

Resolution No. 13-070

**A Resolution Authorizing the Support of the
City of Decatur, Alabama
to a
Commercial and Retail Development
within the
City Limits of the City of Decatur**

BE IT RESOLVED by the CITY COUNCIL (herein called the "Council") of the CITY OF DECATUR, ALABAMA (herein called the "City"), as follows:

Section 1. **Findings.** The Council has ascertained and found and does hereby find and declare as follows:

(a) Genesis USA Development, L.L.C. (herein called "Genesis") proposes to develop a retail and commercial project known as "Sweetwater," located on an approximately 125-acre tract of land lying within the corporate limits of the City (herein called the "Project Site"), including a destination retailer (herein called the "Company") to be located on approximately twenty-five (25) acres of the Project Site (herein called the "Retail Store Property").

(b) The Company will agree to build and operate, on the Retail Store Property, a destination retail store of not less than 100,000 square feet plus surrounding improvements (herein called the "Retail Store"). In order to finance the construction of the Retail Store, the Company will incur a loan of approximately \$28 million dollars (herein called the "Building Loan") from a lender of its choice (herein called the "Lender") to be repayable over a period of twenty (20) years.

(c) Genesis will commit to cause to be located on the Project Site, in addition to the Retail Store, a hotel having not less than 250 guest rooms (herein called the "Hotel") as well as other retail and restaurant space (herein called the "Retail Center"), including, without limitation, at least three restaurants, each of which will be projected to pay to the City municipal sales taxes of not less than \$73,500 a year. The Retail Store, the Hotel and the Retail Center are expected to be constructed in accordance with a Development Plan approved by Genesis and the Company.

(d) The City is authorized under the amendment to the Constitution of Alabama proposed by Act No. 2004-94, and ratified at the election held November 2, 2004 (herein called the "Economic Development Amendment"), to expend funds for economic development, including, without limitation, to lend its credit to or grant public funds to any individual, firm, corporation or business entity, public or private, for the purpose of promoting the economic and industrial development of the City.

(e) The Council has determined that it is in furtherance of the Economic Development Amendment for the City to enter into a Project Development and Funding Agreement (herein called the "Development Agreement") pursuant to which the City will agree, subject to the satisfaction of certain conditions set forth therein, (i) to pay to the Company, or at the direction of the Company, to the Lender, the net proceeds received by the City from municipal sales taxes levied at a rate of three percent (3%) collected as a result of sales made at the Retail Store (with certain exceptions), (ii) to purchase a portion of the Project Site, a part of which will be conveyed to the Company for the Retail Store and a part of which will be retained by the City for the construction of public streets and other public infrastructure, (iii) to construct, or caused to be constructed, on and around the Project Site, certain public streets and other public infrastructure improvements in accordance with the Development Agreement, and (iv) to consent to the creation of a tax increment district covering certain portions of the Project Site (but not including the portions owned by the City or on which the Retail Store and the Hotel are to be located).

(f) The Company, on its part, will agree to construct the Retail Store in accordance with the terms set forth in the Development Agreement and to operate the Retail Store for a period of not less than twenty (20) years from its placed-in-service date.

(g) Genesis, on its part, will agree to construct, or cause to be constructed, on the Project Site, the Hotel and the Retail Center.

(h) The obligation of the City to enter into the Development Agreement and to carry out the terms thereof will be conditioned upon the willingness of the State of Alabama, Limestone County, Alabama, and certain public utilities to pledge their support and financial assistance to the Sweetwater Development.

Section 2. Financial Support of the City. The Development Agreement will obligate the City, subject to the terms and conditions set forth therein, to do the following:

(a) Until the earlier of the date on which the debt service on the Building Loan is paid in full or twenty years from the date of funding of the Building Loan, the City will agree to pay, in the manner set forth therein, all Project Sales Tax Revenues (as hereinafter defined) under the terms and upon satisfaction of the conditions set forth therein, for payment of debt service on the Building Loan. Project Sales Tax Revenues shall mean: the City's actual receipts from sales and use taxes levied by the City at a rate of three percent (3%) on retail sales of tangible personal property (but excluding amounts received from the levy by the City of sales taxes levied on sales taxed at a municipal tax rate of less than three percent (3%)) at the Retail Store during the month immediately prior to the payment date, being a portion of the sales and use taxes levied by the City on retail sales within the City limits. The City shall have no obligation to make any payment from other sources, including, without limitation, from any other sales and use tax proceeds received by the City or from other taxes levied against the

Retail Store or sales taxes levied thereon in excess of three percent (3%). Each such payment shall be made solely from current revenues and the agreements contained in the Development Agreement shall not constitute a lien, either legal or equitable, on any amounts held by the City.

(b) The City will purchase, for a price not in excess of \$2,500,000, those portions of the Project Site upon which will be located the following: the Retail Store; the public streets and other public infrastructure to be financed by the City; and the land upon which there will be located a "detention" or "storm water drainage" pond. That portion of the Project Site upon which the Retail Store will be located will be conveyed to the Company in consideration of \$1.00 and a mortgage on such property (subordinate to the mortgage thereof to the Lender as security for the building loan) to secure the obligations of the Company under the Development Agreement.

(c) The City will use its best efforts to issue general obligation warrants of the City (herein called the "General Obligation Warrants") for the purpose of financing up to \$12,000,000 in capital improvements by the City consisting of the following: (i) the acquisition of that portion of the Project Site to be acquired by the City in accordance with Section 1(e)(ii) of this Resolution, (ii) the construction of public streets on the Project Site and (iii) the construction of other public infrastructure within public rights of way.

Section 3. Tax Increment District. The City will consent to the creation of a tax increment district pursuant to the provisions of Chapter 99 of Title 11 of the Code of Alabama of 1975, as amended, covering any portion of the Project Site except those portions thereof owned by the City and those portions thereof on which there will be located the Retail Store and the Hotel.

Section 4. Conditions to the Obligations of the City. The commitments on the part of the City as set forth in this Resolution are subject to the following conditions:

(a) The execution and delivery by the City, Genesis and the Company of the definitive Development Agreement in form and substance satisfactory to the City and its counsel.

(b) The receipt by the City of a final, non-appealable order of the Circuit Court of Morgan County, Alabama, validating the Development Agreement, the agreements on the part of the City contained therein and all actions to be taken by the City pursuant thereto.

(c) Definitive commitments on the part of the Hotel and three restaurants, each of which is expected to generate City sales tax revenue of not less than \$73,500 a year, to open for business on the Project Site no later than a date approved by the City

(d) Commitments on the part of the State of Alabama, Limestone County, Alabama, and various public utilities serving the area in which the

Project Site is located, to support the Sweetwater Development in a manner satisfactory to the City.

Approved on this 18th day of March, 2013.

President of the City Council

City Clerk