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**CITY OF NAPERVILLE
HEINEN BUSINESS DISTRICT
REDEVELOPMENT AGREEMENT**

7 THIS REDEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into
8 this ___ day of _____, 2024 (the “Effective Date”), by and between the CITY OF
9 NAPERVILLE, an Illinois municipal corporation (the “City”) and HEINEN’S, INC., an Ohio
10 corporation (the “Developer”), (the City and Developer are hereinafter sometimes collectively
11 referred to as the “Parties,” and individually as a “Party”, as the context may require).

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RECITALS:

1. **WHEREAS**, the City, is a home rule municipality in accordance with Article VII Section 6(a) of the Constitution of the State of Illinois of 1970, and is entering into this Agreement pursuant to its home rule authority and the Illinois Business District Development and Redevelopment Act, as amended from time to time (65 ILCS 5/11-74.3-1 *et seq.*) (the “Act”); and
2. **WHEREAS**, the Developer is the fee title holder of the property legally described in Exhibit A-1 and depicted in Exhibit A-2 attached hereto and made a part hereof (the “Heinen Property”); and
3. **WHEREAS**, the Heinen Property is generally bounded by Pembroke Park to the south, E Chicago Avenue to the north, Olesen Drive to the east, and Pembroke Road to the west, and consists of approximately 7.35 acres; and
4. **WHEREAS**, until recently, the Heinen Property consisted of approximately 68,000 square feet of retail space which was constructed in 1974 (“Center”). The historic lease rates have been below other grocery anchored centers in Naperville and have had persistent vacancies, most recently resulting in the closing of the Butera. In speaking with the Butera tenant in the center, grocery store sales have never met potential because of the conditions in the Center.

27 Prior to the recent demolition of the Center, the Butera portion was 100% vacant, and the
28 adjacent portion of the Center had approximately 40% of total square feet vacant. Combined,
29 80% of the Center’s retail square footage was vacant prior to demolition; and

30 **5. WHEREAS**, the Developer has indicated that several factors present on the site make the
31 current retail as had been built a challenge to reuse. Additionally, the site drainage was
32 constructed based on the design standards of “ponding” detention in 1974. This detention
33 method has created many safety and health issues. The approved stormwater detention for the
34 site has contributed to the site not being successful historically. Standing water has many
35 harmful effects including propagation of mold and mildew, deterioration of buildings and
36 parking lots, and safety issues for pedestrian and vehicular traffic, especially in the winter
37 season. The Developer hired Manhard Consulting Engineers to study the stormwater issues.
38 Manhard report notes the surrounding areas including two Naperville Park District properties,
39 apartment property, and roadways all add stormwater to the site. The City Planning Department
40 Stormwater Detention Code would require at least 30% more detention capacity in its current
41 code as compared to 1974; and

42 **6. WHEREAS**, prior to the recent Center demolition, the majority of the Center has had no
43 significant upgrades in more than 45 years. The lack of investment in the building leads to
44 inefficiencies: utility waste, safety issues, accessibility, and other features lacking in a modern
45 building built to today’s code; and

46 **7. WHEREAS**, prior to the recent Center demolition, significant portions of the Center were
47 experiencing significant vacancies; and

48 **8. WHEREAS**, over the last many years, the Center has experienced steadily declining
49 occupancy and challenges re-tenanting its big box retail space; and

50 **9. WHEREAS**, over this same period, sales at the Center have gradually and persistently
51 declined and, as a result, the City’s real estate and sales tax bases have declined and/or
52 remained stagnant; and

53 **10. WHEREAS**, faced with the prospect of a continuation of these declining trends, the Developer
54 proposes to undertake a major capital investment in the Heinen Property including (A) the
55 demolition of all prior Center improvements; (B) design, construction, and establishment of a
56 new modern Center in its place; (C) design, construction, and establishment of a modern
57 stormwater detention facility; (D) replacement and configuration of site utilities, including
58 electric, gas, water, stormwater and sanitary sewer systems serving the Center; (E) construction
59 of new buildings for grocery store uses; (F) rehabilitation of certain remaining improvements
60 on the Heinen Property; (G) enhanced site, building and environmental lighting and
61 landscaping for the Center; (H) new and reconfigured hardscape and pedestrian walkways for
62 the Center; and (H) certain general improvements including parking realignment, new
63 identification, directional and amenity signage and other ancillary improvements for the Center
64 (collectively, the “Project”) all as depicted on Exhibit B attached hereto; and

65 **11. WHEREAS**, the Developer has estimated that it will expend approximately Eleven Million
66 Six Hundred Thirty-Seven Thousand Five Hundred Twenty-Seven Dollars and No Cents
67 (\$11,637,527.00) in hard and soft costs for the Project (the “Developer Project Costs”) as set
68 forth in Exhibit C attached hereto; and

69 **12. WHEREAS**, in order to facilitate the development and construction of the Project, the
70 Developer has requested economic assistance in the form of the City’s establishment of a
71 business district, as provided for in the Act, and the City’s agreement to reimburse the
72 Developer for certain Project costs payable solely from Business District Taxes; and

73 **13. WHEREAS**, subject to and in accordance with the terms of this Agreement, the City has
74 established the Business District, as that term is defined below, and to reimburse the Developer
75 for certain eligible Developer Project Costs as set forth in Exhibit C attached hereto (the
76 “Business District Project Costs”) in an amount not to exceed Two Hundred Seventy-Five
77 Thousand Dollars and No Cents (\$275,000.00), solely from Business District Taxes. Said
78 Business District Project Costs shall not include any legal fees, costs of overhead, interest, or
79 costs of issuance; and

80 **14. WHEREAS**, the Developer represents and warrants to the City, and the City finds that, but for
81 the financial assistance to be provided by the City to the Developer pursuant to this Agreement,
82 the Project would not be economically viable, and the Developer would not develop and
83 construct the Project; and

84 **15. WHEREAS**, pursuant to the Act, the City has designated the Heinen Property as a business
85 district (the “Business District”). The Business District is legally described in Exhibit A-1 and
86 depicted in Exhibit A-2 attached hereto; and

87 **16. WHEREAS**, on August 16, 2022, the Mayor and City Council (the “Corporate Authorities”)
88 of the City, after giving all necessary notices and conducting all necessary meetings and public
89 hearings required by the Act, passed Resolution No. 22-22 entitled “A Resolution Expressing
90 the City of Naperville’s Intent to Consider Designation of a Business District on Property
91 Within the City, to Impose Business District Sales Taxes, and to Induce Development Interest
92 Within Such District Proposed at 1256 Through 1290 East Chicago Avenue of Naperville,
93 Illinois”; and

94 **17. WHEREAS**, on September 20, 2022, the Corporate Authorities of the City, after giving all
95 necessary notices and conducting all necessary meetings and public hearings required by the

96 Act, adopted Ordinance 22-115 proposing the designation of a Business District in the City of
97 Naperville, DuPage County, Illinois, and scheduled a public hearing (the “Public Hearing”)
98 for October 4, 2022 for a proposed business district (to wit: the “Heinen Business District” or
99 “District”). The purpose of such Public Hearing was to examine the Business District Plan for
100 the Proposed Business District (now known as the “Heinen Business District”) and determine
101 whether it should later be approved, whether the proposed business district should be
102 designated as a business district pursuant to the Act, and whether a “blighted area” finding,
103 and determination should be made with regard to the proposed business district; and

104 **18. WHEREAS**, the Corporate Authorities authorized Kane, McKenna & Associates, Inc. (the
105 “Consultant”) to prepare a “BD Plan” pursuant to the Act for the Heinen Business District area
106 legally described and depicted on Exhibit A-1 and Exhibit A-2, respectively, attached hereto;
107 and

108 **19. WHEREAS**, Ordinance 22-115 further provided that the public notice required by the Act
109 (“Notice”) would be published twice, on September 21, 2022 and September 23, 2022, and
110 said Notice provided that the Public Hearing would be held to consider the BD Plan on October
111 4, 2022; and

112 **20. WHEREAS**, the Notice was duly published on September 21, 2022 and September 23, 2022
113 in a newspaper of general circulation within the City, as required by the Act; and

114 **21. WHEREAS**, the Consultant prepared the BD Plan pursuant to the Act for the proposed Heinen
115 Business District and the BD Plan is attached hereto as Exhibit D and made a part hereof; and

116 **22. WHEREAS**, on October 4, 2022, in accordance with the Business District Hearing Date
117 Establishment Ordinance and all other legal requirements, the Corporate Authorities opened,
118 conducted, and concluded a Public Hearing with respect to the proposed BD Plan for the

119 Heinen Business District pursuant to Notice in conformance with the Act and directed staff to
120 prepare an ordinance to approve the BD Plan and establish the Heinen Business District along
121 with another ordinance to set forth the percentage of tax to be imposed; and

122 **23. WHEREAS**, on December 20, 2022, in accordance with all other legal requirements, the
123 Corporate Authorities approved Ordinance 22-144 and established the designation of the
124 proposed Business District, approved the BD Plan, made the requisite finding of “blight” as
125 required by the Act, and, found that it was in the best interests of the City that the Heinen
126 Business District be designated as a “Business District” pursuant to the terms of the Act; and

127 **24. WHEREAS**, on December 20, 2022, in accordance with all other legal requirements, the
128 Corporate Authorities approved Ordinance 22-145 imposing a business district retailers’
129 occupation tax and business district service occupation tax in The City of Naperville, DuPage
130 County, Illinois for The Heinen Business District at the rate of 0.5% of the gross receipts from
131 such sales made in the course of such business while this Ordinance is in effect; and a tax is
132 hereby imposed upon all persons engaged within the Heinen Business District; in the business
133 of making sales of service, at the rate of 0.5% of the selling price of all tangible personal
134 property transferred by such serviceman as an incident to a sale of service (the “Business
135 District Ordinance”); and

136 **25. WHEREAS**, the business district referenced herein shall be known as and referenced herein
137 as “Heinen Business District”. The term of Heinen Business District shall commence on the
138 date of the City’s adoption and due publication of the Business District Ordinance, and shall
139 expire the earlier of: (i) the City’s notice to the Illinois Department of Revenue to cease
140 collection of Business District Taxes, as defined herein, based on the City having paid

141 Developer the Maximum Reimbursement Amount, as defined in Section 3.2 hereof; or (ii)
142 twenty-three (23) years after the date of adoption of the Business District Ordinance; and

143 **26. WHEREAS**, on August 20, 2024, the Corporate Authorities adopted several ordinances
144 whereby the City approved final site, engineering, and landscape plans (the “Project Plans”)
145 for the Project; and

146 **27. WHEREAS**, provided Developer commences the Project, Developer will develop and
147 construct the Project in accordance with this Agreement, all City codes, ordinances and
148 regulations (except to the extent the City has granted relief therefrom), the Project Plans as
149 may be amended from time to time in accordance with the City’s code of ordinances, and all
150 other governmental authorities having jurisdiction over the Property and the Project; and

151 **28. WHEREAS**, this Agreement has been submitted to the Corporate Authorities for
152 consideration and review, and the Corporate Authorities and the Developer have taken all
153 actions required to be taken prior to approval and execution of this Agreement in order to make
154 the same binding upon the City and the Developer according to the terms hereof; and

155 **29. WHEREAS**, the Corporate Authorities of the City, after due and careful consideration, have
156 concluded that the development and construction of the Project as provided herein will further
157 the growth of the City, facilitate the redevelopment of the Heinen Property, improve the
158 environment of the City, increase the assessed valuation of the real estate situated within the
159 City, increase sales tax revenue, foster increased economic activity within the City, increase
160 employment opportunities within the City, improve the retail base of the City and attract new
161 tenants to the Property and other retail properties in the City, promote the City’s needs, goals
162 and objectives as set forth in the BD Plan, meet the business district policy criteria and

163 otherwise promote the best interests of the City by furthering the health, safety, morals and
164 welfare of its residents and taxpayers; and

165 **30. WHEREAS**, pursuant to its Authority under (A) the Act; (B) its home rule powers under the
166 Article VII, Section 6 of the Illinois Constitution; and (C) the Economic Development Act of
167 the Illinois Municipal Code, 65 ILCS 5/8-1-2.5, the City wishes to enter into this Agreement
168 with the Developer.

169 **NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants and
170 agreements contained herein, and other good and valuable consideration, the receipt and
171 sufficiency of which are hereby acknowledged, the City and the Developer do hereby agree as
172 follows:

173
174 **ARTICLE I**
175 **RECITALS PART OF THE AGREEMENT**

176 The representations, covenants and recitations set forth in the foregoing recitals are
177 material to this Agreement and are hereby incorporated into and made a part of this Agreement as
178 though they were fully set forth in this Article I.

179
180 **ARTICLE II**
DEVELOPER OBLIGATIONS

181 **2.1 Developer Obligations and Agreements.** In consideration of the substantial
182 commitments of the City to the development of the Project, the Developer shall fulfill the
183 following obligations:

184 A. The Developer shall construct the Project substantially in accordance with
185 the Project Plans, and the Developer shall complete the Project on or before
186 March 1, 2027, subject to any Force Majeure Delays, as defined in Section
187 6.3; provided, however, that if Developer has not completed the Project by

188 March 1, 2027, but is diligently pursuing completion, Developer may, by
189 notice to the City, elect to extend the estimated completion date by up to an
190 additional one hundred eighty (180) days. Upon commencing the Project,
191 the Developer shall diligently pursue completion thereof. If Developer has
192 not commenced construction of the Project on or before March 1, 2027, the
193 City shall have the right to terminate this Agreement in its sole discretion.
194 The Project shall be deemed complete upon the granting of a certificate of
195 occupancy for the Center. If Developer commences said construction, but
196 does not complete it, as defined above, on or before August 1, 2027, the
197 City shall have the right to terminate this Agreement in its sole discretion.

198 B. The Developer has advanced, shall hereafter advance, or shall cause other
199 parties to advance the funds necessary to construct and complete the Project.
200 The Developer shall have no obligation to advance funds to tenants for
201 Tenant Improvements unless the Developer is contractually obligated to do
202 so.

203 C. The Developer has secured, or shall hereafter secure or cause to be secured,
204 all required permits entitlements, authorizations and approvals necessary or
205 required to construct and complete the Project. If such entitlements are not
206 secured on or before March 1, 2026, the City shall have the right to
207 terminate this Agreement.

208 D. In the event a claim is made against the City, its officers, officials, agents
209 and employees or any of them, or if the City, its officers, officials, agents
210 and employees or any of them (the “Indemnified Party” or “Indemnified

211 Parties”), is made a party-defendant in any proceeding (including but not
212 limited to a contribution action) arising out of, or in connection with, (1) the
213 construction of all or any portion of the Project; (2) the operation of all or
214 any portion of the Project; or (3) any of Developer’s duties, obligations and
215 responsibilities hereunder, including, but not limited to, any claim or cause
216 of action concerning construction of the Project and environmental matters
217 pertaining to the Property, to the extent permitted by law, the Developer
218 shall indemnify, defend and hold harmless the Indemnified Parties, or any
219 Indemnified Party, from all claims, liabilities, losses, taxes, judgments,
220 costs, fines, fees, including expenses and reasonable attorney’s fees, in
221 connection therewith (collectively, “Losses”); provided, however, that to
222 the extent that the Developer claims that any Losses are caused by the
223 negligence, fraud or willful misconduct of one or more Indemnified Parties,
224 the Developer shall have no obligation to indemnify such Indemnified
225 Parties for any such Losses in which event the Developer shall promptly
226 notify the City that it will not defend, indemnify, nor hold the City harmless
227 to the extent specified by the Developer which notice may be the subject of
228 appropriate actions to resolve such Developer obligations. Any Indemnified
229 Party may obtain separate counsel to participate in the defense thereof at his
230 or her own expense. The Indemnified Parties shall cooperate in the defense
231 of such proceedings and be available for any litigation related appearances
232 which may be required. Further, so long as a settlement terminates or
233 satisfies any and all claims against the Indemnified Parties, upon written

234 prior notice to the City, the Developer shall be entitled to settle any and all
235 claims for money, in such amounts and upon such terms as to payment as it
236 may deem appropriate, without the prior approval or consent of the
237 Indemnified Parties, or any of them, as the case may be, provided that
238 neither the City nor any of the other Indemnified Parties shall be required
239 to contribute to such settlement except to the extent that Losses that are the
240 subject of the settlement are caused by the negligence, fraud or willful
241 misconduct of an Indemnified Party.

242 E. Upon reasonable notice, the City Manager, or his designee, shall have
243 access to all portions of the Project while it is under construction during
244 normal business hours for the purpose of determining compliance with this
245 Agreement, applicable laws and applicable regulations; provided, however,
246 that any such person(s) shall comply with all construction site rules and
247 regulations while such person(s) is on or near the property. Additionally,
248 the Developer shall keep and maintain detailed accountings of expenditures
249 demonstrating the total actual costs of the Developer's Business District
250 Project Costs. All such books, records and other documents, including but
251 not limited to the general contractor's and subcontractors' sworn
252 statements, general contracts, subcontracts, purchase orders, waivers of
253 lien, paid receipts and invoices, and documentation evidencing that the
254 Developer has incurred and paid any expense for which reimbursement as
255 the Developer's Business District Project Costs is sought by Developer
256 hereunder shall be available at the Developer's offices for inspection,

257 copying, audit and examination by an authorized representative of the City
258 for a period of three (3) year after issuance of the Certificate of Completion
259 (as defined below).

260 F. The Developer shall cooperate with the City and provide the City with the
261 information in the Developer's possession or control, or to which the
262 Developer has access, required and necessary under the Act to enable the
263 City to comply with the Act and its obligations under this Agreement.

264 G. The Developer shall comply with all applicable federal, state, and municipal
265 laws, regulations, and published policies in connection with the
266 construction of the Project.

267 H. The Developer has furnished to the City a Project budget showing
268 Developer Project Costs in an amount not less than Eleven Million Six
269 Hundred Thirty-Seven Thousand Five Hundred Twenty-Seven Dollars and
270 No Cents (\$11,637,527.00) and showing Business District Project Costs in
271 an amount no less than Two Hundred Seventy-Five Thousand Dollars and
272 No Cents (\$275,000.00). The Developer hereby certifies to the City that the
273 estimated project budgets are true, correct, and complete, to the best of the
274 Developer's knowledge, in all material respects. The Parties agree that the
275 Project budgets are solely estimates and are not conditions precedent to the
276 Developer's receipt of financial assistance from the City.

277 2.2 **Representations and Warranties About Ownership.** The Developer represents,
278 warrants and covenants that, to its knowledge, no member, official, officer, employee of the City,
279 or any commission or committee exercising authority over the Project or the Property, or any

280 consultant hired by the City or the Developer with respect thereto, owns or controls or has owned
281 or controlled any interest, direct or indirect, in the Project or any portion of the Property, or will
282 own or control any interest in the Project. Any representation or warranty made “to Developer’s
283 knowledge” or similar terms in this Section 2.2 shall not be deemed to imply any duty of inquiry.
284 For purposes of this Section 2.2, “knowledge” shall mean and refer only to the actual knowledge
285 of the Developer’s general counsel and managing partner(s) and shall not be construed to refer to
286 the knowledge of any other member, partner, officer, director, agent, employee or representative
287 of the Developer or any affiliate of the Developer.

288 **ARTICLE III**
289 **CITY OBLIGATIONS**

290 3.1 **City Economic Assistance.** In consideration of the substantial commitment of the
291 Developer to undertake and complete the Project and in order to induce the Developer to undertake
292 the Project, and subject to compliance with the terms and conditions set forth herein, the City shall
293 provide economic assistance to the Developer by reimbursing it for up to Two Hundred Seventy-
294 Five Thousand Dollars and No Cents (\$275,000.00), solely from Business District Taxes, in
295 eligible Business District Project Costs (the “Maximum Reimbursement Amount”) by issuing, and
296 making payments as defined below. Said Business District Project Costs shall not include any legal
297 fees, costs of overhead, interest, or costs of issuance and debt service.

298 3.2 **Business District Implementation.** The Parties agree that the following City
299 actions are necessary and material to the implementation of this Agreement:

300 A. The Corporate Authorities adopting an ordinance on or before April 1, 2023
301 (the “Heinen Business District Tax Ordinance”) imposing a service
302 occupation tax and a retailers’ occupation tax, as provided for by the Act,
303 within the Business District at a rate of half of one percent (0.50%) of gross

304 sales for the term of the proposed Business District (the “Business District
305 Taxes”), which shall be in full force and effect on or before April 1, 2023.

306 B. The Corporate Authorities establishing a separate fund entitled the "Heinen
307 Business District Tax Allocation Fund" (or also referenced herein as the
308 “Business District Fund”) in order to receive the Business District Taxes
309 from the Illinois Department of Revenue.

310 C. The City filing the Business District Ordinance with the Illinois Department
311 of Revenue and taking all other actions to cause the Illinois Department of
312 Revenue to begin the imposition and collection of the Business District
313 Taxes on or before July 31, 2023.

314 D. The City shall use good faith efforts to perform the aforementioned items if
315 not performed as of the Effective Date.

316 3.3 **Certificates of Expenditure.** During the construction of the Project, the Developer
317 may from time to time submit a request for Certificate of Expenditure, substantially in the form
318 set forth on Exhibit E (each, a “Certificate of Expenditure”) to verify the amount of Business
319 District Project Costs incurred by the Developer. Each Developer request for a Certificate of
320 Expenditure shall: (A) be signed by the Developer under oath; (B) be accompanied by
321 documentation reasonably acceptable to the City evidencing Developer having incurred such costs,
322 including, but not limited to, paid receipts for Developer’s costs, draw statements, sworn
323 statements, and/or lien waivers for the Project; (C) include a summary of Developer’s Business
324 District Project Costs in an amount not to exceed the Maximum Reimbursement Amount; and (D)
325 any other information and materials reasonably requested by the City, and shall be submitted to
326 the City Manager or the City Manager’s designee. Unless the City has good cause to believe that

327 the request for a Certificate of Expenditure is improper, the City shall approve the requests within
328 thirty (30) days following receipt. If the City elects to withhold or deny approval of a request for
329 a Certification of Expenditure, the City shall promptly advise the Developer in writing as to the
330 specific basis for the City's position, and Developer shall be afforded the right to supplement the
331 request for Certificate of Expenditure.

332 **3.4 City Disbursements to Developer of Business District Funds.**

333 A. The City shall not be obligated to issue any disbursement of collected
334 Business District Funds unless and until the Developer has received an
335 occupancy permit for the redeveloped Center located on the Heinen
336 Property.

337 B. Upon obtaining an occupancy permit for the redeveloped Center located on
338 the Heinen Property, the Developer may submit a written request to the City
339 for the City to disburse collected Business District Funds to the Developer.

340 C. Within sixty (60) days following the City's receipt of the Developer's
341 written request to the City for the City to disburse collected Business
342 District Funds to the Developer, the City shall disburse to the Developer all
343 Business District Funds, up to the total amount eligible Business District
344 Expenses memorialized within approved Certificates of Expenditures.

345 D. Following the Occupancy Permit Issuance Date, the City shall thereafter
346 disburse collected Business District Funds to the Developer on an annual
347 basis.

348 E. The amount Business District Funds disbursed by the City to the Developer
349 shall not to exceed Two Hundred Seventy-Five Thousand Dollars and No

350 Cents (\$275,000.00), but may be less than the Maximum Reimbursement
351 Amount based upon actual expenditures of eligible Business District
352 Expenses and may be less based on the amount of Business District Taxes
353 the City has collected through the expiration of the Business District

354 F. The City's obligation to make disbursements of collected Business District
355 Funds to the Developer shall cease on the earlier of: (1) the expiration of
356 the Reimbursement Period as defined in Section 3.5 of this Agreement; or
357 (2) full payment of all actual expenditures of eligible Business District
358 Expenses; or (3) full payment of the Maximum Reimbursement Amount of
359 Two Hundred Seventy-Five Thousand Dollars and No Cents (\$275,000.00).

360 G. For illustrative purposes only, if the City has collected Two Hundred
361 Thousand Dollars and No Cents (\$200,000.00) in Business District Taxes
362 through and including the Occupancy Permit Issuance Date, the City shall,
363 within sixty (60) days following the City's receipt of the Developer's
364 written request to the City for the City to disburse collected Business
365 District Funds to the Developer, pay the Developer Two Hundred Thousand
366 Dollars and No Cents (\$200,000.00), provided that the City is in possession
367 of at least Two Hundred Thousand Dollars and No Cents (\$200,000.00) in
368 eligible Business District Expenses memorialized within approved
369 Certificates of Expenditures. Thereafter, on an annual basis the City shall
370 disburse to the Developer all subsequently collected Business District
371 Funds, up to the total amount eligible Business District Expenses
372 memorialized within approved Certificates of Expenditures, until the earlier

373 of: (1) the expiration of the Reimbursement Period as defined in Section 3.5
374 of this Agreement; or (2) full payment of all actual expenditures of eligible
375 Business District Expenses; or (3) full payment of the Maximum
376 Reimbursement Amount of Two Hundred Seventy-Five Thousand Dollars
377 and No Cents (\$275,000.00).

378 **3.5 Sources of Funds.**

379 A. The sole source of funds to make payments of the City disbursements to the
380 Developer of Business District Funds, as described in Section 3.4 of this
381 Agreement, shall be Business District Taxes received by the City during the
382 Reimbursement Period. The term “Reimbursement Period” shall be defined
383 as the period commencing on the Effective Date and ending on the earlier
384 of: (1) full payment of all actual expenditures of eligible Business District
385 Expenses; or (2) full payment of the Maximum Reimbursement Amount of
386 Two Hundred Seventy-Five Thousand Dollars and No Cents (\$275,000.00);
387 or (3) the date that is one (1) year following the expiration of the Business
388 District.

389 B. The Developer agrees and understands that: (1) the sole source of funds for
390 payments of the City disbursements to the Developer of Business District
391 Funds, as described in Section 3.4 of this Agreement, is expressly limited
392 to the Business District Taxes; (2) the Developer is assuming the risk that
393 Business District Taxes generated during the Reimbursement Period may
394 be less than the Maximum Reimbursement Amount; (3) the Developer will
395 have no right to compel the exercise of any taxing power of the City for

396 payment of any of the reimbursement amounts; and (4) the City's
397 reimbursement obligations pursuant to this Agreement do not and will not
398 represent or constitute a general obligation or a pledge of the faith and credit
399 of the City, the State of Illinois or any political subdivision thereof.

400 **ARTICLE IV**
401 **AUTHORITY**

402 4.1 **City Powers and Authority.** The City hereby represents and warrants to the
403 Developer that the City has full constitutional and lawful right, power and authority, under
404 currently applicable law, to execute and deliver and perform the terms and obligations of this
405 Agreement, and the foregoing has been, or will be, duly and validly authorized and approved by
406 all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the
407 legal, valid and binding obligation of the City, and is enforceable in accordance with its terms and
408 provisions and the execution of this Agreement does not require the consent of any other
409 governmental authority.

410 4.2 **Developer Powers and Authority.** The Developer hereby represents and warrants
411 to the City that the Developer has full lawful right, power and authority, under currently applicable
412 law, to execute and deliver and perform the terms and obligations of this Agreement, and the
413 foregoing has been or will be duly and validly authorized and approved by all necessary Developer
414 actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the
415 Developer, is enforceable in accordance with its terms and provisions and does not require the
416 consent of any other party.

417 4.3 **Authorized Parties.** Except in cases where the approval or authorization of the
418 City's Corporate Authorities is required by law, whenever, under the provisions of this Agreement,
419 or other related documents and instruments or any duly authorized supplemental agreements, any

420 request, demand, approval, notice or consent of the City or the Developer is required, or the City
421 or the Developer is required to agree to, or to take some action at, the request of the other, such
422 request, demand, approval, notice or consent, or agreement shall be given for the City, unless
423 otherwise provided herein, by the City Manager or his designee and for the Developer by any
424 officer of the Developer so authorized (and, in any event, the officers executing this Agreement
425 are so authorized). Any Party shall be authorized to act on any such request, demand, approval,
426 notice or consent, or agreement or other action and neither Party hereto shall have any complaint
427 against the other because of any such action taken.

428 **ARTICLE V**
429 **DEFAULTS AND REMEDIES**

430 5.1 **Default.** A Party shall be deemed to be in default of this Agreement if it fails to
431 materially perform, observe, or comply with any of its covenants, agreements, or obligations
432 hereunder or breaches or violates any of its representations contained in this Agreement after the
433 expiration of any cure period applicable thereto.

434 5.2 **Cure of Default.** Except as otherwise provided herein, prior to the time that a
435 failure of any Party to this Agreement to perform its obligations hereunder or the failure to perform
436 any other action or omission to perform any such obligation or action described in Section 5.1 shall
437 be deemed to be a default hereof, the Party claiming such failure shall provide written notification
438 to the Party alleged to have failed to perform of the alleged failure and shall demand performance.
439 No default of this Agreement may be found to have occurred if performance has commenced to
440 the reasonable satisfaction of the complaining Party within sixty (60) days of the receipt of such
441 notice; provided, however, that if such default cannot reasonably be cured within such sixty (60)
442 day period, the alleged defaulting Party shall be afforded an additional period to cure but in no
443 event more than ninety (90) days. In all instances, the prosecution of the conduct necessary to

444 remedy the alleged default must be diligently pursued until the cure is perfected. The obligation to
445 cure defaults, as herein required, shall be tolled during any applicable time period during which a
446 delay in performance is permitted as an event of one or more Force Majeure Delays under the
447 provisions of Section 6.3 hereof but the tolling of the performance of any obligation shall be
448 limited to the obligation or action as to which the Force Majeure Delay provisions apply and only
449 for the timeframe that the event of Force Majeure is in effect.

450 In the event that either Party shall default on any provision of this Agreement and fail to
451 cure said default as provided in the preceding paragraph or as elsewhere provided in this
452 Agreement, the non-defaulting Party may enforce the terms hereof by filing any action or
453 proceeding available at law or in equity, in any court of competent jurisdiction, including an action
454 for specific performance of the covenants and agreements herein contained. Except as otherwise
455 set forth herein, no action taken by a Party pursuant to the provisions of this Section 5.2 or pursuant
456 to the provisions of any other section of this Agreement shall be deemed to constitute an election
457 of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of
458 any other remedy either set forth herein or available to any Party at law or in equity.

459 **5.3 Default Shall Not Permit Termination of Agreement.** Except as provided
460 Section 2.1.A and Section 2.1.C, no default under this Agreement shall entitle any Party to
461 terminate, cancel or otherwise rescind this Agreement; provided, however, this limitation shall not
462 affect any other rights or remedies the Parties may have by reason of any default under this
463 Agreement.

464 **5.4 Right to Enjoin.** In the event of any violation or threatened violation of any of the
465 provisions of this Agreement by a Party, any other Party shall have the right to apply to a court of

466 competent jurisdiction for an injunction against such violation or threatened violation, and/or for
467 a decree of specific performance.

468

469

470

**ARTICLE VI
GENERAL PROVISIONS**

471 6.1 **Time of Essence.** Time is of the essence of this Agreement. The Parties will make
472 every reasonable effort to expedite the subject matters hereof and acknowledge that the successful
473 performance of this Agreement requires their continued cooperation.

474 6.2 **Mutual Assistance.** The Parties agree to take such actions, including the execution
475 and delivery of such documents, instruments and certifications (and, in the case of the City, the
476 adoption of such ordinances and resolutions), as may be necessary or appropriate from time to
477 time to carry out the terms, provisions and intent of this Agreement and to aid and assist each other
478 in carrying out such terms, provisions and intent. The City agrees that it shall not revoke or amend
479 the Authorizing Ordinances if such revocation or amendment would prevent or impair, or have the
480 effect of either of the foregoing, the development of the Project in accordance with this Agreement
481 or the City’s performance of its obligations hereunder. The Parties shall cooperate fully with each
482 other in securing from all appropriate governmental authorities (whether federal, state, county or
483 local) all necessary or required permits, entitlements, authorizations and approvals to develop and
484 construct the Project.

485 6.3 **Force Majeure.** To the extent that a Force Majeure Event causes a Force Majeure
486 Delay, as those terms are defined below, neither the City nor Developer nor any successor in
487 interest to either of them, shall be considered in breach of or in default of their obligations under
488 this Agreement. For the purpose of this Agreement force majeure events (“Force Majeure Events”)
489 include: pandemics or epidemics which directly impact the Project, governmental takings and

490 limitations associated with such taking, war, state or national emergency, government mandated
491 closures, damage or destruction by fire or other casualty, strike, shortage of material as reasonably
492 evidenced by documentation thereof, unusually adverse weather conditions such as, by way of
493 illustration and not limitation, severe rain storms or below-freezing temperatures of abnormal
494 degree or for an abnormal duration, tornadoes or cyclones. The timeframe during which a Force
495 Majeure Event causes a Party to be unable to discharge an obligation hereunder shall be deemed a
496 “Force Majeure Delay”. In each case where a Party hereto believes its performance of any specific
497 obligation, duty or covenant hereunder is delayed by reason of an event of Force Majeure Delay,
498 the Party claiming the benefit of this Section 6.3 shall notify the other Party of the nature of the
499 specific Force Majeure Event and the manner and timeframe for which it will cause a Force
500 Majeure Delay and, specifically, the obligation, duty or covenant which it believes is delayed or
501 impaired by reason of the Force Majeure event. Notice shall be provided to the other Party within
502 three (3) days of an event causing a Force Majeure Event. Such notice shall be given in accordance
503 with Section 6.9 hereof. Performance of the obligation, duty or covenant impaired by reason of the
504 designated event shall be tolled only for that period of time reasonably necessary to remove, cure,
505 or otherwise perform in the face of the Force Majeure Event. In no case shall an event of Force
506 Majeure Delay toll the performance of any obligation, duty or covenant not directly implicated in
507 the claimed event of Force Majeure Delay. Further, nothing herein shall be deemed to preclude the
508 right of the Party entitled, by the terms of this Agreement, to receive the performance of any
509 obligation, duty or covenant to challenge the validity of a claimed event of Force Majeure Delay.

510 6.4 **Amendment.** This Agreement, and any exhibits attached hereto, may be amended
511 only by the mutual consent of the Parties evidenced by a written amendment, by the adoption of
512 an ordinance or resolution of the City approving said written amendment, as provided by law, and

513 by the execution of said written amendment by the Parties or their successors in interest.
514 Notwithstanding the foregoing, an amendment to the Project Plans or planned unit development
515 shall not require an amendment to this Agreement. In addition, the City Manager may effect Minor
516 Modifications to this Agreement without the same being deemed an amendment to this Agreement
517 which requires action by the Corporate Authorities. For the purposes of this Agreement, the term
518 “Minor Modification” means a modification or waiver of any requirement, specification, or other
519 term set forth in this Agreement, consented to by the Parties in writing, whereby such
520 modification or waiver does not materially affect the goals, purposes, or nature of the Agreement.

521 6.5 **Entire Agreement.** This Agreement sets forth all agreements, understandings and
522 covenants between and among the Parties relative to the matters herein contained. This Agreement
523 supersedes all prior agreements, negotiations and understandings, written and oral, and shall be
524 deemed a full integration of the entire agreement of the Parties.

525 6.6 **Severability.** If any provisions, covenants, agreement or portion of this Agreement,
526 or its application to any person, entity or property, is held invalid, such invalidity shall not affect
527 the application or validity of any other provisions, covenants or portions of this Agreement and, to
528 that end, all provisions, covenants, agreements or portions of this Agreement are declared to be
529 severable.

530 6.7 **Consent or Approval.** Except as otherwise specifically provided in this
531 Agreement, whenever consent or approval written or otherwise of any Party to this Agreement is
532 required, such consent or approval shall not be unreasonably withheld, delayed, or conditioned.

533 6.8 **Illinois Law / Venue.** This Agreement shall be construed in accordance with the
534 laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this

535 Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage
536 County, Illinois.

537 6.9 **Notice.** Any notice, request, consent, approval or demand (each, a “Notice”) given
538 or made under this Agreement shall be in writing and shall be given in the following manner: (A)
539 by personal delivery of such Notice; or (B) by mailing of such Notice by certified mail, return
540 receipt requested; (C) by sending e-mail transmission of such Notice with confirmation of receipt;
541 or (D) by commercial overnight delivery of such Notice. All Notices shall be delivered to the
542 addresses set forth in this Section 6.9. Notice served by certified mail shall be effective on the fifth
543 (5th) Business Day (as defined below) after the date of mailing. Notice served by e-mail
544 transmission shall be effective as of date and time of e-mail transmission, provided that the Notice
545 transmitted shall be sent on a Business Day during business hours. In the event e-mail Notice is
546 transmitted on a non-Business Day or during non-business hours, the effective date and time of
547 Notice is the first business hour of the next Business Day after transmission. Notice served by
548 commercial overnight delivery shall be effective on the next Business Day following deposit with
549 the overnight delivery company. For purposes hereof, the first “business hour” of a Business Day
550 shall be 8:00 a.m. Central time and the last “business hour” shall be 6:00 p.m. Central time. The
551 term “Business Day” shall be Monday through Friday, excluding federal and State of Illinois
552 holidays.

553 If to the City:

554 City of Naperville
555 Attn: City Manager
556 400 South Eagle Street
557 Naperville, Illinois 60540
558 KriegerD@naperville.il.us

559 with a copy to:

560 City of Naperville
561 Attn: City Attorney
562 400 South Eagle Street
563 Naperville, Illinois 60540
564 DiSantoM@naperville.il.us

565 If to the Developer:

566 HEINEN'S, INC.
567 Attn: Jeff Heinen or President
568 4540 Richmond Rd.
569 Cleveland, OH 44128
570 jheinen@heinens.com

571 6.10 **Counterparts.** This Agreement may be executed in several counterparts, each of
572 which shall be an original and all of which shall constitute but one and the same agreement.

573 6.11 **Term of Agreement.** The term of this Agreement shall commence on the Effective
574 Date, set forth on page one (1) hereof and continue until the earlier of: (A) the Developer's receipt
575 of the Maximum Reimbursement Amount or (B) the date that is one year following the last day of
576 the Reimbursement Period.

577 6.12 **Good Faith and Fair Dealing.** City and Developer acknowledge their duty to
578 exercise their rights and remedies hereunder and to perform their covenants, agreements, and
579 obligations hereunder, reasonably and in good faith.

580 6.13 **Drafting.** Each Party and its counsel have participated in the drafting of this
581 Agreement therefore none of the language contained in this Agreement shall be presumptively
582 construed in favor of or against either Party.

583 6.14 **Recording.** The Developer shall be permitted to record, at its cost and expense, a
584 memorandum of this Agreement with the DuPage County Recorder's Office.

585 6.15 **Successors and Assigns.** This Agreement shall inure to the benefit of and shall be
586 binding upon Developer and Developer's respective successors, grantees and permitted assigns,
587 and upon successor corporate authorities of the City.

588 6.16 **Assignment.** Prior to issuance of the Certificate of Completion, Developer may
589 not assign this Agreement, or any rights of obligations hereunder, to any party, except to an
590 Affiliate, without the prior express written consent of the City. After to issuance of the
591 Certificate of Completion, the Developer may assign this Agreement, or any rights of
592 obligations hereunder, provided that the Developer delivers at least ten (10) day’s notice prior
593 to such assignment taking effect.

594 6.17 **Partial Funding.** Except as otherwise set for in this Agreement, the Developer
595 acknowledges and agrees that the economic assistance to be received by the Developer as set forth
596 in this Agreement is intended to be and shall be a source of partial funding for the Project and
597 agrees that any additional funding above and beyond said economic assistance shall be solely the
598 responsibility of the Developer. The Developer acknowledges and agrees that the amount of
599 economic assistance set forth in this Agreement represents the maximum amount of economic
600 assistance to be received by the Developer, provided the Developer complies with the terms and
601 provisions set forth in this Agreement. The Developer further acknowledges and agrees that the
602 City is not a joint developer or joint venturer with the Developer and the City is in no way
603 responsible for completion of any portion of the Project.

604 6.18 **Attorney Fees.** Except where otherwise provided herein, should it become
605 necessary to bring legal action or proceedings to enforce this Agreement, or any portion thereof,
606 or to declare the effect of the provisions of this Agreement, each Party shall be responsible for
607 payment of their own costs of litigation, including but not limited to attorneys’ and consultants’
608 fees and costs.

609 6.19 **Audits.** Following the close of each fiscal year of the City, as is usual and
610 customary and required by law, the City shall undertake to audit the financial statements of the

611 City in the manner provided by law. Such audit shall include the Business District Fund and any
612 other City fund that may be used to account for the financial activity contemplated herein. After
613 any such audit is completed and accepted by the City, the City shall provide to Developer a
614 certified copy of such audit upon Developer's written request.

615 6.20 **Exhibits.** Each exhibit attached hereto or referenced herein shall be deemed
616 incorporated in this Agreement and made part hereof.

617

618 **[SIGNATURE PAGES FOLLOW]**

619

HEINEN'S, INC.,
an Ohio corporation

By: Jeff Heinen

Name: JEFF HEINEN

Title: PRESIDENT

645

646

STATE OF Ohio)

647

) SS

648

COUNTY OF Cuyahoga)

649

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO

650

HEREBY CERTIFY that the above-named Jeff Heinen is personally known to me to be

651

the President, and also personally known to me to be the same person whose

652

name is subscribed to the foregoing instrument as such Developer

653

and respectively, and that he appeared before me this day in person and severally acknowledged

654

that, as such Developer, he signed and delivered the said instrument,

655

pursuant to authority given by the limited partnership as his free and voluntary act, and as the free

656

and voluntary act and deed of said President of HEINEN'S, INC., for

657

the uses and purposes therein set forth.

658

GIVEN under my hand and official seal, this 13th day of August, 2024.

659

Commission expires April 13, 2026 Amy Lynn Franks

660

Notary Public

661

662



AMY LYNN FRANKS
Notary Public, State of Ohio
My Commission Expires:
April 13, 2026

EXHIBIT A-1

**Legal Description, Permanent Tax Index Numbers
and Street Location (Common Addresses) for the
Heinen Property**

PINs of Proposed Area

08-17-303-022

Common Address

1256 through 1290 East Chicago Avenue, Naperville, IL

Approximate Size: 7.35 acres

The Land is described as follows:

Parcel 1:

Lot 1 in Eagle Crest Plaza Subdivision, being a Subdivision in the South 1/2 of Section 17, Township 38 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded July 16, 1974 as document [R74-36120](#), in DuPage County, Illinois.

Parcel 2:

Electric line easement for the benefit of Parcel 1, created by Easement Grant recorded March 3, 1978 as document [R78-17642](#), as described in Paragraph 3 and depicted in Exhibit A-I therein, falling in the Southwest corner of the following described Land:

That part of the South 1/2 of Section 17, Township 38 North, Range 10, East of the Third Principal Meridian, described as follows: commencing at a point on the center line of Chicago Avenue formerly (Naperville Chicago Road) (Maple Road) as now monumented and occupied, said point being 640 .35 feet (as measured along said center line) Northeasterly of the most Northerly corner of Pembroke Greens Unit One, being a Subdivision in the aforesaid South 1/2 of Section 17, said most Northerly corner being at the point of intersection of the center line of Chicago Avenue formerly (Naperville Chicago Road) (Maple Road) and the Easterly line of the aforesaid Pembroke Greens Unit One Subdivision; thence North 74 degrees 29 minutes 10 seconds East, along said center line of Chicago Avenue 253 .535 feet to the point of intersection with the center line of Olson's Lane as now platted and recorded; thence South 6 degrees 18 minutes 00 seconds west, along said center line of Olsen's Lane, 338.87 feet; thence North 83 degrees 42 minutes 00 seconds west, along a line drawn perpendicularly to the aforesaid center line of Olsen's Lane, 159 .36 feet ; thence North 15 degrees 30 minutes 50 seconds West, along a line drawn perpendicularly to the aforesaid center line of Chicago Avenue 205 .39 feet to the point of intersection with a line drawn South 6 degrees 36 minutes 53 seconds West through the hereinafter designated point of beginning; thence North 6 degrees 36 minutes 53 seconds East, along the last described line, 53.976 feet to said point of beginning, all in DuPage County, Illinois.

EXHIBIT A-2
Depiction (Map) of Heinen Property



1260-1290 E Chicago Ave Business District




 Transportation, Engineering and
 Development Business Group
 www.tedbg.com
 Date: 9/13/2022

Exhibit A-2

This map should be used for reference only.
 The data are subject to change without notice.
 City of Knoxville reserves no liability in the use
 or application of the data. Reproduction or
 distribution is forbidden without express
 written consent from the City of Knoxville.

EXHIBIT B Project Depiction

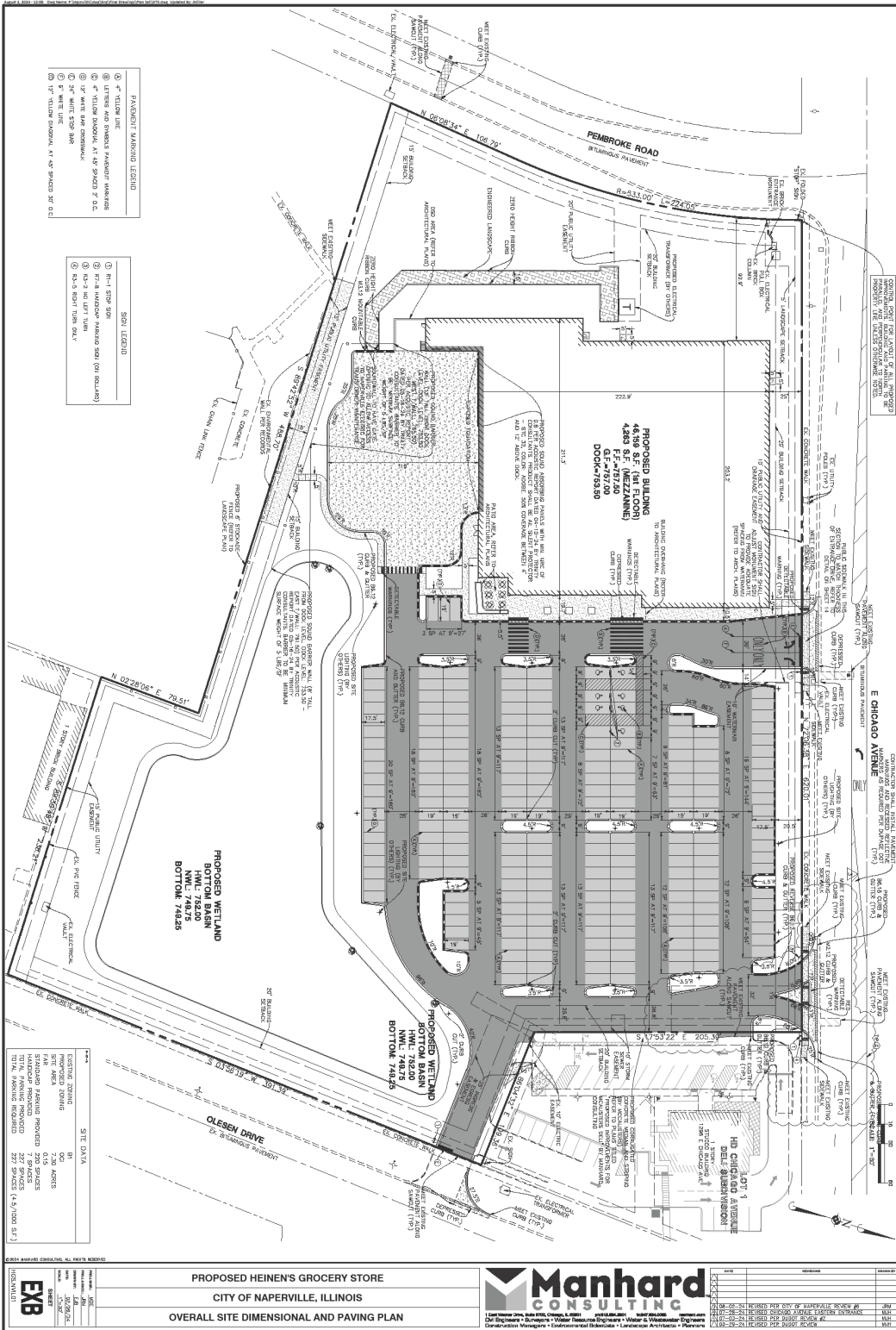


EXHIBIT C

Developer & Business District Project Costs

TOTAL DEVELOPER PROJECT COSTS	
PROJECT DESCRIPTION	ESTIMATED COST
HARD COSTS	
General Conditions/General Requirements	\$830,905
Sitework	\$2,834,880
Concrete, Masonry, Metals	\$3,122,778
Wood/Plastics, Doors and Windows, Roof	\$1,627,020
Finishes, Specialties,	\$904,855
Mechanical, Electrical	\$1,298,655
SOFT COSTS	
Engineers, Architects, Consultants	\$1,018,434
TOTAL DEVELOPER PROJECT COSTS	\$11,637,527.00

TOTAL ELGIBLE BUSINESS DISTRICT PROJECT COSTS	
PROJECT DESCRIPTION	ESTIMATED COST
Detention Basin	\$75,000
Storm Sewer and Installation	\$200,000
TOTAL ELGIBLE BUSINESS DISTRICT PROJECT COSTS	\$275,000.00

EXHIBIT D

Heinen Business District Plan

September 1, 2022

CITY OF NAPERVILLE, ILLINOIS
CITY OF NAPERVILLE HEINEN BUSINESS DISTRICT PLAN

Prepared By:

**City of Naperville, Illinois
&
Kane, McKenna and Associates, Inc.**

September, 2022

CITY OF NAPERVILLE HEINEN BUSINESS DISTRICT PLAN

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I. INTRODUCTION

Background

The City of Naperville (the "City") has identified an area on the southwest corner of E Chicago Avenue and Olesen Drive (the proposed "Business District") that would benefit from the utilization of a business district designation as specifically provided for in 65 ILCS 5/11-74.3-1 et. seq., as amended (the "BD Act" or "Business District Act"). The Business District Act authorizes Illinois municipalities to designate an area within the municipality as a "Business District" as defined in the BD Act. A Business District must be established in conformance with a specific plan officially approved by the City Council (the "City Council") of the City after holding a public hearing on the proposed designation. Kane, McKenna and Associates, Inc. ("KMA") has been retained to assist the City in determining the eligibility of the area in accordance with the BD Act and in preparing this Business District Plan.

The proposed Business District (sometimes referred to as the "Study Area" therein) includes a strategic shopping center within the City, including the former Butera Fruit Market ("Butera") and adjacent strip center ("Center"). The proposed Business District is legally described in Appendix A and graphically depicted in Appendix B. The proposed Business District is generally bounded by Pembroke Park to the south, E Chicago Avenue to the north, Olesen Drive to the east, and Pembroke Road to the west, and consists of approximately 7.35 acres. The proposed Business District is presently owned by JPS Properties, LLC, with a purchase agreement with Heinen's, Inc. (the "Developer").

The proposed Business District consist of approximately 68,000 square feet of retail space which was constructed in 1974. The historic lease rates have been below other grocery anchored centers in Naperville. The Study Area has had persistent vacancies, most recently resulting in the closing of the Butera. In speaking with the Butera tenant in the center, grocery store sales have never met potential because of the conditions in the center. The Butera portion is 100% vacant, and the adjacent Center has approximately 40% of total square feet vacant. Combined, 80% of the Study Area's retail square footage remains vacant.

The Developer has indicated that several factors present on the site make the current retail as built a challenge to reuse. Additionally, the site drainage was constructed based on the design standards of "ponding" detention in 1974. This detention method has created many safety and health issues. The approved stormwater detention for the site has contributed to the site not being successful historically. Standing water has many harmful effects including propagation of mold and mildew, deterioration of building and parking lot, and safety issues for pedestrian and vehicular traffic, especially in the winter season. Developer hired Manhard Consulting Engineers to study the stormwater issues. Manhard report notes the surrounding areas including two Naperville Park District properties, apartment property, and roadways all add stormwater to the site. The City Planning Department Stormwater Detention Code would require at least 30% more detention capacity in its current code as compared to 1974.

The majority of the center has had no significant upgrades in more than 45 years. The lack of investment in the building leads to inefficiencies: utility waste, safety issues, accessibility, and other features lacking in a modern building built to today's code.

Developer working with the City and consultants, if BD is approved, will design a modern stormwater detention facility. Best engineering practices will raise the surface grade of the site and install a mix of underground and surface detention. Therefore the 46,000 square feet of the former grocery will need to be demolished and a new modern center will be developed in its place.

Municipal Powers Under the BD Act

In accordance with the BD Act, the City may exercise the following powers in carrying out a business district development plan:

- (1) To make and enter into all contracts necessary or incidental to the implementation and furtherance of a business district plan. A contract by and between the municipality and any developer or other nongovernmental person to pay or reimburse said developer or other nongovernmental person for business district project costs incurred or to be incurred by said developer or other nongovernmental person shall not be deemed an economic incentive agreement under Section 8-11-20 of the BD Act, notwithstanding the fact that such contract provides for the sharing, rebate, or payment of retailers' occupation taxes or service occupation taxes (including, without limitation, taxes imposed pursuant to subsection (10) the municipality receives from the development or redevelopment of properties in the business district. Contracts shall be binding upon successor corporate authorities of the municipality and any party to such contract may seek to enforce and compel performance of the contract by civil action, mandamus, injunction, or other proceeding.
- (2) Within a business district, to acquire by purchase, donation, or lease, and to own, convey, lease, mortgage, or dispose of land and other real or personal property or rights or interests therein; and to grant or acquire licenses, easements, and options with respect thereto, all in the manner and at such price authorized by law. No conveyance, lease, mortgage, disposition of land or other property acquired by the municipality or agreement relating to the development of property, shall be made or executed except pursuant to prior official action of the municipality. No conveyance, lease mortgage, or other disposition of land owned by the municipality, and no agreement relating to the development of property, within a business district shall be made without making public disclosure of the terms and

disposition of all bids and proposals submitted to the municipality in connection therewith.

- (2.5) To acquire property by eminent domain in accordance with the Eminent Domain Act.
- (3) To clear any area within a business district by demolition or removal of any existing buildings, structures, fixtures, utilities, or improvements, and to clear and grade land.
- (4) To install, repair, construct, reconstruct, or relocate public streets, public utilities, and other public site improvements within or without a business district which are essential to the preparation of a business district for use in accordance with a business district plan.
- (5) To renovate, rehabilitate, reconstruct, relocate, repair, or remodel any existing buildings, structures, works, utilities, or fixtures within any business district.
- (6) To construct public improvements, including but not limited to buildings, structures, works, utilities, or fixtures within any business district.
- (7) To fix, charge, and collect fees, rents, and charges for the use of any building, facility, or property or any portion thereof owned or leased by the municipality within a business district.
- (8) To pay or cause to be paid business district project costs. Any payments to be made by the municipality to developers or other nongovernmental persons for business district project costs incurred by such developer or other nongovernmental person shall be made only pursuant to the prior official action of the municipality evidencing an intent to pay or cause to be paid such business district project costs. A municipality is not required to obtain any right, title, or interest in any real or personal property in order to pay business district project costs associated with such property. The municipality shall adopt such accounting procedures as shall be necessary to determine that such business district project costs are properly paid.
- (9) To apply for and accept grants, guarantees, donations of property or labor or any other thing of value for use in connection with a business district project.
- (10) If the municipality has by ordinance found and determined that the business district is a blighted area under this Law, to impose a retailers' occupation tax and a service occupation tax in the business district for the planning, execution, and implementation of business district plans and to pay for business district project costs as set forth in the business district plan approved by the municipality.
- (11) If the municipality has by ordinance found and determined that the business district is a blighted area under this Law, to impose a hotel operators' occupation tax in the business district for the planning, execution, and implementation of business

district plans and to pay for the business district project costs as set forth in the Business District Act for the business district project costs.

Pursuant to the Business District Act, the service occupation and retailers' occupation taxes may be imposed at a rate not to exceed one percent (1%) of the gross receipts from sales of tangible personal property within the business district and must be imposed in quarter percent (0.25%) increments. The taxes may not be imposed on "tangible personal property titled or registered with an agency of this State's government or food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption), prescription and nonprescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purposes of rendering it usable by a disabled person, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use." The hotel operators' occupation tax may be imposed at a rate of not to exceed one percent (1%) of the gross rental receipts from the rental leasing or letting of hotel rooms within the business district (excluding, however, gross rental receipts from the rental leasing or letting of a hotel to permanent residents, as defined in the Hotel Operators' Occupation Tax Act), must be imposed in quarter percent (0.25%) increments.

Pursuant to the Business District Act, the business district tax allocation fund, in which the taxes described above are deposited, shall be dissolved no later than 270 days following payment of the last distribution of taxes that retire all proposed Business District costs and obligations. These Service Occupation and Retailers Occupation taxes, if imposed, shall be collected by the Illinois Department of Revenue and then disbursed to the City for up to 23 years, pursuant to the statute. The Hotel Operators Occupation tax shall be administered and collected by the City.

In accordance with the Business District Act, the Plan sets forth the necessity for, the objectives of and the development program for the proposed Business District in the City. All appendices to this Plan are incorporated herein by this reference thereto.

City Goals and Objectives

The 2022 City's Land Use Master Plan designates the Future Land Use for the Study Area as a Neighborhood Center. The City's stated goals and objectives for this use include:

- Encourage commercial businesses that offer goods and services catering to adjacent residential neighborhoods.
- Require necessary buffering and screening to ensure an appropriate transition between neighborhood centers and adjacent lower-intensity place types.
- Allow an appropriate mix of uses that creates an active district and serves the needs of adjacent neighborhoods.
- Provide parking through surface parking lots.

To further the above-stated general goals of the City, certain objectives have been specified for the proposed Business District and are outlined below (note: the objectives are area wide in nature and each objective does not need apply to a single project):

- To support the redevelopment of vacant or underutilized properties within the proposed Business District, and to stabilize occupancy and usage;
- To provide for the necessary rehabilitation of retail space required to support the proposed uses within the proposed Business District and to facilitate redevelopment of the proposed Business District as a whole;
- To provide for the necessary public improvements to support the proposed uses within the proposed Business District and facilitate redevelopment of the proposed Business District as a whole;
- To improve pedestrian and vehicular traffic safety and circulation throughout the proposed Business District as a whole;
- To undertake selected public street, utility and other site improvement projects that are essential to the continuation of the proposed Business District for use in accordance with this Plan; and
- To ensure that redevelopment within the proposed Business District is both coordinated and comprehensive.

II. QUALIFICATION CRITERIA

Business District development and redevelopment is specifically provided for in Business District Act. Pursuant to the Act, the City Council may designate a specific area of the City as a business district only after the holding of a public hearing and the making of a formal finding that:

- 1) The business district, on the whole, has not been subject to growth and development through investment by private enterprises or would not reasonably be anticipated to be developed or redeveloped without the adoption of the business district plan; and,
- 2) The business district on the whole conforms to the comprehensive plan for the development of the municipality as a whole.

Additionally, the City Council may designate a specific area as a business district with the authority to levy an additional Service Occupation and Retailers Occupation tax after the holding of a public hearing and the making of a formal finding that the area conforms to the following definition:

“Blighted area” means an area which by reason of the predominance of defective, non-existent, or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire or other causes, or any combination of those factors, retards the provision of housing accommodations or constitutes an economic or social liability, an economic underutilization of the area or a menace to the public health, safety, morals, or welfare.”

The proposed Business District, as it currently exists, demonstrates factors which support its qualification as a blighted area under the above definition. These include deterioration of site improvements and buildings. The presence of these factors is described below. Their presence alone, and in combination, constitute an economic liability and economic underutilization of the area as a whole.

Deterioration of Site Improvements:

Deterioration refers to any physical deficiencies or disrepair in buildings or site improvements requiring treatment or repair. This would include buildings with major defects in the secondary building components (e.g., doors, windows, porches, gutters and downspouts, fascia materials, etc.), and major defects in primary building components (e.g., foundations, frames, roofs, etc.). The condition of roadways, alleys, curbs gutters, sidewalks, off-street parking and surface areas may also evidence deterioration, as well as surface cracking, crumbling, potholes, depressions, loose paving materials, and weeds protruding through the concrete and asphalt surfaces.

The Study Area components examined were of the following types:

Basic Structural — Includes the basic elements of a building: foundation walls, load bearing walls and columns, floor structure, roof and roof structure.

Structural Components — Includes normal additions to structures such as porches and steps, window and window units, doors and door units, chimneys, tuck points and gutters and downspouts.

Infrastructure Components — Includes parking lots, curbs, pylons, drainage, fire hydrants.

Per site visits conducted by KMA staff, and supported by photographs and oral and written history, much of the surface parking lot suffers from deterioration to Infrastructure Components as evidenced by cracked asphalt, pavement, some cracked curbs, and surface asphalt in need of resurfacing. Additionally, the surface parking lot suffers from chronic flooding, a drainage issue caused by dated design standards and inadequate pipe size.

The buildings in the Study Area suffer from deterioration such as cracks in the walls, mold and mildew, need for tuckpointing, rusted metal car barriers, and rusted fencing around the rear dock. Furthermore, the buildings were constructed more than 45 years ago with little by means of investment since. This functional obsolescence of the Basic Structural elements of the buildings contributes to the continued high vacancy of the shopping center.

The proposed redevelopment would significantly improve upon the Study Area challenges through:

- Demolition of obsolete structures
- Raising the lot several feet
- Construction of new stormwater detention
- Construction of new buildings to better suit developer needs
- Construction of new surface parking lot and landscaping

Other Findings:

- 1) With respect to the finding that “the proposed Business District on the whole constitutes an economic underutilization of the area,” this finding is present based upon the analysis related to declining sales taxes well as vacancy within the proposed Business District.
- 2) Pursuant to the Act, the City makes the finding that the proposed Business District “constitutes an economic or social liability.” Based upon the low retail lease rates as compared to other grocery anchored centers in the city and persistent vacancies present in the proposed Business District, and lag or decline in EAV relative to the City, the “economic liability” finding is present. The Study Area has declined in Equalized Assessed Valuation when compared to the City as a whole, as seen in the following chart.

EAV Trend for Study Area

Study Area	2021	2020	2019	2018	2017	2016
BD EAV	\$1,635,750	\$1,606,350	\$1,536,880	\$1,536,880	\$1,485,050	\$1,431,370
Annual % Change	1.8%	4.5%	0.0%	3.5%	3.8%	-
City of Naperville	\$5,322,195,144	\$5,245,520,933	\$5,014,220,207	\$4,882,224,062	\$4,682,910,002	\$4,468,983,831
City of Naperville (No BD)	\$5,320,559,394	\$5,243,914,583	\$5,012,683,327	\$4,880,687,182	\$4,681,424,952	\$4,467,552,461
Annual % Change	1.5%	4.6%	2.7%	4.3%	4.8%	6.3%
CPI	4.70%	1.20%	1.80%	2.40%	2.10%	1.30%

Source: DuPage County and U.S. Bureau of Labor Statistics

As part of this Plan’s preparation, the City hereby makes a formal finding that the proposed Business District is a “blighted area” pursuant to the requirements of the Business District Act due to deterioration of site improvements and buildings, and furthermore, that the proposed Business District constitutes an economic liability and economic underutilization of the area to the City in its present condition and use.

III. BUSINESS DISTRICT DESCRIPTION

General Description

The proposed Business District is generally described as those properties bounded by Pembroke Park to the south, E Chicago Avenue to the north, Olesen Drive to the east, and Pembroke Road to the west, and consists of approximately 7.35 acres.

Legal Description

The legal description of the proposed Business District is included in Appendix A. The proposed Business District includes only parcels of real property that will be directly and substantially benefit from this Plan.

Name of the Proposed Business District

The name of the proposed Business District shall be “City of Naperville Heinen Business District.”

IV. BUSINESS DISTRICT REDEVELOPMENT

Business District Policy Criteria

The City will implement the following guidelines to direct development activities within the proposed Business District:

- 1) Preserve and create an environment within the proposed Business District which will promote the economic and social welfare of the City including opportunities for new retail/commercial growth.
- 2) Exercise powers provided for under the Business District Act in the promotion of the public interest and enhancement of the tax base and tax revenues to the City.
- 3) Enhance the economic well-being and strengthen the retail/commercial sector within the proposed Business District by encouraging private investment and reinvestment through public financing vehicles, if necessary, to increase business activity, attract sound and stable commercial growth, create and retain job opportunities and enhance and diversify the tax base.
- 4) Address the need for economic feasibility, cost efficiency and economies of scale in development through encouragement of coordinated development of projects. The City will review projects on an individual basis in order to determine the need for assistance.
- 5) Provide necessary public infrastructure that enhances the proposed Business District to create an attractive service and/or shopping environment to encourage and support private investment.

Private Development Actions

The City is committed to being prudent regarding the use of public resources in the assistance of economic development activities. Accordingly, City assistance for economic development located within the proposed Business District, as generally described below, will require thorough City review of the need for specifically requested public assistance. The City Council will need to approve the terms of assistance in the form of a development agreement with any developer or business proposals. Private development actions would be expected to conform to the guidelines set forth above.

Ownership will need to evidence capacity to implement the proposed project and it must conform to the appropriate City planning provisions. The City seeks to expand and diversify its economic and tax base. Accordingly, the project must serve to improve the economic tax base of the City.

General Project Description

The City intends to provide or enter into agreements with developers or other private sector interests to provide certain public and private improvements in the proposed Business District. City projects may include

- Rehabilitation of existing commercial space for re-tenanting and reuse;
- Installation, repair and/or relocation of public utilities including construction or replacement of the public utility mains, service lines and related system improvements;
- Installation, repair and/or relocation of certain street improvements including construction or replacement of roadways, traffic signalization and other surface improvements;
- Facilitation of site preparation including the acquisition, subdivision or consolidation of property to support coordinated redevelopment within the proposed Business District; and
- Facilitating certain other public or private improvements that are essential to the preparation of the proposed Business District for use in accordance with this Plan, but which are located outside of the geographic boundaries of the proposed Business District.

Business District Project Costs for 23 Year Term

Estimated business district project costs are shown below (the “Business District Project Costs”). Adjustments to these cost items may be made without amendment to the Plan. The costs represent estimated amounts and do not represent actual City commitments or expenditures. The “Total Maximum Business District Expenditure Amount” set forth in Table 1 shall constitute a ceiling on the aggregate amount of possible expenditures of funds in the proposed Business District, over the 23-year term of the proposed Business District.

Table 1. Proposed Business District Project Costs for 23-Year Term

	Project Description	Estimated Cost
(a)	Site Preparation and Improvement Costs	\$ 3,400,000
(b)	Professional Costs, Miscellaneous Costs and Contingency	\$ 1,000,000
	Developer’s Expenditure Amount	\$ 4,400,000

The Developer will request Business District funding for reimbursement of costs it incurs for improving the stormwater and detention area for the adjacent lands including streets, Park District area, apartments, along with site’s stormwater and detention needs. The Developer will not use Business District funds for any of its other building improvements. The Developer will pay for all the improvements, including stormwater and detention needs, and not obligate the City to issue

any bonds or debt obligations. The Developer will request of the City Business District funds to 0.5 % of gross sales tax.

All project cost estimates are in 2022 dollars and are subject to inflationary adjustments. Adjustments between the estimated line-item costs above are expected. The individual costs will be reevaluated in light of the nature of the private development and resulting tax revenues as the project is considered for public financing alternatives that the City may provide.

The amounts of the line-items set forth above are not intended to place a specific limit on the described line-item expenditures. Adjustments may be made in line items within the Total Maximum Expenditure Amount, either increasing or decreasing individual line-item costs.

Adjustments to these cost items may be made without amendment to the Plan as long as the Total Maximum Expenditure Amount is not exceeded.

Issuance of Obligations

The City may issue obligations pursuant to the Business District Act in order to pay for business district project costs. The obligations may be secured by the business district Taxes and other sources the City deems appropriate.

One or more series of obligations may be issued from time to time in order to implement the Business District Plan. Obligations issued by the City pursuant to the Business District Plan and the Business District Act shall be retired pursuant to the requirements of said Act.

V. CITY PUBLIC FINANCING ASSISTANCE

The City has an obligation to be prudent with the use of public resources in commercial development activities. For this reason, it is very important that, whenever the use of public financing is at issue in relation to commercial redevelopment goals for a proposed project, the City have a process in place to govern conditions under which it will make private development incentives available.

That process must allow for adequate analysis of a request for public financial assistance and the evaluation of the project to determine if it meets the needs and objectives of the City. All this should be incorporated into a business district redevelopment agreement which may only become effective with approval by the City Council. This process should include the following steps.

- 1) The private entity (owner, developer, tenant) approaches City for specific private development incentives assistance and presents a request to the City.
- 2) City will review request. If deemed a potentially viable and beneficial project, City will begin review of development project.
- 3) City will review and analyze information submitted by the applicant. Any additional information required by the City shall be submitted in a timely manner.
- 4) If request is deemed feasible, then the request may be processed by the City.
- 5) City attorney will initiate preparation and negotiation of a Business District development agreement.
- 6) City staff will undertake negotiations regarding the proposed development project and business district development plan with the applicant.
- 7) The development project will then be presented with City staff recommendation for review and approval by the City Council.

Note: Many of the steps noted above may be consolidated depending upon the timetable and characteristics of the development project.

VI. SOURCES OF FUNDS TO PAY DEVELOPMENT PROJECT COSTS

Upon designation of the proposed Business District by City ordinance, the City intends to impose the service occupation tax and the retailer's occupation tax provided for by the Business District Act within the proposed Business District at a rate of up to 0.5% of gross sales for the term of the proposed Business District (the "Special Business District Taxes"). Said Special Business District Taxes shall be a source of funding for paying business district project costs within the proposed Business District and any obligations incurred by the City to pay such business district project costs.

A separate City ordinance shall also be adopted by the City Council that shall create a separate fund entitled the "Naperville Heinen Business District Tax Allocation Fund" in order to receive the Special Business District Taxes from the Illinois Department of Revenue. Pursuant to the Business District Act, all Special Business District Taxes shall be deposited into this special fund.

The Special Business District Taxes shall be discontinued upon such date that all obligations issued payable from such Special Business District Taxes are fully paid upon maturity or otherwise, unless otherwise extended by the City.

VII. ESTABLISHMENT AND TERM OF THE BUSINESS DISTRICT

The establishment of the proposed Business District shall become effective upon adoption of an ordinance by the City Council adopting this Plan and designating the Business District. Development agreements between the City and any developer or other private party shall be consistent with the provisions of the Business District Act and this Plan.

Pursuant to the Business District Act, the Special Business District Taxes described in Section VI may not be imposed for more than 23 years pursuant to the provisions of the Business District Act. It is expected that the proposed Business District shall expire upon termination of the imposition of the Special Business District Taxes.

VIII. FORMAL FINDINGS

Based upon the information described in Section II, and the attached appendices, the City Council hereby finds and determines as follows:

- 1) The proposed Business District on the whole has not been subject to growth and development by private enterprises or would not reasonably be anticipated to be developed or redeveloped without the adoption of this Plan; and,
- 2) The Business District Plan conforms to the City's Comprehensive Plan for the development of the municipality as a whole; and,
- 3) The proposed Business District is qualified as defined in the Business District Act by a predominance of deterioration of site improvements and adjacent roadways; and,
- 4) The proposed Business District is "blighted" as defined by the Act; and,
- 5) The proposed Business District is a contiguous area.

IX. PLAN AMENDMENTS

The City Council may amend this Plan from time to time by adopting an ordinance providing for such amendment in accordance with the Business District Act.

EXHIBIT E

Form of Certificate of Expenditure

Date: _____, 202_

To: HEINEN. INC. (“Developer”)

Re: City of Naperville, (the “City”) \$ _____ Business District Tax Reimbursement

This Certification is submitted to you, Developer, pursuant to the City of Naperville Business District Redevelopment Agreement (Heinen Project) by and between Developer and the City, dated _____, 202_, as authorized pursuant to Ordinance No. _____ (the “Redevelopment Agreement. All terms used herein shall have the same meaning as when used in the Redevelopment Agreement.

The City hereby certifies that, as of the date hereof, \$ _____ in Business District Project Costs has been advanced by Developer in connection with the Project. Such amount has been properly incurred, is a proper charge made or to be made in connection with the Project. Total Business District Project costs are \$ _____.

IN WITNESS WHEREOF, the City has caused this certification to be signed on its behalf as of the date shown above.

CITY OF NAPERVILLE

By: _____

Name: _____

Title: _____