

**REGULAR CITY COUNCIL MEETING
105 S MAIN ST
FARMER CITY, ILLINOIS
MONDAY, AUGUST 2, 2021
6:00 P.M.
AGENDA**

PRELIMINARY MATTERS

1. Call to order
2. Roll call
3. Pledge of allegiance to the flag
4. Proclamations/presentations/recognitions
5. Public Comment –

CONSENT AGENDA

The following items will be adopted on a single motion without discussion unless a council member requests separate consideration:

- A. Approval of the minutes of the July 6, 2021 council minutes
- B. Fund Warrant List

UNFINISHED BUSINESS--Ordinances or resolutions previously tabled.

NEW BUSINESS--Ordinances and resolutions for initial consideration

- A. Approve appointment of Jason Strough to council
- B. Resolution 2021-62 Resolution authorizing the expenditure of one-third the cost of sidewalks in accordance with the public sidewalk installation and replacement program for 217 E High St
- C. Ordinance 1072 An Ordinance Approving a Redevelopment Agreement by and Between the City of Farmer City and Stuart Jenkins in connection with 201 S Main St

EXECUTIVE SESSION

OTHER ITEMS

1. City manager report
2. Non-agenda items and other business

ADJOURNMENT

NOTE: Anyone planning to attend the meeting who has need of special assistance under the Americans with Disabilities Act (ADA) is asked to contact the city clerk's office at (309) 928-2842, 48 hours before the meeting. Staff will be pleased to make the necessary arrangements.

**MINUTES OF THE FARMER CITY, ILLINOIS
CITY COUNCIL
REGULAR MEETING OF
JULY 19, 2021 6 p.m.**

Roll call

Present: Councilmembers Shelley Friedrich, Willard McKinley, David Walsh and Mayor Scott Testory.
Also, in attendance: City Manager Sue McLaughlin, City Clerk Angie Wanserski, City Attorney Joe Chamley.

Pledge of allegiance to the flag

Proclamations/presentations

Public Comment

CONSENT AGENDA

- A. Approval of the minutes of the July 6, 2021 council meeting
- B. Fund Warrant List
MOTION by McKinley to approve consent agenda. Seconded by Friedrich.
Voted unanimously. Motion carried.

UNFINISHED BUSINESS - Ordinances or resolutions previously tabled

- A. Resolution 2021-60 Resolution confirming appointment of members of the Farmer City Public Library Board.
No discussion.
MOTION by McKinley to move off the table and approve Resolution 2021-60 Resolution confirming appointment of members of the Farmer City Public Library Board. Seconded by Friedrich. Voted unanimously. Motion carried.

NEW BUSINESS – Ordinances and resolutions for initial consideration

- A. Resolution 2021-61 a resolution temporarily closing certain streets.
This was removed from the agenda
- B. Ordinance 2021-1071 an ordinance declaring 420 N John St as surplus property and directing the sale of real estate and related matter.
The city is hoping to get this property back on the tax roll by putting it up for bid. The intent to bid must be published 4 times. City manager McLaughlin is anticipating that the city can move forward on this property in October.
MOTION by McKinley to approve Ordinance 2021-1071 an ordinance declaring 420 N John St as surplus property and directing the sale of real estate and related matter. Seconded by Friedrich. Voted unanimously. Motion carried.
- C. Approve soliciting bids for the repaving of the 200 block of E Green St, 200 block of South Lincoln and Oak Lane including sidewalks and ADA ramps.
The city has received MFT funds owing from Illinois gas tax and will use these funds, along with capital projects money, for road milling and overlay and sidewalks with ADA ramps. This year's project will include 1 block of Green St, 1 block of Lincoln St and Oak Lane.
MOTION by McKinley to approve the solicitation of bids for the repaving of the 200 block of E Green St, 200 block of South Lincoln and Oak Lane including sidewalks and ADA

ramps. Seconded by Friedrich. Voted unanimously. Motion carried.

EXECUTIVE SESSION –

OTHER ITEMS

1. City manager report

City manager McLaughlin informed residents that the ADM railroad tracks on John St were removed. She will be bringing designs about the North parking lot of the pool and John St drainage to council in the near future.

ADJOURNMENT

MOTION by McKinley to adjourn meeting. Seconded by Friedrich. Voted unanimously. Motion carried.

Angie Wanserski, City Clerk

Vendor Name	Net Invoice Amount	
100		
WATTS COPY SYSTEMS INC	189.11	ADM COPIER
COOPER, BILLIE	300.00	CLEANING SERVICES
MEDIACOM	145.10	INTERENET
SIMPLIFIED COMPUTERS	1,020.00	TECH SUPPORT - JULY THROUGH SEPTEMBER
FUTURA	22.79	ADM - SUPPLIES
TECHNOLOGY MANAGEMENT	132.81	IWIN MEMBERSHIP SERVICES
POLICE LAW INSTITUTE	570.00	POLICE 3 YEAR RENEWAL
ILEAS	60.00	ILEAS DUES
Ray O Herron	212.99	POL - SUPPLIES
FUTURA	22.77	SUPPLIES
Evergreen FS Inc	1,210.60	POLICE FUEL
Mug - ABug	1,800.00	STS - SPRAY MOSQUITO'S
FRONTIER	42.61	STREET
FUTURA	22.79	SUPPLIES
HEARTLAND AG INC	273.75	STREET SUPPLIES
Evergreen FS Inc	403.53	STREET FUEL
Menards	134.94	POOL EQUIPMENT
Kiefer Aquatics	173.10	POOL - GUARD SUPPLIES
FUTURA	22.79	SUPPLIES
MCCORMICK DISTRIBUTING	520.92	CONCESSION FOOD
MCCORMICK DISTRIBUTING	373.14	CONCESSION FOOD
GOLD MEDAL	48.50	CONCESSION FOOD
GOLD MEDAL	222.17	CONCESSION FOOD
GOLD MEDAL	269.88	CONCESSION
Total 100:	8,194.29	
110		
LAUTERBACH & AMEN, LLP	1,375.00	ACCOUNTING ASSISTANCE
Total 110:	1,375.00	
150		
MITCHELL'S TRUCKING	280.67	CA6 TRUCKING ONLY
Total 150:	280.67	
510		
FUTURA	22.79	SUPPLIES
Evergreen FS Inc	179.35	WATER FUEL
Total 510:	202.14	
520		
Evergreen FS Inc	201.77	SEWER FUEL
Total 520:	201.77	
530		
JM TEST SYSTEMS	234.50	TESTING ON RUBBER GLOVES
HEPLERBROOM LLC	662.50	PROFESSIONAL FEES
ILLINOIS ENVIRONMENTAL PR	6,993.00	AIR POLLUTION CONTROL PERMIT FEE
FOSTER INVESTIGATIONS, LTD	2,832.18	PROFESSIONAL SERVICES
McMaster-Carr	129.09	ELEC SUPPLIES
FUTURA	22.79	SUPPLIES
CHEMSEARCH	620.92	MB- 1000 25 LBS
Evergreen FS Inc	246.61	ELEC FUEL

Vendor Name	Net Invoice Amount
Total 530:	<u>11,741.59</u>
Grand Totals:	<u><u>21,995.46</u></u>

Vendor Name	Net Invoice Amount	
510		
IMCO UTILITY SUPPLY CO	240.00	Meter repair/replace
Water Products Co.	297.00	REPAIR CLAMP
	<hr/>	
Total 510:	537.00	
	<hr/>	
520		
PDC Laboratories Inc.	3,324.27	LAB SERVICES
USA BLUEBOOK	248.59	LAB equipment
	<hr/>	
Total 520:	3,572.86	
	<hr/>	
Grand Totals:	4,109.86	
	<hr/> <hr/>	

PETITION FOR CONSTRUCTION OF PUBLIC SIDEWALKS WITH THE AID
OF CITY AND THOMAS FRAZIER CLARK FOUNDATION FUNDS

TO: The City Council of the City of Farmer City, Illinois

The undersigned Petitioner hereby represents as follows:

1. That he/she is the owner of the real estate legally described as follows, or having a street address as follows:

217 EAST HIGH STREET

2. That he/she desires to have a sidewalk constructed abutting the above-described real estate in accordance with the terms and specifications of Ordinance #419, which was passed and approved by the city council of the City of Farmer City, Illinois, on July 16, 1973; which Ordinance requires the sidewalks to be no less than four feet wide.
3. That the frontage of the proposed sidewalk is 75 lineal feet and the number of square feet is 300.
4. That he/she has obtained an estimate of the cost of the construction of said proposed sidewalk and submits the estimate to the City Council for approval, a copy of which estimate is attached hereto and made a part hereof by reference.
5. That as will be noted from the attached estimate the total costs for the proposed sidewalk is \$ 2,600.⁰⁰, and Petitioner herewith submits one-third of the estimated cost, namely \$ 866.⁶⁷.

Dated: July 12, 2021

Ronald J. Lane

Action of City of Farmer City
Date:
Resolution #



Tim Brandt Construction LLC

18097 N 50 E Road

IL 61732

(309)826-0178

timbrandtconstruction@gmail.com

Estimate

Date	Estimate #
6/9/2021	2149

Name / Address
Ron Vance 217 E High Farmer City

			Project
Description	Qty	Rate	Total
Replace Brick Sidewalk with Concrete-Approximately 4'x75'x4"		2,600.00	2,600.00
Total			\$2,600.00

John Yeagle Construction
217 E. Green St., Farmer City, IL 61842

July 8 2021

Ron Vance
217 E. High St.
Farmer City, IL 61842

Sidewalk replacement
75 lineal feet x 4 feet wide

Remove brick
Pour 4" thick concrete walk

300 sq ft @ \$9.50

\$ 2,850.00

RESOLUTION 2021-62

RESOLUTION AUTHORIZING THE EXPENDITURE OF ONE-THIRD THE COST OF SIDEWALKS IN ACCORDANCE WITH THE PUBLIC SIDEWALK INSTALLATION AND REPLACEMENT PROGRAM 217 E HIGH ST

WHEREAS, the city of Farmer City is a community where many residents enjoy walking and children love to play; and

WHEREAS, it is not safe for pedestrians to walk in roadways or for children to play in streets the city of Farmer City has long encouraged the construction of sidewalks; and

WHEREAS, in 1973 the City of Farmer City began a program of contributing one-third the cost of the construction of new or replacement sidewalks; and

WHEREAS, Ronald Vance has petitioned the city to construct replacement sidewalks at 612 N. Plum in the amount of \$2600.00;

NOW THEREFORE BE IT RESOLVED by the city council of the City of Farmer City, Illinois, that is hereby authorizing an expenditure not to exceed one-third the cost of new or replacement sidewalks at 217 E High St.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMER CITY, COUNTY OF DEWITT, ILLINOIS THIS 2nd DAY OF AUGUST 2021

AYES: _____ NAYS: _____ ABSTAIN: _____ ABSENT: _____

Scott Testory, mayor

Angie Wanserski, city clerk

May 27, 2021

Dear Sue:

I am enclosing my application for TIF. If any additional information is required, please let me know so that I can provide it.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Jenkins". The signature is written in a cursive style with a horizontal line underneath the name.

Stuart Jenkins

1103 West Charles St

Champaign, IL 61821

(217) 369-1910

Spjenkins2@aol.com

Tax Increment Financing Program Assistance Application

Applicant Information

Applicant name.....Stuart Jenkins
Contact information.....spjenkins2@aol.com.....(217) 369-1910
Grant Recipient's name/SSN.....Stuart Jenkins/337-36-1580
Type of business entity.....sale of vintage and collectible items
Building name/address.....Farmer City Antiques Center/201 South Main
How is title held.....individual ownership in the name of Stuart Jenkins

Property Information

Property index number.....05-28-342-001

(Copy of most recent tax bill attached)

Project Information

Current Use.....retail sale of vintage/collectible items
General Project Description.....roof replacement (approx. 2300 sq ft)

Work to be completed by:

Mitch Sluder at Rollflex Metals LLC

6644 South Niles Rd

Berrien Springs , MI 49103

Sluder Construction has a strong multi-state presence and a high favorability rating for commercial, industrial, and residential projects.

Labor and materials.....\$15,500 (privately financed)

Signature and Date: Stuart Jenkins 27 May 2021

DeWitt County

Gloria J Wills, County Treasurer
 201 W Washington St, PO Box 439
 Clinton, IL 61727

2019 Real Estate Taxes (payable in 2020)

PLEASE refer to backside of tax bill for -instructions regarding when, where, and how to pay your taxes
 -contact information, should you have a question
 -instructions to change your mailing address
 -instructions to pay online.

The County Collector only collects your taxes and does not determine your assessed value or tax amount.
 We will be happy to assist you or direct you to the proper authority regarding questions about your tax bill.

05-28-342-001
 JENKINS FAMILY TRUST
 1103 W CHARLES ST
 CHAMPAIGN, IL 61821-4523

Owner & Location	Jenkins Family Trust 201 S Main
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Township	Santa-Anna	Bill #	7435
Tax Code	08904	Use Code	0060
Section/Lot		Acres	0.000
		Legal Twp	Range
Legal Description	30 N SD LOTS 4, 5 & 6 BLK 15 ORIGINAL TOWN OF FARMER CITY.		

Valuation	
Land	5,900
Building	18,301
	<u>24,201</u>
State Factor	1.00000
	<u>24,201</u>
Farm Land	0
Farm Building	0
State Equalized Value	<u>24,201</u>

Parcel #	05-28-342-001
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Fair Market Value (non-farmland) 72,603

Exemptions	
Home Improvement	0
Owner Occupied	0
Senior Citizen	0
Veteran	0
Senior Assessment Freeze	0
Net Taxable Value	<u>24,201</u>

Taxing Body	Prior Rate	Prior Amount	Current Rate	Current Amount
County Tax	0.74549	171.28	0.74822	171.91
Fpd Farmer City	0.68172	156.63	0.69896	160.59
Parkland Jr C 505	0.53274	122.40	0.53545	123.02
Farmer City Library	0.14130	32.47	0.15000	34.46
Santa-Anna Township	0.25603	58.83	0.26193	60.18
Blue Ridge U 18	5.29285	1,216.09	5.28943	1,215.30
City Of Farmer City	1.67267	384.31	1.72628	396.63
Santa Anna Road Dist	0.30584	70.27	0.31430	72.21
Farmer City Tif 3	0.00000	63.36	0.00000	119.14
Water Ath Mhmt Vally	0.00000	0.00	0.00000	0.00
Total Real Estate Taxes	9.62864	2,275.64	9.72457	2,353.44

*#1369 PNC
on June 16-20*

1st Installment Due 07/07/2020 for \$1,176.72

2nd Installment Due 09/03/2020 for \$1,176.72

Keep too card for your records



PAINTING ESTIMATE

Estimate From:
 Arthur Williams
 Apple Jack's Painting
 208 Dewey Street
 Urbana, Ill. 61802
 Phone: (217)390.9306

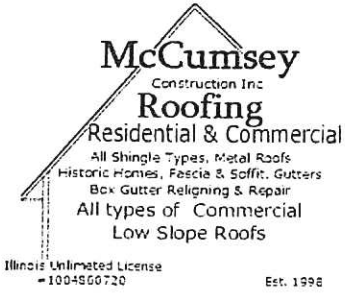
Estimate For:
 Name: Stewart Jenkins
 Bus. Name: _____
 Address: 201 South Main
 City, ST Zip: Farmer City, IL.
 Phone: (217)369.1910

Estimate Date: 07/28/21
Estimated Start Date: _____
Estimated Completion Date: _____

Description of Work	Quantity	Price (\$)	Total (\$)
<p>Waterproof existing roof using GacoRoof Silicone Roofing System</p> <ol style="list-style-type: none"> 1. Power wash roof using Dewalt 4000psi washer. 2. Apply GacoWash Cleaner according to manufacturer directions using a garden pump sprayer at a rate of 3,500 square feet per gallon. 3. Prepare splits, seams and flashing with Gaco Liquid Roof Tape and polyester mesh as needed according to manufacturer directions. Applied with brush and trowel at rate of 50 square feet per gallon 4. Apply 2 coats of GacoRoof Silicone according to manufacturer directions at rate of 100 square feet per gallon. Applied with 1 inch solvent resistant roller cover on Painters Pole. 			
All Products and labor included.			
<p><i>This quotation is valid for a period of 30 days from the date of quoting. Any extra work other than that quoted above will be charged accordingly.</i></p> <p style="text-align: right;">Estimated total</p>			<p>\$20,000</p>



For A Quality Roof You Can Count On Us!



P.O. Box 52
 Farmer City IL, 61842
 Phone: 309-928-3920
 Fax: 309-928-2918

Owner - Dale McCumsey cell: 309-826-4395

McCumseyConst@aol.com

Estimating - Chase McCumsey cell: 309-826-3067

Facebook.com/McCumseyConstructionInc

McCumseyConstInc@Gmail.com

Customer Mailing Address: Stuart Jenkins
1103 W Charles St.
Champaign IL 61821

Job Location: _____

201 S Main

Date : 7/10/2021

We Are Pleased to submit the following estimate for: _____

New roof

Details of estimate

Price

Details of estimate	Price
Tear off existing roofs and haul to landfill.	
Mechanically fasten 1/2 inch insulation recovery board over wood roof deck.	
Install a white tpo membrane roof system according to the manufactures specifications.	
The wall between upper and lower roofs will have window removed and covered with tpo.	
Material, labor, and insurances.	\$52,200.00

Owner and contractor will carry all necessary insurance's.
 Invoices due upon completion. There will be a 1.5 %
 Monthly late fee 18% per year.

Total: \$52,200.00

Customer Signature: _____

Thank You:
 Dale McCumsey

Flat roofing all type single plys-Slate & Tile-All type shingles-Standing seam metal roofs-Metal & flat roof maintenance

ORDINANCE NO. 21-1072

AN ORDINANCE
APPROVING A REDEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF FARMER CITY, DEWITT COUNTY,
ILLINOIS AND STUART JENKINS IN CONNECTION
WITH THE REDEVELOPMENT PROJECT AREA

WHEREAS, Stuart Jenkins (the “Developer”), has submitted a proposal to the City of Farmer City, DeWitt County, Illinois (the “Municipality”) for redevelopment within the Municipality’s Redevelopment Project Area (the “Redevelopment Project Area”); and, thereafter, the Municipality and the Developer have engaged in negotiations related to a Redevelopment Agreement (including all exhibits and attachments in connection therewith, the “Redevelopment Agreement”) concerning redevelopment incentives and assistance related to the development and redevelopment of a part of the Redevelopment Project Area.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FARMER CITY, DEWITT COUNTY, ILLINOIS, as follows:

Section 1. Approval. The Redevelopment Agreement, in substantially the form thereof presented before the meeting of the Mayor and City Council at which this ordinance is adopted, shall be and is hereby ratified, confirmed and approved, and the Mayor and City Clerk are authorized to execute and deliver the Redevelopment Agreement for and on behalf of the Municipality with such changes therein as such officers shall approve; and upon the execution thereof by the Municipality and the Developer, the appropriate officers, agents, attorneys, consultants and employees of the Municipality are authorized to take all supplemental actions, including the execution and delivery of related supplemental opinions, certificates, agreements and instruments authorized by the Redevelopment Agreement, not inconsistent with the Redevelopment Agreement, desirable or necessary to implement and otherwise give full effect to the Redevelopment Agreement.

Section 2. Bid Waiver. Pursuant to the Municipality’s power and authority as a unit of local government of the State of Illinois, applicable bidding requirements, if any, related to the Redevelopment Agreement and related documents and related contracts entered into or to be entered into shall be and are hereby waived. The Developer shall be responsible for compliance with applicable law related to the Redevelopment Agreement, including without limitation the Prevailing Wage Act (820 ILCS 130/0.01 et seq.).

Section 3. Effective. This ordinance shall be in full force and effect immediately upon its passage and approval in the manner provided by law.

Upon motion by _____, seconded by _____, adopted at a regular meeting this 2nd day of August, 2021, by roll call vote, as follows:

AYES (Names): _____

NAYS (Names): _____

ABSENT (Names): _____

PASSED this 2nd day of August, 2021.

City Clerk

APPROVED this 2nd day of August, 2021.

Mayor

STATE OF ILLINOIS)
THE COUNTY OF DEWITT) SS.
CITY OF FARMER CITY)

CERTIFICATION OF ORDINANCE

I, Angie Wanserski, do hereby certify that I am the duly selected, qualified and acting City Clerk of the City of Farmer City, DeWitt County, Illinois (the “**Municipality**”), and as such official I am the keeper of the records and files of the Municipality and of its Mayor and City Council (the “**Corporate Authorities**”).

I do further certify that the attached ordinance constitutes a full, true and correct excerpt from the proceedings of the regular meeting of the Municipality’s Corporate Authorities on August 2, 2021, insofar as same relates to the adoption of Ordinance No. 1072, entitled:

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF FARMER CITY, DEWITT COUNTY,
ILLINOIS AND STUART JENKINS IN CONNECTION WITH THE
REDEVELOPMENT PROJECT AREA,**

a true, correct and complete copy of which ordinance as adopted at such meeting appears in the minutes of such meeting and is hereto attached. Such ordinance was adopted and approved on the date thereon set forth by not less than a affirmative vote of a majority of the Corporate Authorities and approved by the Mayor on the date indicated thereon.

I do further certify that the deliberations of the Corporate Authorities on the adoption of the above ordinance were taken openly, that the vote on the adoption of such ordinance was taken openly and was preceded by a public recital of the nature of the matter being considered and such other information as would inform the public of the business being conducted, that such meeting was held at a specified time and place convenient to the public, that the agenda for the meeting was duly posted on the Municipality’s website and at the City Hall at least 48 hours before the meeting, that notice of such meeting was duly given to all of the news media requesting such notice, that such meeting was called and held in strict compliance with the provisions of the Illinois Municipal Code, as amended, and that the Corporate Authorities have complied with all of the applicable provisions of such laws and such Code and their procedural rules in the adoption of such ordinance.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of the City of Farmer City, DeWitt County, Illinois, this 2nd day of August, 2021.

City Clerk

(SEAL)

REDEVELOPMENT AGREEMENT

by and between the

CITY OF FARMER CITY, ILLINOIS

and

STUART JENKINS

Dated as of _____

Document Prepared By:

**Joseph P. Chamley
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Floor
Champaign, IL 61820**

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EXHIBIT LIST

EXHIBIT A	Description of Property
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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is dated for reference purposes only as of _____, but actually executed by each of the parties on the dates set forth beneath each of their respective signatures below, by and between the **City of Farmer City, DeWitt County, Illinois**, an Illinois municipal corporation (the “**City**”), and **Stuart Jenkins** of Farmer City, Illinois (the “**Developer**”). This Agreement shall become effective upon the last of the City and the Developer to so execute and deliver this Agreement to the other (the “**Effective Date**”).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.), as supplemented and amended (the “**TIF Act**”), the Mayor and City Council of the City (the “**Corporate Authorities**”) adopted certain ordinances (Ordinance Nos. 1018, 1019 and 1020 on December 10, 2018, collectively, the “**TIF Ordinances**”); and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinance, the City designated the Redevelopment Project Area (the “**Redevelopment Project Area**”) and approved the related redevelopment plan, as supplemented and amended (the “**Redevelopment Plan**”), including the redevelopment projects described in the Redevelopment Plan (collectively, the “**Redevelopment Projects**”); and

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below) upon the Property (as defined below); and

WHEREAS, the Property (as defined below) is within the Redevelopment Project Area; and

WHEREAS, the Developer is unwilling to undertake (or cause to be undertaken) the Project (as defined below) without certain tax increment finance incentives from the City, which the City is willing to provide; and

WHEREAS, the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

“**Building**” means the existing building located upon the Property.

“Corporate Authorities” means the Mayor and City Council of the City.

“Eligible Redevelopment Project Costs” means those costs paid and incurred in connection with the Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act, including costs of roof replacement on an existing private building upon the Property and other Project Costs.

“Fund” means, collectively, the “Special Tax Allocation Fund” for the Redevelopment Project Area established under Section 5/11-74.8 of the TIF Act and the TIF Ordinance.

“Incremental Property Taxes” means, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Redevelopment Project Area and any adjacent TIF redevelopment project area by taxing districts that is attributable to the increase in the equalized assessed value of the Redevelopment Project Area and any adjacent TIF redevelopment project area over the initial equalized assessed value of the Redevelopment Project Area and any adjacent TIF redevelopment project area as assigned by the DeWitt County Clerk which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall be paid to the Treasurer for deposit by the Treasurer into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

“Prevailing Wage Act” means the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois, the material terms of which require all contractors and subcontractors to pay all laborers, workers and mechanics performing work for any “public body” (as therein defined) or on any “public works” (as therein defined) no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is located and to perform certain notice and recordkeeping duties.

“Project” means the roof replacement of the Building upon the Property.

“Project Completion Date” means the date which occurs no later than twelve (12) months from and after the date this Agreement is executed by the City.

“Property” means, collectively, the real estate consisting of the parcel or parcels legally described on Exhibit A hereto, upon or within which the Project is to be undertaken and completed.

“Reimbursement Amounts” means, collectively, amounts to be reimbursed or paid to or as directed by the Developer from the Fund by the City under and pursuant to Section 4.1 of this Agreement.

“Requisition” means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article VI of this Agreement.

“TIF Financing” means financing arrangements to or for the benefit of the Developer arising out of the TIF Act which pay or reimburse redevelopment project costs in whole or in part.

“**Treasurer**” means the City Treasurer of the City, or his or her designee.

Section 1.2. Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) **Organization and Standing.** The City is a municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City’s Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors’ or creditors’ rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery of this Agreement or the performance of the City’s agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) **Governmental Consents and Approvals.** No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

Section 2.2. Representations and Warranties of the Developer. In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

(a) **Organization.** The Developer is a natural person.

(b) **Power and Authority.** The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder and thereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

(e) **Consents and Approvals.** No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this Agreement or the performance by the Developer of its obligations hereunder.

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 2.3. Disclaimer of Warranties. The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Property and the Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

ARTICLE III

**CONDITIONS PRECEDENT TO THE UNDERTAKINGS
ON THE PART OF THE DEVELOPER AND THE CITY**

Section 3.1. Conditions Precedent. The undertakings on the part of the City as set forth in this Agreement are expressly contingent upon each of the following:

- (1) The Developer shall have obtained approval of the Project in accordance with all applicable laws, codes, rules, regulations and ordinances of the City, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use regulations (collectively, the “**City Codes**”), it being understood that the City in its capacity as a municipal corporation has discretion to approve the Project; and
- (2) The Developer shall have substantially completed the Project on or before the Project Completion Date.

Section 3.2. Reasonable Efforts and Notice of Termination. The Developer shall use due diligence to timely satisfy the conditions set forth in Section 3.1 above on or before the Project Completion Date, but if such conditions are not so satisfied or waived by the City, then the City may terminate this Agreement by giving written notice thereof to the Developer. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

**ARTICLE IV
CITY’S COVENANTS AND AGREEMENTS**

Section 4.1. City’s TIF Funded Financial Obligations. The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs in connection with the Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid by or on behalf of the Developer and the approval thereof by the City in accordance with Article VI of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 4.1 immediately below, agrees to reimburse the Developer, or to pay as directed by the Developer, from the Fund such amounts (the “**Reimbursement Amounts**”) related to Project upon the Property as follows:

Such Reimbursement Amounts in connection with the Project shall be in an amount up to \$ _____ for eligible Redevelopment Project Costs subject to the further terms and limitations of this Agreement.

Section 4.2. Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including the payments of any Reimbursement Amounts to be paid or reimbursed by the City is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to

reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

ARTICLE IV **DEVELOPER'S COVENANTS**

Section 5.1. Commitment to Undertake and Complete Project. The Developer covenants and agrees to undertake and complete the Project on or before the Project Completion Date. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of any required permits, and any failure on the part of the City to grant or issue any such required permit shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any such approvals shall be made in conformance with the City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

Section 5.2. Compliance with Agreement and Laws During Project. The Developer shall at all times undertake the Project, including any related activities in connection therewith, in conformance with this Agreement and all applicable City Codes.

Section 5.3. Prevailing Wages. The Developer acknowledges that the Illinois Department of Labor currently takes the position as a matter of its enforcement policy that the TIF financing of the Project under this Agreement does not subject the Project to the Prevailing Wage Act unless the Project also receives funding from another public source. The City makes no representation as to any such application of the Prevailing Wage Act to the Project, and any failure by the Developer to comply with the Prevailing Wage Act, if and to the extent subsequently found to be applicable by any legal authority having jurisdiction, shall not be deemed a "Default" under this Agreement. Notwithstanding the foregoing sentence, the Developer agrees to assume all responsibility for any such compliance (or noncompliance) with the Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions.

Section 5.4. Continuing Compliance with Laws. The Developer agrees that in the continued use, occupation, operation and maintenance of the Building, the Developer will comply with all applicable federal and state laws, rules, regulations and all applicable City Codes and other ordinances.

Section 5.5. Tax and Related Payment Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general ad valorem real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 *et seq.*), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a

covenant that runs with the land being the Property upon which the Project is undertaken and shall be in full force and effect until December 31, 2039, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Property, the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 5.4 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of taxes, assessments, charges or other impositions levied or imposed upon Property or any part thereof.

ARTICLE VI

PAYMENT PROCEDURES FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

Section 6.1. Payment Procedures. The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts shall be disbursed by the City Manager for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the City Manager of the City as its representative to coordinate the authorization of disbursement of any Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer at any time with respect to Eligible Redevelopment Project Costs incurred and paid but not previously submitted. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as applicable receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors’ affidavits or lien waivers.

Section 6.2. Approval and Resubmission of Requisitions. The City Manager shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; or (ii) a “Default” under this Agreement as described in Section 6.1 hereof has occurred and is continuing. If a Requisition is disapproved by such City Manager, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

Section 6.3. Time of Payment. Provided that performance of this Agreement has not been suspended or terminated by the City under Article VII hereof, the City shall pay each of the applicable Reimbursement Amounts which are approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after the approval of any such applicable Requisition.

ARTICLE VII
DEFAULTS AND REMEDIES

Section 7.1. Events of Default. The occurrence of any one or more of the events specified in this Section 6.1 shall constitute a “**Default**” under this Agreement.

By the Developer:

(1) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement or any of the Related Agreements that is false or misleading in any material respect;

(2) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement or any of the Related Agreements;

By the City:

(1) The failure by the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of this Agreement; and

(2) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

Section 7.2. Rights to Cure. The party claiming a Default under Section 6.1 of this Agreement (the “**Non-Defaulting Party**”) shall give written notice of the alleged Default to the other party (the “**Defaulting Party**”) specifying the Default complained of. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice, provided that in the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default provided that such Defaulting Party promptly commences and diligently pursues such cure or remedy. During any such period following the giving of notice, the Non-Defaulting party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued within thirty (30) days as provided above shall constitute a “**Breach**” under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

Section 7.3. Remedies. Upon the occurrence of a Breach under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence of a Breach under this Agreement by the Defaulting Party shall be to institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to proceedings to compel any legal action for specific performance or other appropriate equitable

relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of a Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable relief and under no circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions hereof is due to insufficient Incremental Property Taxes being available to the City, any such failure shall not be deemed to be a Default or a Breach on the part of the City.

Section 7.4. Costs, Expenses and Fees. Upon the occurrence of a Default or a Breach which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

ARTICLE VIII

RELEASE, DEFENSE AND INDEMNIFICATION OF CITY

Section 8.1. Declaration of Invalidity. Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 8.1 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any, in the event of a Breach of this Agreement by the City.

Section 8.2. Damage, Injury or Death Resulting from Project. The Developer releases from and covenants and agrees that the City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

Section 8.3. Damage or Injury to Developer and Others. The City and its Corporate

Authorities, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct, gross negligence, or acts or omissions of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

Section 8.4. No Personal Liability. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Corporate Authorities, officials, agents, employees or independent contractors in their individual capacities. No member of the Corporate Authorities, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement, or **(ii)** for the payment of any Reimbursement Amounts which may become due and payable under the terms of this Agreement.

Section 8.5. City Not Liable for Developer Obligations. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach under this Agreement; provided that nothing in this Section 8.5 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts in the event of a Breach of this Agreement by the City.

Section 8.6. Actions or Obligations of Developer. The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the construction or installation of the Project, **(iii)** the Developer's compliance with the Prevailing Wage Act if, as and when applicable to the Project, and **(iv)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the management, development, redevelopment, construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors.

Section 8.7. Environmental Covenants. To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: **(i)** any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Property regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise; **(ii)** (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any

now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hazardous substances on or about or allegedly on or about the Property; or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this section, "hazardous materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Section 8.8. Notification of Claims. Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects any of the Developer's rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

ARTICLE IX **MISCELLANEOUS PROVISIONS**

Section 9.1 Entire Agreement and Amendments. This Agreement (together with Exhibit A attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, including in particular the Letter of Understanding, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 9.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 9.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 9.4. Special and Limited Obligation. This Agreement shall constitute a special

and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations under Section 4.1 hereof only such amount of the Incremental Property Taxes as is set forth in Section 4.1 hereof, if, as and when received, and not otherwise.

Section 9.5. Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

Section 9.6. Waiver. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 9.7. Cooperation and Further Assurances. The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 9.8. Notices and Communications. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered or (c) sent by a nationally recognized overnight courier, delivery charge prepaid, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:
STUART JENKINS
201 S. Main
Farmer City, IL 61842
Tel:

- (ii) In the case of the City, to:
CITY OF FARMER CITY, ILLINOIS
105 S. Main Street
Farmer City, IL 61842-0049
Attn: City Manager
Tel: (309) 928-3412

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 9.9. Assignment. The Developer agrees that it shall not sell, assign or otherwise transfer any of its rights and obligations under this Agreement without the prior written consent of the City, except that: (i) any assignment of this Agreement as collateral, or (ii) any related sale, assignment or transfer of this Agreement in whole to a legal entity having common ownership with the Developer, may be made without the prior written consent of the City. Except as authorized in this Section above, any other assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section, including any with or without the City's prior written consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the applicable parties thereto.

Section 9.10. Successors in Interest. Subject to Section 9.9 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

Section 9.11. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

Section 9.12. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in DeWitt County, Illinois.

Section 9.13. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate on December 31 of the second (2nd) calendar year following the calendar year in which the City executes this Agreement; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 5.5 and Article VIII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

Section 9.14. Construction of Agreement. This Agreement has been jointly negotiated by the parties. The parties acknowledge that each has either been represented by or has had the opportunity to consult with legal counsel and that accordingly the terms of this Agreement are not

to be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement or because that party failed to understand the legal effect of any provision of this Agreement.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

**CITY OF FARMER CITY, DEWITT COUNTY,
ILLINOIS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Date: _____

STUART JENKINS

By: _____

Date: _____

[Exhibit A follows this page and is an integral part of this Agreement in the context of use.]

EXHIBIT A

Description of Property

Legal: 30 N SD Lots 4, 5 & 6 BLK 5 ORIGINAL TOWN OF FARMER CITY

Address: 201 S. Main Street, Farmer City, IL 61842 (located in TIF #3-Forward TIF)

PIN: 05-28-342-001