caused the relocation and that the use of one Dairy Queen in our City to another location in the City which is in the same general district will not cause significant new impacts on the City's infrastructure. Moreover, the relocation was caused by a City project. For reference, we have attached a GIS map on the following page showing the location of the proposed development of the relocated Dairy Queen.

I recommend the Board of Public Works approve the Agreement.

In advance, I greatly appreciate your consideration of this request.

LOCATION EXHIBIT

RESOLUTION RB-53-23
A RESOLUTION APPROVING AN IMPACT FEE AGREEMENT FOR RELOCATION OF A BUSINESS AFFECTED BY ROAD PROJECT ACQUISITION
(10th Street Dairy Queen)

WHEREAS, the City of Noblesville, Indiana (the "City") has certain fees that developers pay when developing property including, but not limited to, Traffic Impact Fees and Sewer Connection and Availability Fees; and,

WHEREAS, the Developer proposes the Relocation of a Dairy Queen franchise which was formerly located at the corner of 10th Street and Pleasant Street (the "Prior Dairy Queen") to property located at 1007 S. 10th Street; and

WHEREAS, the Prior Dairy Queen was required to be moved by a result of the Pleasant Street Phase I Project; and

WHEREAS, the City and the City's Board of Public Works and Safety (the "Board") desire to assist with the project by applying certain impact fee credits for the construction of the new Diary Queen; and

WHEREAS, the Board desires to memorialize the agreement to provide such credits in the form of an agreement which is attached hereto as Exhibit 1 (the "Agreement"); and

WHEREAS, the Board has reviewed the Agreement and considered the information provided to it by the Mayor, City administration and others relating to the Agreement and therefore finds that the terms of the Agreement should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA, AS FOLLOWS:

Section 1. The Agreement, in substantially final form attached hereto as Exhibit 1, is hereby approved and the Mayor and/or Deputy Mayor of the City are each hereby authorized to execute said Agreement on behalf of the City. The Mayor and/or Deputy Mayor of the City are each hereby authorized and empowered to approve any such amendments, additions, deletions or changes to the Agreement as he deems necessary or advisable, with the advice of counsel, and provided such amendments, additions, deletions, or changes are not inconsistent with the purpose and intent of the Agreement as attached, and his approval shall be signified by his execution of the Agreement.

Section 2. The Mayor, the Deputy Mayor, the Controller and the Clerk of the City, and such other staff members, service providers and firms as they may direct are hereby authorized and directed to take any and all other actions on behalf of the City as may be necessary or appropriate to carry out the purposes of this resolution and/or the Agreement.

Section 3. This resolution shall be in full force and effect after its passage and execution as provided by law.

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this _____ day of _____ 2023.

_____
JACK MARTIN, PRESIDENT

_____
JOHN DITSLEAR, MEMBER

_____
LAURIE DYER, MEMBER

_____
ROBERT J. ELMER, MEMBER

_____
RICK L. TAYLOR, MEMBER

ATTEST:

_____
EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA

AGREEMENT FOR ROAD IMPACT FEE AND SEWER CONNECTION AND AVAILABILITY FEE CREDITS BETWEEN THE CITY OF NOBLESVILLE ("THE CITY") AND CAMBRIDGE INVESTMENT INC. ("THE DEVELOPER")

This Agreement entered into by and between The Developer and the City of Noblesville

WITNESS THAT:

WHEREAS, the City has certain fees that developers pay when developing property including a Traffic Impact Fee and Sewer Connection and Availability Fee; and,

WHEREAS, the Developer proposes the Relocation of a Dairy Queen franchise (the "Project") to property which is commonly known as 1007 S 10th Street and is more particularly described in Exhibit A (the "Property"); and,

WHEREAS, the Property is also known by the Hamilton County Tax Parcels listed in Exhibit B, and is zoned appropriately for the Project and use; and,

WHEREAS, the Project involves the relocation of a prior Dairy Queen franchise which was located in Noblesville at the intersection of 10th Street and Pleasant Street ("Prior Dairy Queen") to the Property; and

WHEREAS, the City is completing the Pleasant Street Project which includes the three phase construction and extension of Pleasant Street from 19th Street on the east to State Road 32 on the west; and

WHEREAS, part of Phase I of the Pleasant Street Project, Noblesville needed to acquire the property on which the Prior Dairy Queen sat; and

WHEREAS, the Developer and the City desire that the Prior Dairy Queen be relocated to the Property; and

WHEREAS, the Property has experienced prior development for which fees have already been paid; and

WHEREAS, the total Traffic Impact Fee as a result of the Project is $167,610.00, calculated on a $370.00 per trip basis; and

WHEREAS, the total Sewer Connection and Availability Fee as a result of the Project is $21,280.00, calculated on a $5,600 per equivalent dwelling unit ("EDU") basis; and

WHEREAS, the City desires to grant the Developer fee credits for both the Traffic Impact Fee and the Sewer Connection and Availability Fee given that (1) the Property is already currently developed; and (2) the Prior Dairy Queen is being relocated to the Property as a result of the City's action; and

WHEREAS, the City has calculated the credit as a result of the prior development on the Property as $44,807.00 for the Traffic Impact Fee and $5,600 for the Sewer Connection and Availability Fee, for a total fee credit as a result of prior development on the Property of $50,407.00 ("Development Credit"); and

WHEREAS, the City has calculated the credit as a result of the relocation to be $122,803.00 for the Traffic Impact Fee and $15,680.00 for the Sewer Connection and Availability Fee for a total fee credit as a result of the relocation of $138,483.00 (the "Relocation Credit"); and

WHEREAS, to the extent the Relocation Credit is required to be paid, the City agrees to pay the Relocation Credit on behalf of the Developer given the fee is due to the City requiring the Dairy Queen to be relocated

WHEREAS, The Developer and the City are desirous of entering into an Agreement to defer the payment of impact fees generated from the Property as set forth herein.

IT IS HEREBY AGREED by and between the parties as follows:

1. Obligation of the Developers. The Developer, or its assignee, shall construct improvements for occupancy by a Dairy Queen. Such construction shall not be inconsistent with the conceptual site plan submitted to the City Engineering Department for the Project. For the avoidance of any doubt, if the Developer

or its assignee fails to develop a Dairy Queen within the time frame's set forth in this agreement, then the credits provided herein shall be null and void. In the event the Developer or its assignee develops any other kind of property or has a user other than a Dairy Queen, such a development may be eligible for Development Credit, but will not be eligible for the Relocation Credit provided for herein. Whether such a development is eligible for Development Credit is a determination within the sole discretion of the City, which shall not be unreasonably withheld.

2. Amendment to Plans. In the event that field conditions, location of utilities, unsuitable soils, schedule, weather or development of the Project cause for a re-design or field changes to the Plans, the Developer shall propose such change(s), in writing, to the City Engineer for her review. The City Engineer is not required to make any changes he deems would negatively impact the quality of the work or would generally be unacceptable on any other City infrastructure.

3. Construction of Project. The Developer will commence construction of the Project by no later than April 30, 2024 and will be completed no later than December 31, 2025.

4. Relocation of Utilities. Developer is responsible for the relocation of all utilities, if any, required for the Project.

5. Creation of Special Account. – Not included in this agreement.

6. Interest Cost. Not included in this agreement.

7. Right-of-Way Dedication. Not included in this agreement.

8. Project Cost: In no event shall the City be obligated to pay any portion of the cost of the Project, except as specifically provided for in this Agreement. The City (or a City entity) shall only be responsible for paying the Relocation Credit amount, and only if a court or agency with authority determines that the Relocation Credit must be paid. In no event shall the City be responsible for paying the Development Credit.

9. Collection of Fees. The City shall provide credit of Traffic Impact Fees and Sewer Connection and Availability Fees immediately. Credits shall be applied in terms of dollars and not trips or EDUs. The balance of Traffic Impact Fees and Sewer Connection and Availability Fee shall be Zero Dollars ($0.00). The City shall only provide credit for Traffic Impact and Sewer Connection and Availability fees. Accordingly, all other City fees shall still be required (for example, and without limitation, fees for application, permit, filing, inspection, or any other applicable City Fees related to the development).

10. Construction Inspection. The City shall inspect the construction of the project.

11. Interest. Not included in this agreement.

12. Limitation of Obligation. The Developer must follow City Ordinances, State building and fire code, Noblesville Construction Standards, and any other applicable laws in constructing the Project. Nothing herein shall be construed as a duty of the City to pay the Relocation Credit obligation (if any such payment must be paid) from any specific source.

13. Project Dissolution. Should the Project not be constructed within the time frame stated in this agreement, the City, through its Board of Public Works and Safety, may pursue completion of the project by any and all available legal or equitable remedies including, but not limited to, an injunction.

14. Dispute Resolution. In the event there is any dispute between the parties concerning the terms of this Agreement, said dispute shall first be considered by five (5) persons consisting of a representative of the Developer, the attorney designated by the Developers, a member of the City Council designated by the City's Board of Public Works, the City Engineer and the City Attorney. In the event there is no resolution of the dispute by said group, the issue shall be submitted to mediation pursuant to the Indiana Rules of Alternative Dispute Resolution prior to the initiation of litigation by either party.

15. Notices. For purposes of this Agreement, any notices, including Notice of Assignments of the Benefits herein by the Developers, shall be made to the following:

City of Noblesville

City of Noblesville c/o Mayor
16 South 10th Street
Noblesville, IN 46060

With copies to:
City Attorney
Noblesville, IN 46060

Developer

16. Assignment. Developer shall be permitted to assign the credits provided herein provided that Developer first receives the written consent of the City to such assignment. The Mayor or his designee shall be permitted to approve of such assignment without need for further action by the Board of Public Works and Safety. The consent of the City shall not be unreasonably withheld.

APPROVED this _____ day of _____, 2023.

DEVELOPER

Title: _____

Printed: _____

Title: _____Member_____

All of which is approved by the Board of Public Works and Safety of the City of Noblesville

this _____ day of _____, 2023.

_____

JACK MARTIN, PRESIDENT

_____

JOHN DITSLEAR, MEMBER

_____

LAURIE DYER, MEMBER

_____

ROBERT J. ELMER, MEMBER

_____

RICK L. TAYLOR, MEMBER

ATTEST:

_____

EVELYN L. LEES, CLERK

CITY OF NOBLESVILLE, INDIANA

Exhibit A – Legal Description

Exhibit B – Parcel Numbers

11-11-06-03-02-002.000
11-11-06-03-02-003.000
11-11-06-03-02-004.000

AGREEMENT FOR ROAD IMPACT FEE ~~CREDIT~~AND SEWER CONNECTION AND AVAILABILITY FEE CREDITS BETWEEN THE CITY OF NOBLESVILLE ("THE CITY") AND ~~_____~~CAMBRIDGE INVESTMENT INC. ("THE DEVELOPER")

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WHEREAS, the Developer proposes the Relocation of a Dairy Queen franchise (the "Project") to property which is commonly known as 1007 S 10th Street and is more particularly described in Exhibit A (the "Property"); and,

WHEREAS, the Property is also known by the Hamilton County Tax Parcels listed in Exhibit B, and is zoned appropriately for the Project and use; and,

WHEREAS, the Project involves the relocation of a prior Dairy Queen franchise which was located in Noblesville at the intersection of 10th Street and Pleasant Street ("Prior Dairy Queen") to the Property; and

WHEREAS, the City is completing the Pleasant Street Project which includes the three phase construction and extension of Pleasant Street from 19th Street on the east to State Road 32 on the west; and

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WHEREAS, the Property has experienced prior development for which fees have already been paid; and

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WHEREAS, The Developer and the City are desirous of entering into an Agreement to defer the payment of impact fees generated from the Property as set forth herein.

IT IS HEREBY AGREED by and between the parties as follows:

1. Obligation of the Developers. The Developer, or its assignee, shall construct ~~the~~ improvements ~~as shown in the pending improvement location~~

~~permit, permit number LOCP-_____-2023, for the Project.~~ for occupancy by a Dairy Queen. Such construction shall not be inconsistent with the conceptual site plan submitted to the City Engineering Department for the Project. For the avoidance of any doubt, if the Developer or its assignee fails to develop a Dairy Queen within the time frame's set forth in this agreement, then the credits provided herein shall be null and void. In the event the Developer or its assignee develops any other kind of property or has a user other than a Dairy Queen, such a development may be eligible for Development Credit, but will not be eligible for the Relocation Credit provided for herein. Whether such a development is eligible for Development Credit is a determination within the sole discretion of the City, which shall not be unreasonably withheld.

Hughes, Jonathan [HJ1] November 20, 2023 10:48 PM
~~Do we have a current ILP~~

2. Amendment to Plans. In the event that field conditions, location of utilities, unsuitable soils, schedule, weather or development of the Project cause for a re-design or field changes to the Plans, the Developer shall propose such change(s), in writing, to the City Engineer for her review. The City Engineer is not required to make any changes he deems would negatively impact the quality of the work or would generally be unacceptable on any other City infrastructure.

3. Construction of Project. The Developer will commence construction of the Project by no later than ~~January~~April 30, 2024 and will be completed no later than ~~(_____), 2024~~December 31, 2025.

Unknown [2]
~~Do we have an estimated project schedule?~~

4. Relocation of Utilities. Developer is responsible for the relocation of all utilities, if any, required for the Project.

5. Creation of Special Account. – Not included in this agreement.

6. Interest Cost. Not included in this agreement.

7. Right-of-Way Dedication. Not included in this agreement.

8. Project Cost: In no event shall the City be obligated to pay any portion of the cost of the Project, except as specifically provided for in this Agreement. The City (or a City entity) shall only be responsible for paying the Relocation Credit amount, and only if a court or agency with authority determines that the Relocation Credit must be paid. In no event shall the City be responsible for paying the Development Credit.

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11. Interest. Not included in this agreement.

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13. Project Dissolution. Should the Project not be constructed within the time frame stated in this agreement, the City, through its Board of Public Works and Safety, may pursue completion of the project by any and all available legal or equitable remedies including, but not limited to, an injunction.

14. Dispute Resolution. In the event there is any dispute between the parties concerning the terms of this Agreement, said dispute shall first be considered by five (5) persons consisting of a representative of the Developer, the attorney

designated by the Developers, a member of the City Council designated by the City's Board of Public Works, the City Engineer and the City Attorney. In the event there is no resolution of the dispute by said group, the issue shall be submitted to mediation pursuant to the Indiana Rules of Alternative Dispute Resolution prior to the initiation of litigation by either party.

15. Notices. For purposes of this Agreement, any notices, including Notice of Assignments of the Benefits herein by the Developers, shall be made to the following:

City of Noblesville

City of Noblesville c/o Mayor
16 South 10th Street
Noblesville, IN 46060

With copies to:
City Attorney
Noblesville, IN 46060

Developer

Hughes, Jonathan [HJ3] November 22, 2023 08:29 AM
Developer to Provide

16. Assignment. Developer shall be permitted to assign the credits provided herein provided that Developer first receives the written consent of the City to such assignment. The Mayor or his designee shall be permitted to approve of such assignment without need for further action by the Board of Public Works and Safety. The consent of the City shall not be unreasonably withheld.

APPROVED this _____th _____ day of _____, 2023

DEVELOPER

Title: _____

Printed: _____

Title: _____Member_____

All of which is approved by the Board of Public Works and Safety of the City of Noblesville

this _____ day of _____, 2023.

_____

JACK MARTIN, PRESIDENT

_____

JOHN DITSLEAR, MEMBER

_____

LAURIE DYER, MEMBER

_____

ROBERT J. ELMER, MEMBER

_____

RICK L. TAYLOR, MEMBER

ATTEST:

_____

EVELYN L. LEES, CLERK

CITY OF NOBLESVILLE, INDIANA

Exhibit A – Legal Description

Hughes, Jonathan [HJ4] November 22, 2023 08:28 AM
To be provided by Developer

Exhibit B – Parcel Numbers

11-11-06-03-02-002.000
11-11-06-03-02-003.000
11-11-06-03-02-004.000

Summary report: Litera Compare for Word 11.5.0.74 Document comparison done on 11/22/2023 8:40:23 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: 2023-11-20 Dairy Queen Impact Fee Credit Agreement (without exhibits).DOCX	
Modified DMS: iw://DMS.BOSELAW.COM/DT1/4676546/1	
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~~Delete~~	11
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	25