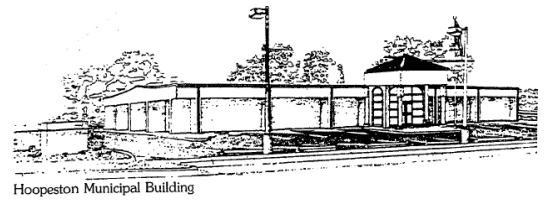


City of Hoopeston

301 W Main St
Hoopeston, IL 60942
217-283-5833



AUGUST 13, 2024
SPECIAL CITY COUNCIL MEETING
MEETING PACKET

City of Hoopeston



**CITY OF HOOPESTON
SPECIAL CITY COUNCIL MEETING AGENDA
TUESDAY, AUGUST 13, 2024
7:00 PM | CITY HALL**

DATE POSTED: Friday, August 9, 2024

REMOTE MEETING LINK:

<https://us06web.zoom.us/j/84179256836>

REMOTE MEETING ID:

841 7925 6836

- Presentations will have a limit of 5 minutes.
- Public comments will be limited to 3 minutes per person with a total of 30 cumulative minutes.

PLEDGE OF ALLEGIANCE:

- I. CALL MEETING TO ORDER
- II. ROLL CALL
- III. AMENDMENT OR APPROVAL OF THE AGENDA
- IV. AMENDMENT OR APPROVAL OF THE MINUTES FROM THE PRIOR COUNCIL MEETING
- V. APPROVAL OF PAYMENT OF THE BILLS
- VI. PRESENTATIONS
- VII. PETITIONS TO THE COUNCIL
- VIII. PUBLIC COMMENT
- IX. EXECUTIVE SESSION
- X. REPORT OF OFFICERS
 - a. EYRICH
 - b. K. FERRELL
 - c. M. FERRELL
 - d. GARRETT
 - e. LAWSON
 - f. PORTH
 - g. SCHARLACH
- XI. COMMUNICATIONS TO THE COUNCIL

XII. UNFINISHED BUSINESS

XIII. NEW BUSINESS

XIV. MAYOR COMMENTS:

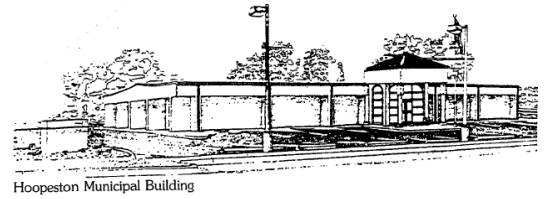
a. HOTEL DEVELOPMENT AGREEMENT

XV. ATTORNEY COMMENTS

XVI. ADJOURNMENT

City of Hoopeston

301 W Main St
Hoopeston, IL 60942
217-283-5833



**MINUTES FROM
8-6-24 CITY COUNCIL MEETING**

REGULAR COUNCIL MEETING

CITY OF HOOPESTON

TUESDAY, AUGUST 6, 2024

7:00 PM – CITY HALL

- I. CALL TO ORDER – Mayor Wise called the meeting to order at 7:01 pm following the pledge of allegiance.
- II. ROLL CALL – The following 5 alderpersons were present: Eyrich, K. Ferrell, M. Ferrell, Porth, and Scharlach. Mayor Wise, Clerk Hardcastle, and Attorney Miller were also present.
- III. AMENDMENT OR APPROVAL OF THE AGENDA – Mayor Wise indicated that item B listed under Mayor Comments can be struck from the agenda. Alderwoman K. Ferrell moved to approve the amended agenda. Alderman Eyrich seconded the motion. Motion carried 5-0.
- IV. APPORVAL OF THE MINUTES FROM PREVIOUS COUNCIL MEETINGS – Alderwoman K. Ferrell moved to approve the minutes from the following meetings: June 27, 2024, special meeting, July 16, 2024 regular council meeting, and the July 30, 2024 special meeting. Alderman M. Ferrell seconded the motion. Motion carried 5-0.
- V. APPROVAL OF THE PAYMENT OF THE BILLS – Alderwoman K. Ferrell moved to approve the payment of the city’s bills. Alderman Eyrich seconded the motion. A voice vote was taken (Ayes: Eyrich, K. Ferrell, M. Ferrell, Porth, Scharlach – Nays: None – Absent: Garrett, Lawson) and the bills were approved 5-0.
- VI. PRESENTATIONS – None
- VII. PETITIONS TO THE COUNCIL – None
- VIII. PUBLIC COMMENT
 - a. Anonymous Male addressed the council. He indicated that he was wearing the shirt that the female was wearing when she was attacked. He is wearing this shirt because of a meeting that he had with the Mayor on Saturday. He had heard from an alderman at that meeting that we are doing all we can and that state representatives will not help us. He has said several times that he will keep coming to these meetings until the police catch the suspect that assaulted the female, and that the city council enacts laws to take care of the problem. He is also requesting the hiring of additional police officers in order to have 3 officers on at all times. He is also requesting that the city council reduce the number of calls that police must respond to. It is his opinion that the city council is not taking crime seriously. He is

going to keep coming until justice is served to his girlfriend because that is what a real man does. He went on to ask how long the alderman that questioned him would fight for his wife. He is upset that the alderman asked him what the point was. The city council and the police department are the ones who is to blame for all of this. He reiterated that he would keep coming until the city acts.

- b. April Fivecoat – It has been 76 days since she was attacked. The police department was able to catch an arsonist in less than 24 hours but not her attacker. The citizens elected the city council to help, and the council has not passed ordinances about homelessness or tents or hired enough police. They also think that state or federal representatives will not help. The city spends \$80,000 to run the pool and \$200,000 to run the cemetery. These funds could pay for 3 extra police officers for 1 year. There are other ways of hiring police officers rather than raising taxes. It is her opinion that the city council is no better than her attacker since she has no faith in the system any more. No one will ever silence her. She then stated her name was April Fivecoat and she will no longer be a victim due to the city council's lack of action. She then stated that we could go ahead and print that in the newspaper.

IX. EXECUTIVE SESSION – None

X. REPORT OF OFFICERS

a. EYRICH

- i. Nothing to report.

b. K. FERRELL

- i. TIRE/ELECTRONIC RECYCLING – Alderwoman K. Ferrell announced that she is working on another tire and electronic recycling event. She is hoping to have both run at the same time, possibly at the beginning of October. She will report back with an exact date.

c. M. FERRELL

- i. RESOLUTION 2025-9 – AWARDING THE BID FOR THE 2004 FORD F150. Alderman M. Ferrell announced that the city received 1 bid for the 2004 Ford F150 previously used by the Street and Alley department. Pete Neal submitted the bid for \$300. Alderman M. Ferrell moved to approve accepting the bid. Alderwoman K. Ferrell seconded the motion. A voice vote was taken (Ayes: Eyrich, K. Ferrell, M. Ferrell, Scharlach, Porth – Nays: None – Absent: Garrett, Lawson) and the bid was accepted 5-0.

d. GARRETT

- i. Absent.

e. LAWSON

- i. ORDINANCE 2025-5 – CHANGING ORDINANCE 10.43.020C – In Alderwoman Lawson’s absence, Mayor Wise spoke about this ordinance. At the previous council meeting we passed an ordinance regulating the use of low-speed powered bicycles and scooters. In that original ordinance there was a 1-time registration fee. This new ordinance would create an annual registration fee of \$15. Alderman Porth moved to approve the ordinance. Alderwoman K. Ferrell seconded the motion. A voice vote was taken (Ayes: Eyrich, K. Ferrell, M. Ferrell, Scharlach, Porth – Nays: None – Absent: Garrett, Lawson) and the ordinance was approved 5-0.

f. PORTH

- i. Nothing to report.

g. SCHARLACH

- i. Nothing to report.

XI. COMMUNICATIONS TO THE COUNCIL – Clerk Hardcastle read a letter from Cayley Martin from the Vermilion County Probation and Court Services Department soliciting donations for their Problem-Solving Courts program.

XII. UNFINISHED BUSINESS – None

XIII. NEW BUSINESS – None

XIV. MAYOR COMMENTS

- a. FOOD TRUCK PERMITS – The daily food truck permits have it that the only person to sign the permits is the mayor. We need to change this to allow the city office workers to approve the permits.
- b. WELCOME BANNERS – Visit Downtown Hoopston will be taking over the welcome banner program from Vermilion Advantage.
- c. SWEETCORN FESTIVAL REQUEST – Mayor Wise read a letter from the Hoopston Jaycees requesting the use of McFerren Park for the 80th National Sweetcorn Festival. Mayor Wise granted the request.

- d. SIGN ORDINANCE – Mayor Wise reviewed the sign ordinance and indicated that Attorney Miller will review the draft, and it would be put up for a vote at the next meeting.

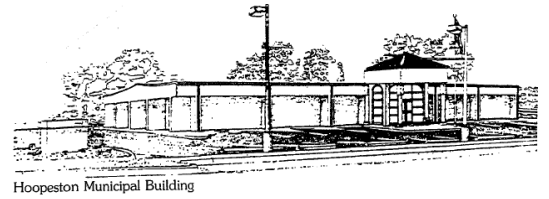
XV. ATTORNEY COMMENTS

- a. PROPERTY UPDATES – Attorney Miller advised that Eric has been ill and he has been out of town but some progress has been made on some of the property issues. Eric is currently working on the S Fifth St property to get the new-found heir to sign off on the agreement. He is also working on the Henning’s property. Alderman Scharlach asked about the downtown building project. Mayor Wise answered that Silver Bros. was at Gail Lane’s building working the last few days. When they are done with that then Lee Farms Excavating will be able to take down the old Chronicle building and the Doyle building. He is hoping that they will be down before the Sweetcorn Festival.
- b. TENT ORDINANCE – Alderman M. Ferrell asked about the tent ordinance. Alderwoman K. Ferrell indicated that she has a draft of the ordinance but has not forwarded it out to everyone.
- c. SOLAR ORDINANCE – Attorney Keyt is still working on this. There is a potential solar farm that would be placed within the city’s zoning jurisdiction.

- XVI. ADJOURNMENT – There being no further action to come before the council, Alderwoman K. Ferrell moved to adjourn the meeting. Alderman M. Ferrell seconded the motion. Motion carried 5-0 and the council adjourned the meeting.

City of Hoopeston

301 W Main St
Hoopeston, IL 60942
217-283-5833



PAYMENT OF THE CITY'S BILLS

Report Criteria:

- Detail report.
- Invoices with totals above \$0 included.
- Only unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
01-50-419 GROUND UPKEEP-GF						
C & D OUTDOOR LLC	24-529	MULCH AT CITY HALL AND CITY	07/31/2024	528.00	.00	
Total 01-50-419 GROUND UPKEEP-GF:				528.00	.00	
01-50-435 UTILITIES-GF						
IL Power Marketing dba Homefiel	030000351484	ELECTRIC-CITY HALL/40000172	08/06/2024	354.78	.00	
IL Power Marketing dba Homefiel	030000351486	ELECTRIC-E MAIN ST/40000173	08/06/2024	41.70	.00	
Total 01-50-435 UTILITIES-GF:				396.48	.00	
01-50-446 LEGAL-GF						
HEYL, ROYSTER, VOELKER & A	INTERIM1695575	PROFESSIONAL SERVICES/AC	08/04/2024	60.00	.00	
HEYL, ROYSTER, VOELKER & A	INTERIM1695576	SOLAR ORDINANCE/PROFESSI	08/04/2024	120.00	.00	
Total 01-50-446 LEGAL-GF:				180.00	.00	
01-50-459 DUES & SUBSCRIPTIONS-GF						
TRANSUNION RISK & ALTERNA	191415-202407-1	BACKGROUND CHECK SUBSC	08/01/2024	33.34	.00	
Total 01-50-459 DUES & SUBSCRIPTIONS-GF:				33.34	.00	
01-50-465 OFFICE SUPPLIES-GF						
AMAZON CAPITAL SERVICES	174KGC6GVMYD	BANKERS BOX	08/05/2024	31.83	.00	
Total 01-50-465 OFFICE SUPPLIES-GF:				31.83	.00	
01-51-435 UTILITIES-S/A						
IL Power Marketing dba Homefiel	030000351489	ELECTRIC-S&A GARAGE/40000	08/06/2024	182.53	.00	
Total 01-51-435 UTILITIES-S/A:				182.53	.00	
01-51-455 TRAINING-S/A						
STEPHEN NEAL	PO84018	REIMBURSE FOR CDL LICENSE	08/06/2024	65.00	.00	
Total 01-51-455 TRAINING-S/A:				65.00	.00	
01-53-413 MAINT & REPAIR VEH-CEMETERY						
NAPAAUTO PARTS	283887	BATTERY FOR 2019 TON TRUC	07/08/2024	199.99	.00	
Total 01-53-413 MAINT & REPAIR VEH-CEMETERY:				199.99	.00	
01-53-435 UTLITIES-CEMETERY						
IL Power Marketing dba Homefiel	030000351477	ELECTRIC-CEMETERY/4000017	08/06/2024	440.57	.00	
Total 01-53-435 UTLITIES-CEMETERY:				440.57	.00	
01-54-436 ST LIGHT BILLING						
IL Power Marketing dba Homefiel	010000038328	ELECTRIC-THOMPSON ST LIGH	08/06/2024	83.40	.00	
IL Power Marketing dba Homefiel	030000351481	ELECTRIC-MAIN ST LIGHTING/4	08/06/2024	5,448.53	.00	
IL Power Marketing dba Homefiel	030000351488	ELECTRIC-LIGHTS 5TH&ORAN	08/06/2024	99.91	.00	

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 01-54-436 ST LIGHT BILLING:				5,631.84	.00	
02-50-412 MAINT & REPAIR EQUIPMENT-P						
STOCKLAND SERVICE INC	106854	REPLACE TWO BLOWN TIRES	08/06/2024	217.00	.00	
Total 02-50-412 MAINT & REPAIR EQUIPMENT-P:				217.00	.00	
02-50-435 UTILITIES-P						
IL Power Marketing dba Homefiel	010000038326	ELECTRIC-SOCCER FIELD/4000	08/06/2024	34.26	.00	
IL Power Marketing dba Homefiel	030000351482	ELECTRIC-BALL FIELD PARK/40	08/06/2024	334.20	.00	
IL Power Marketing dba Homefiel	030000351483	ELECTRIC-BALL FIELD DIAMON	08/06/2024	51.38	.00	
IL Power Marketing dba Homefiel	030000351487	ELECTRIC-LITTLE LEAGUE FIE	08/06/2024	713.75	.00	
IL Power Marketing dba Homefiel	030000351490	ELECTRIC-CIVIC CENTER/PEN	08/06/2024	297.44	.00	
Total 02-50-435 UTILITIES-P:				1,431.03	.00	
07-50-413 MAINT & REPAIR VEHICLE-PD						
NAPA AUTO PARTS	284463	2010 CHEVY TAHOE, 5W20 SYN	07/19/2024	69.17	.00	
NAPA AUTO PARTS	284470	EXCHANGE HEADLIGHTS FRO	07/19/2024	4.70	.00	
Total 07-50-413 MAINT & REPAIR VEHICLE-PD:				73.87	.00	
07-50-435 UTILITIES-PD						
IL Power Marketing dba Homefiel	030000351484	ELECTRIC-CITY HALL/40000172	08/06/2024	354.78	.00	
Total 07-50-435 UTILITIES-PD:				354.78	.00	
07-50-459 DUEES/SUBSCRIPTIONS-PD						
TRANSUNION RISK & ALTERNA	191415-202407-1	BACKGROUND CHECK SUBSC	08/01/2024	33.33	.00	
Total 07-50-459 DUEES/SUBSCRIPTIONS-PD:				33.33	.00	
08-50-413 MAINT & REPAIR VEHICLE-F						
NAPA AUTO PARTS	283996	BATTERY FOR T-9	07/09/2024	575.98	.00	
NAPA AUTO PARTS	284249	SEAL KIT	07/15/2024	23.99	.00	
Total 08-50-413 MAINT & REPAIR VEHICLE-F:				599.97	.00	
08-50-435 UTILITIES-F						
IL Power Marketing dba Homefiel	030000351480	ELECTRIC-FIRE STATION N MA	08/06/2024	470.57	.00	
Total 08-50-435 UTILITIES-F:				470.57	.00	
08-50-468 LAUNDRY-F						
HOOPESTON COIN LAUNDRY	PO84204	3 GEAR WASH, 9385-4 TROY, 93	07/31/2024	101.25	.00	
Total 08-50-468 LAUNDRY-F:				101.25	.00	
09-50-414 MAINT & REPAIR SYSTEM-RB						
SHERWIN-WILLIAMS	4453-9	PAINT AND THINNER	07/26/2024	6,059.57	.00	
C & D OUTDOOR LLC	24-529-1	GRASS SEED 50# BAG	07/31/2024	225.00	.00	
Total 09-50-414 MAINT & REPAIR SYSTEM-RB:				6,284.57	.00	
20-51-435 UTILITIES-W ADM						
IL Power Marketing dba Homefiel	030000351484	ELECTRIC-CITY HALL/40000172	08/06/2024	177.40	.00	

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 20-51-435 UTILITIES-W ADM:				177.40	.00	
20-51-465 OFFICE SUPPLIES-W ADM						
AMAZON CAPITAL SERVICES	174KGC6GVMYD	BANKERS BOX	08/05/2024	15.92	.00	
Total 20-51-465 OFFICE SUPPLIES-W ADM:				15.92	.00	
20-52-435 UTILITIES-S ADM						
IL Power Marketing dba Homefiel	030000351484	ELECTRIC-CITY HALL/40000172	08/06/2024	177.40	.00	
Total 20-52-435 UTILITIES-S ADM:				177.40	.00	
20-52-465 OFFICE SUPPLIES-S ADM						
AMAZON CAPITAL SERVICES	174KGC6GVMYD	BANKERS BOX	08/05/2024	15.92	.00	
Total 20-52-465 OFFICE SUPPLIES-S ADM:				15.92	.00	
20-53-435 UTILITIES-W TREAT						
IL Power Marketing dba Homefiel	030000351478	ELECTRIC-PUMP HOUSE/40000	08/06/2024	528.17	.00	
Total 20-53-435 UTILITIES-W TREAT:				528.17	.00	
20-53-451 ENGINEERING-W TREAT						
DONOHUE & ASSOCIATES	13528-45	TASK #7 WTP IMPROVEMENTS	08/06/2024	727.50	.00	
Total 20-53-451 ENGINEERING-W TREAT:				727.50	.00	
20-54-412 MAINT & REPAIR EQUIP-W SYSTEM						
NAPA AUTO PARTS	284155	BLISTER PACK CAPSULES-JET	07/12/2024	7.64	.00	
Total 20-54-412 MAINT & REPAIR EQUIP-W SYSTEM:				7.64	.00	
20-54-451 ENGINEERING-W SYSTEM						
DONOHUE & ASSOCIATES	13528-45	TASK #6 WS T	08/06/2024	202.50	.00	
Total 20-54-451 ENGINEERING-W SYSTEM:				202.50	.00	
20-56-412 MAINT & REPAIR EQUIP-S SYSTEM						
NAPA AUTO PARTS	284155	BLISTER PACK CAPSULES-JET	07/12/2024	7.65	.00	
Total 20-56-412 MAINT & REPAIR EQUIP-S SYSTEM:				7.65	.00	
20-56-435 UTILITIES0-S SYSTEM						
IL Power Marketing dba Homefiel	030000351479	ELECTRIC-CLOVER LIFT STATI	08/06/2024	201.59	.00	
IL Power Marketing dba Homefiel	030000351491	ELECTRIC-RT 9 LIFT STATION/4	08/06/2024	65.49	.00	
Total 20-56-435 UTILITIES0-S SYSTEM:				267.08	.00	
30-50-435 UTILITIES-COM						
IL Power Marketing dba Homefiel	030000351484	ELECTRIC-CITY HALL/40000172	08/06/2024	354.78	.00	
Total 30-50-435 UTILITIES-COM:				354.78	.00	
30-50-459 DUES & SUBSCRIPTIONS-COM						
TRANSUNION RISK & ALTERNA	191415-202407-1	BACKGROUND CHECK SUBSC	08/01/2024	33.33	.00	

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 30-50-459 DUES & SUBSCRIPTIONS-COM:				33.33	.00	
31-50-465 OFFICE SUPPLIES-MUN COURT						
AMAZON CAPITAL SERVICES	174KGC6GVMYD	BANKERS BOX	08/05/2024	31.83	.00	
Total 31-50-465 OFFICE SUPPLIES-MUN COURT:				31.83	.00	
Grand Totals:				19,803.07	.00	

Dated: _____

Mayor: _____

City Council: _____

City Recorder: _____

City Treasurer: _____

Report Criteria:

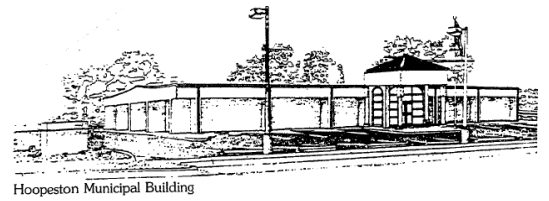
Detail report.

Invoices with totals above \$0 included.

Only unpaid invoices included.

City of Hoopeston

301 W Main St
Hoopeston, IL 60942
217-283-5833



**HOTEL DEVELOPMENT
AGREEMENT**

DEVELOPMENT AGREEMENT

by and between the

CITY OF HOOPESTON, VERMILION COUNTY, ILLINOIS

and

NEED OTHER PARTY ENTITY NAME

Dated as of ~~March~~ August , 2024

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EXHIBIT LIST

EXHIBIT A	Legal Description of Property
EXHIBIT B	Dimensions and Path of Road

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is dated for reference purposes only as of **DATE**, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the **CITY OF HOOPESTON, ILLINOIS** an Illinois municipal corporation (the “**City**”), and **ENTITY NAME OF DEVELOPER, an Illinois limited liability company** (the “**Developer**”). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and date this Agreement and deliver it to the other (the “**Effective Date**”).

RECITALS

WHEREAS, in accordance with and pursuant to the power of the City under the Illinois Municipal Code (65 ILCS 5/1-1-1 *et. seq.*) as a municipal corporation within the State of Illinois, Mayor and City Council of the City (the “**Corporate Authorities**”) are authorized to enter into development agreements in order to encourage development or redevelopment of land within the corporate limits of the City; and

WHEREAS, the Developer has proposed to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below, the “**Project**”) within real estate to be specified more particularly below (the “**Property**”); and

WHEREAS the Property is located within the corporate boundaries of the City; and

WHEREAS the City has determined that it is desirable and in the City’s best interests to support the development of businesses and land utilization within the Property for the overall benefit of the inhabitants of the City but is unwilling to make the specific and substantial infrastructure improvements necessary for the Project (more fully defined below, the “**Improvements**”) and the corresponding commitment of funds and other resources without a binding commitment that the Project be completed, which Developer is willing to provide as specified in this Agreement; and

WHEREAS, the Developer is unwilling to develop the Property and undertake the Project without certain infrastructure improvements to be made by the City, which City is willing to provide as specified in this Agreement; and

WHEREAS, The City and the Developer mutually wish to establish an Agreement which sets forth their respective obligations with respect to same so that each may undertake its respective commitments in pursuance of the overall Project with the assurance that the other will fulfill its own obligations.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, stipulations, 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:

“City’s Overall Commitment” means the amount of funds the City agrees to expend on the Water/Sewer Improvements and the Road, to wit, eight hundred and fifty thousand dollars (\$850,000).

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“County” means Vermilion County, Illinois unless the name of another county is clearly specified.

“Escrow Funds” means the funds placed in escrow by Developer pursuant to Developer’s obligations under this Agreement, and in contemplation of the anticipated expenditure of City on the Infrastructure Improvements and the need to ensure means to recompensate City for said expenditures should Developer fail to perform Developer’s obligations following City’s expenditure, and which shall be held as per the terms of this Agreement.

“Hotel” means a hotel to be constructed on the Property by Developer which shall be not less than 4,500 square feet in dimension and of a number of floors sufficient to contain the necessary rooms and facilities, contain not less than 42 units suitable for occupancy by hotel guests, with the entrances to said units to be internal to the building and not open to the outside, along with all parking areas necessary for the functional operation of a business of this kind.

“Infrastructure Improvements” or **“Improvements”** mean the improvements to the infrastructure of the Property and surrounding area which are to be performed by the City pursuant to this agreement, consisting of the construction of the Road and of the Water/Sewer Improvements, both of which are defined more fully below.

“Project” means, collectively, the construction and operation of the Hotel, the Restaurant, the Storage Facility, and if necessary the Retaining Pond, within the Property, and of any infrastructure improvements necessary for the completion and functioning of the above-mentioned construction and operation and those other acts which are necessary to the successful and functional completion of these tasks.

“Project Completion” means the time at which all Infrastructure Improvements have been completed including both Road and Water/Sewer Improvements, the Hotel has been fully constructed and is in operation, the Strip Mall has been fully constructed with at least three units ready for occupation by appropriate businesses, the Storage Facility has been fully constructed and is ready to function, the Restaurant has been fully constructed and is in active operation as a branch or franchise location of a nationally-known restaurant enterprise, ~~and the Retaining Pond (if constructed) contains a functional and appropriate aeration system which is in working order and operation, and Developer has transferred to City ownership of the Road, including any necessary real property, easements, or rights-of-way.~~

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“Property” means the real estate consisting of the parcel bearing the PIN number 03-11-300-010 and tract number GRTR0558H and the parcel bearing the PIN number 03-11-300-023 and the tract number GRTR0558F, **more fully described on Exhibit A hereto attached;** upon or within which the Project is to be undertaken and completed.

“Restaurant” means a commercial dining establishment open to the public to be constructed on the Property by Developer, for occupancy by a business tenant for purposes of offering such services, which shall be not less than 3,500 square feet in size and shall contain the necessary facilities for the operation of a business of this kind, along with all parking areas necessary for the functional

operation of a business of this kind.

“**Retaining Pond**” means an artificial pool or basin for management of flooding and stormwater and contains as an element of its design a permanent pool of water.

“**Road**” in the absence of a specific named road means a roadway to be constructed by City on the Property running north to south through the Property from Orange Avenue on the south to West Elm Street on the north and intersecting with said streets, **and of dimensions and along a path substantially similar to that shown in Exhibit B** hereto attached.

“**Road Funds**” mean the sum of money available to the City for the construction of the Road, as determined upon the completion of the Water/Sewer Improvements, which shall be the City’s Overall Commitment, less the Water/Sewer Expenditure.

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“**State**” means the State of Illinois unless a different US state is clearly specified or specified indicated by context.

“**Storage Facility**” means a facility to be constructed on the Property by Developer consisting of storage units to be rented to customers for the purpose of storing said customers’ property, along with any additional buildings or spaces in immediate proximity to said units which are necessary for the administration and operation of a business of this kind and along with all parking areas necessary for the functional operation of a business of this kind.

“**Strip Mall**” means a shopping mall to be constructed on the Property by Developer consisting of units suitable to be occupied by business establishments the entrances to which are accessible from the outside, which shall be not less than 10,000 square feet in size and contain not less than three units suitable for occupancy by business tenants of a size and character consistent with customary construction and operation of strip mall facilities within Vermilion County and neighboring Illinois counties, along with all parking areas necessary for the functional operation of a business of this kind.

“**Water/Sewer Expenditure**” means the amount which is in fact expended by the City on the construction and implementation of the Water/Sewer Improvements, to include any amount used on improvements which are reasonably necessary to fulfill the City’s obligations with respect to the Water/Sewer Improvements whether or not these improvements are implemented within the boundaries of the Property, but not to include any amount expended on water/sewer improvements not reasonably necessary to fulfill the City’s obligations under this Agreement.

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“**Water/Sewer Improvements**” means an extension of the water and sewer infrastructure of the City on the Property, to be constructed by the City for the purpose of enabling the proper functioning of the Hotel, Restaurant, and Strip Mall, in fulfillment of City’s obligations under this agreement and in order to induce Developer to engage in the Project.

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) With the exception of addresses contained within contact information provided within this agreement, street names contained within shall refer to the streets of those names which are contained within the corporate boundaries of Hoopston, Illinois unless context clearly indicates otherwise.
- (e) 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 Municipal Corporation of the State of Illinois 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 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 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 other 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 limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois.

(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.

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(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's managers or other parties with authority to authorize and implement such action. 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, save with respect to any routine building or zoning permits or similar minor incidents of construction, and with respect to any such, Developer represents and warrants that either Developer is unaware of any fact or issue which might prevent the prompt issuance of same, or else has made full and frank disclosure to the City in writing of all such facts or issues known to Developer as of the signing of this Agreement.

(f) IDOT Approval. Developer specifically warrants, without any limitation on subsection (e) above, that Developer has obtained any necessary approval from the Illinois Department of Transportation and any other relevant governmental authorities for the connection of the Road to existing roadways, and has provided full written proof and documentation of same to City.

(g) 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.

(h) Maintenance of Existence. During the term of this Agreement, the Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a corporation duly authorized and existing in the State of Illinois.

(i) Title to Property. Developer holds clear title to the Property, which is not encumbered in any fashion which would impede the completion of the Project and the fulfillment of Developer's obligations under this Agreement, and has provided proof of these facts to City prior to the signing of this Agreement.

(j) Disclosure of Service Providers. Developer has fully disclosed to City the identity and contact information of all contractors, engineers, architects, or other direct or indirect providers of professional or construction services, which are currently providing services in connection with the Project, under contract to do so, or which have previously provided such services or been contracted with to do so, along with all such providers of professional or construction which are intended or expected by Developer to be contracted by or supply services in connection with the Project in the

future.

(k) **Disclosure of Documentation.** Developer has fully provided to City all information submitted in connection with application for any Rural Development Loan or other loan in connection with the Property or the Project. To the extent that any information provided in such documents is not accurate as of the Effective Date, Developer has provided to City full information as to how the statements in such documents are not accurate as of the Effective Date.

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 obligations of each for the purposes of this Agreement.

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 Developer and the City as set forth in this Agreement are expressly contingent upon each of the following:

- (a) **Title.** The Developer shall hold fee simple title to the Property which is not encumbered in any way which is likely to prevent or meaningfully impede any portion of the Project.
- (b) **Disclosures.** Developer shall have fully made all disclosures to the City which Developer represents and warrants to have been made pursuant to Section 2.2 or elsewhere in this Agreement.
- (c) **Permissions and Authorizations.** Developer shall have obtained all necessary permissions and authorizations as to Section 2.2 or elsewhere in this Agreement, or which are otherwise necessary to the successful completion of the Project.
- (d) **Transfer of Easements.** Developer shall convey to the City title to the land on which the Road is to be constructed, and utility easements for the construction and maintenance of the Water/Sewer Improvements and any other relevant utilities, promptly upon the execution of the Agreement by all parties.

ARTICLE IV
DEVELOPER'S COVENANTS

Section 4.1. Compliance with Agreement and Laws During Development. The Developer shall at all times acquire, construct and install the Project, including any related and appurtenant facilities and improvements (or cause the same to be done), in conformance with this Agreement and all applicable laws, rules and regulations and requirements of grants used to fund the Project, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use ordinances of the City and any prevailing wage laws or competitive bidding requirements. Any agreement of the Developer related to the design, construction or installation of the Project with any contractor subcontractor or supplier shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

Section 4.2. Approvals and Permits The Developer recognizes and agrees that the City has

sole discretion with regard to 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 permit application shall be processed in its usual and customary manner and that any such approval shall be made in conformance with the applicable City Ordinances and shall not be unreasonably denied, withheld, conditioned, or delayed.

Section 4.3. Hotel. The Developer shall construct the Hotel on the Property. The Hotel shall be not less than 4500 square feet in dimension and of a number of floors sufficient to contain the necessary rooms and facilities, contain not less than 42 units suitable for occupancy by hotel guests, with the entrances to said units to be internal to the building and not open to the outside, along with all parking areas necessary for the functional operation of a business of this kind. Construction of the Hotel shall be complete no later than twelve months from the Effective Date of this Agreement, and the Hotel shall be fully open for business no later than twenty-four months from the Effective Date of this Agreement.

Section 4.4 Restaurant. The Developer shall construct the Restaurant on the Property. The Restaurant shall be not less than 3500 square feet in dimension, along with all parking areas necessary for the functional operation of a business of this kind. The Restaurant shall be constructed with the necessary facilities to operate a commercial dining establishment of this size. Construction of the Restaurant shall be complete no later than twelve months from the Effective Date of this Agreement. The Restaurant shall be fully open for business no later than twenty-four months from the Effective Date of this Agreement, and in operation as a branch or franchise location of a restaurant chain which is nationally known within the United States.

Section 4.5. Retaining Pond. Developer agrees that, in the event that a water retention pond is found to be necessary for the completion of the Project, the prevention of water damage or liability for same to neighboring properties, or the operation of the relevant businesses and facilities following its completion, that such Pond will be constructed by Developer at Developer's expense, and will include an aeration system whereby the water in said permanent pool is continuously circulated to a degree sufficient to oxygenate the water and preserve the water quality in a manner consistent with the customary construction and operation of aerated retaining pools in Vermilion County, Illinois and adjacent counties.

Section 4.6. Title. The Developer shall until the Project has reached a full state of Project Completion continue to hold fee simple title to the Property, and not cause or allow this ownership to become encumbered in any way which is likely to prevent or meaningfully impede any portion of the Project. This obligation shall not bar the contracting of services which will result in the imposition of liens in connection with the construction of the buildings and similar acts in furtherance of the Project of a kind consistent with customary business practices in construction projects of this kind, and which are not likely to impede the full completion of the Project or Developer's fulfillment of its obligations otherwise. This obligation shall not bar the lease or sale of all or a portion of the Hotel, Strip Mall, or Storage Facility to businesses of an appropriate type and under terms and conditions consistent with Developer's obligations under this Agreement, save that such lease or sale may take place only with written permission and approval from the City. The City shall not unreasonably withhold such approval.

Section 4.7. Storage Facility. The Developer shall construct the Storage Facility on the Property. Construction of the Storage Facility shall be complete no later than twelve months from the

Effective Date of this Agreement.

Section 4.8. Strip Mall. The Developer shall construct the Strip Mall on the Property. Construction of the Strip Mall shall be complete no later than twelve months from the Effective Date of this Agreement, with not less than three units in a state of readiness to be leased by business tenants.

Section 4.9. Creation of Jobs. Developer agrees to use “reasonable efforts” to create 15 or more permanent, full-time jobs in connection with the Project. “Reasonable efforts” shall mean and include the use of due diligence to create or cause the creation of such jobs under the economic conditions prevailing during such period. This shall include jobs where the employee is not employed directly by Developer but is employed by a business operating out of a location constructed by Developer as part of the Project.

Section 4.10. Minimum Expenditure. Developer agrees to, between the Effective Date of this Agreement and Project Completion, expend a minimum of five million dollars (\$5,000,000.00) on expenditures pursuant to the completion of the Project. Developer shall provide to City within a reasonable time upon request an inventory of same which documents all expenditures Developer deems to be included.

Section 4.11. City’s Right to Audit Developer’s Books and Records. Developer agrees that the City or its agents shall have the right and authority to review and audit from time to time (at the Developer’s principal office during normal business hours) the Developer’s books and records relating to the Project, including but not limited to the total amount of all costs paid or incurred by the Developer for the Project, blueprints and other diagrams of all buildings which are to be constructed or have been constructed on the Property or any other improvements which Developer is to make on the Property, and the identity, contact information, and tasks performed by all third parties which have performed professional or construction work for Developer pursuant to the Project, or are intended to do so.

Section 4.12. Escrow. Developer shall make such deposits of Escrow Funds with the Escrow Agent as are provided for under Article VIII of this Agreement, and promptly provide documentation of said deposits to City.

Section 4.13. Completion of Road. Developer shall assume responsibility for all portions of the construction of the Road not complete as of the expenditure of the Road Funds by the City, including all expenses of road construction above and beyond that which City is obligated to pay, and shall transfer ownership of the Road, including any necessary real property, easements, or rights-of-way, to City no later than 30 days from completion of construction of the Road.

Section 4.14. Acknowledgement of Water/Sewer Improvement Completion and Expenditures. Upon being provided by City with notice and documentation of the completion of the Water/Sewer Improvements, as set forth in section 5.3 below, Developer shall within 30 days transmit to City an acknowledgement in writing that the City has expended the amount stated on the Water/Sewer Improvements in a manner consistent with City’s obligations under this Agreement, has completed said improvements as required, has provided in a timely manner sufficient notice and documentation of said expenditure and improvements, and is obligated to spend the remaining amount, and no more, on the Road.

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Alternatively, if Developer disputes any of the above, Developer must transmit to City in writing and within 30 days a statement setting forth the disputed issue or issues with particularity. Disputes or objections not raised by Developer within this 30 day deadline are waived by Developer so long as the facts giving rise to such disputes or objection were known to or reasonably knowable by Developer at that time.

Section 4.15. Acknowledgement of Road Fund Expenditure. Upon being provided by City with notice and documentation of the City's expenditure in full of the Road Funds, and documentation of the manner in which they were expended (as set forth in Section 5.6 below), Developer shall within 30 days transmit to City an acknowledgement in writing that City has expended the amount stated on the Road's construction and implementation, in a manner consistent with City's obligations under this Agreement, has provided in a timely manner sufficient notice and documentation of said expenditure and improvements, and has expended the Road Funds in full in a manner consistent with the City's obligations under this Agreement, and that City has thus satisfied its obligations with respect to the construction and implementation of the Road and the costs of the remainder of the construction and implementation of the Road shall be the responsibility of Developer.

Alternatively, if Developer disputes any of the above, Developer must transmit to City in writing and within 30 days a statement setting forth the disputed issue or issues with particularity. Disputes or objections not raised by Developer within this 30 day deadline are waived by Developer so long as the facts giving rise to such disputes or objection were known to or reasonably knowable by Developer at that time.

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ARTICLE V CITY'S COVENANTS

~~**Section 5.1. Road.** The City agrees to construct the Road of dimensions and along a path substantially similar to that shown in Exhibit P. Such road shall be of a character and construction comparable to roads of similar size and function within the City of Hoopeson. Such construction shall be begun no later than DATE and completed no later than DATE.~~

Section 5.12. Water/Sewer Improvements. The City agrees to construct the Water/Sewer Improvements, which shall include at minimum one water and sewer hookup each for the Hotel and the Restaurant and three such hookups for the Strip Mall, of a size and character sufficient for buildings and businesses of the relevant types, and a minimum of one fire hydrant located in an appropriate location within the Property. Such construction shall be begun no later than DATE and completed no later than DATE.

5.2 Documentation of Water/Sewer Improvements: City will provide documentation of City's estimate of the anticipated cost of Water/Sewer Improvements in a reasonably prompt manner once that information and documentation is known to or in the possession of City. City will provide information and documentation of amount in fact expended on the Water/Sewer Improvements on an ongoing basis while such work is progressing. Should City become aware of a reasonable likelihood that the cost of water/sewer infrastructure improvements will be significantly greater than estimates previously given, City shall inform Developer in a timely manner upon City becoming aware.

5.3 Documentation on Completion: City will provide developer with information and documentation of the Water/Sewer Expenditure once construction and implementation of

Water/Sewer Improvements is complete. Said documentation shall clearly indicate the amount which constitutes the Water/Sewer Expenditure as contemplated by and defined in this agreement, which shall be clearly distinguished from any other construction or infrastructure development work not done pursuant to this agreement and not falling within the scope of the Water/Sewer Expenditure, and shall include such receipts, billing statements, and records of payments as are necessary to fully show the expenditure of the funds and the manner in which they have been expended.

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Section 5.4. Road. The City agrees to construct (or else expend all Road Funds as set forth more particularly below) the Road of dimensions and along a path substantially similar to that shown in Exhibit B. Such road shall be of a character and construction comparable to roads of similar size and function within the City of Hoopeston. ~~Such construction shall be begun no later than DATE and completed no later than DATE.~~ Construction of Road shall begin only after all other construction is complete, and once Developer has acknowledged the Road Funds which are available and that they and only they will be expended by City on the construction of the Road, City shall be obligated to expend the Road Funds on the Road's construction and implementation until the exhaustion of the Road Funds or the completion of the Road, whichever shall occur first, and upon the exhaustion of said funds will have fully satisfied City's obligations with respect to construction of the Road.

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Section 5.5 Limitations On City's Obligation with Regard to Road

City shall be obligated to expend Road Funds on the Road's construction and implementation until the exhaustion of the Road Funds or the completion of the Road, whichever shall occur first, and upon the exhaustion of said funds will have fully satisfied City's obligations with respect to construction of the Road. City shall not unreasonably delay this expenditure. Should construction and implementation of the Road be completed without all of the Road Funds being expended, City will retain remainder, to be returned to County. Notwithstanding any other part of this agreement, City will in no event be required to expend more in total on the Water/Sewer Improvements and the Road than the City's Overall Commitment.

Section 5.6 Report on Expenditure of Road Funds of Completion of Road

Should the Road Funds be exhausted prior to the completion of the Road, the City will provide information and documentation to Developer stating that the funds have been expended and setting forth the manner in which they were expended shall include such receipts, billing statements, and records of payments as are necessary to fully show the expenditure of the funds and the manner in which they have been expended. Should the Road be completed prior to the exhaustion of the Road Funds, City shall provide to Developer notice and documentation that the Road has been completed in full.

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Section 5.37. Escrow. The City shall provide to Developer that documentation of its expenditures on Infrastructure Improvements as is required under Article VIII of this Agreement.

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. 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.

(a) 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 that is false or misleading in any material respect; and

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

(b) By the City:

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

Section 6.2. 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**”) describing the nature of the Default complained of and the term or provision of this Agreement which the Non-Defaulting Party believes is in default. 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. 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 may give the Non-Defaulting Party written notice that (i) the Default will take more than thirty (30) days to cure or remedy; (ii) the Defaulting Party has promptly commenced and is diligently pursuing such cure or remedy; and (iii) the date on or before which the Defaulting Party will have completed such cure or remedy. Provided that the Defaulting Party promptly commences and diligently pursues such cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default. During any such period following the giving of notice of the alleged Default, 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 or has cured or remedied the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued 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 6.3. 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 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 monetary liability or be liable 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.

Section 6.4. Costs, Expenses and Fees. Upon the occurrence of a Default or 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 VII RELEASE, DEFENSE, AND INDEMNIFICATION OF CITY

Section 7.1. Damage, Injury or Death Resulting from Project. The Developer releases from and covenants and agrees that the City and its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, elected and appointed 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 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 7.2. Damage or Injury to Developer and Others. The City and its Corporate Authorities, elected and appointed 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 7.3. 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, elected or appointed officials, agents, employees or independent contractors of the City shall be personally liable to the Developer in the event of a Default or Breach by any party under this Agreement.

Section 7.4. 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 7.5. Actions or Obligations of Developer. The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, elected and appointed 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 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 7.6. 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 paragraph, "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. §§ 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 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 7.7. 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 VIII ESCROW

Section 8.1. Escrow Agent [AGREED ESCROW AGENT] shall serve as Escrow Agent for

the Escrow Funds as provided for in this Agreement, and shall [AGREED TERMS]. Escrow Agent shall be provided by Developer with an executed copy of this Agreement no later than the opening of escrow.

Section 8.2. Deposit to Escrow

- (1) Following the Effective Date, City shall every 60 days provide documentation to Developer documentation of all money which was during that period expended toward the Infrastructure Improvements, including but not limited to construction costs, material costs, costs of obtaining necessary permits, and costs of professional services.
- (2) Documentation provided by City shall identify which portion of the amount expended is attributable to the Road and which portion is attributable to the Water/Sewer Improvements.
- (3) Upon receipt of such documentation, Developer shall within 60 days deposit into escrow with Escrow Agent a sum equal to the documented amount expended by City, save that in no event shall Developer be required to deposit as Escrow Funds an amount greater than one million two hundred thousand dollars in total.

Section 8.3. Disbursements from Escrow

1. Upon the completion of the Hotel as described in Section 4.3 and elsewhere in this Agreement, and acknowledgement in writing from City that this has taken place, Escrow Agent shall promptly disburse to Developer that portion of the Escrow Funds previously deposited by Developer pursuant to costs expended by City on the Water/Sewer Improvements, with the balance of the Escrow Funds remaining in the keeping of the Escrow Agent.
2. Upon the completion of both the Hotel as described in Section 4.3 and elsewhere in this Agreement and the Restaurant as described in Section 4.4 and elsewhere in this Agreement, and acknowledgement in writing from City that this has taken place, Escrow Agent shall promptly disburse to Developer all Escrow Funds at that time deposited with the Escrow Agent.
3. City will not unreasonably withhold or delay the acknowledgement provided for in the preceding paragraphs of this section once Developer has fulfilled the relevant conditions.
4. In the event that Developer has failed to complete the Hotel, the Restaurant, the Storage Unit, ~~and the Strip Mall,~~ and the Road as described in Articles I and VI of this Agreement, and Developer is in a state of Breach of the Agreement with respect to those failures as defined in Section 6.2 of this Agreement, Escrow Agent shall disburse to City all Escrow Funds at that time deposited with the Escrow Agent.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9.1. Entire Agreement and Amendments. This Agreement (together with Exhibits A and B attached hereto) constitutes the entire agreement by and between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral, 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 person or entity 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.

Section 9.5. Time and Force Maieure. 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 and duly executed by the party giving such waiver. 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 in a properly addressed envelope 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;
DEVELOPER ENTITY NAME
DEVELOPER ADDRESS

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- (ii) In the case of the City, to:
City of Hoopston, Illinois
301 W. Main Street
Hoopston, IL 60942
Attn: Mayor
Tel: (217) 283-5320 / Fax: (217) 586-4321

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 in whole or in part without the prior express written consent of the City. Except as authorized in this Section above, any 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 7.9 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.

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 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 Vermilion County, Illinois.

Section 8.13. 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 upon Project Completion and the disbursement of all Escrow Funds, ~~provided however, that anything to the contrary notwithstanding, the Developer's obligations under (FIGURE THIS OUT WHEN REST OF AGREEMENT WRITTEN AND NUMBERING FINALIZED).~~

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Section 9.14. Construction of Agreement. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation 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 HOOPESTON,
VERMILION COUNTY, ILLINOIS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Date: _____

DEVELOPER ENTITY NAME, LLC.

By: _____
Manager

Date: _____

[Exhibits A and B follow this page and are each an integral part of this Agreement in the context of use.]

EXHIBIT A

Legal Description of Property

LEGAL DESCRIPTION OF PROPERTY

PIN: PROPERTY PIN

(commonly known as COMMON ADDRESS)

|

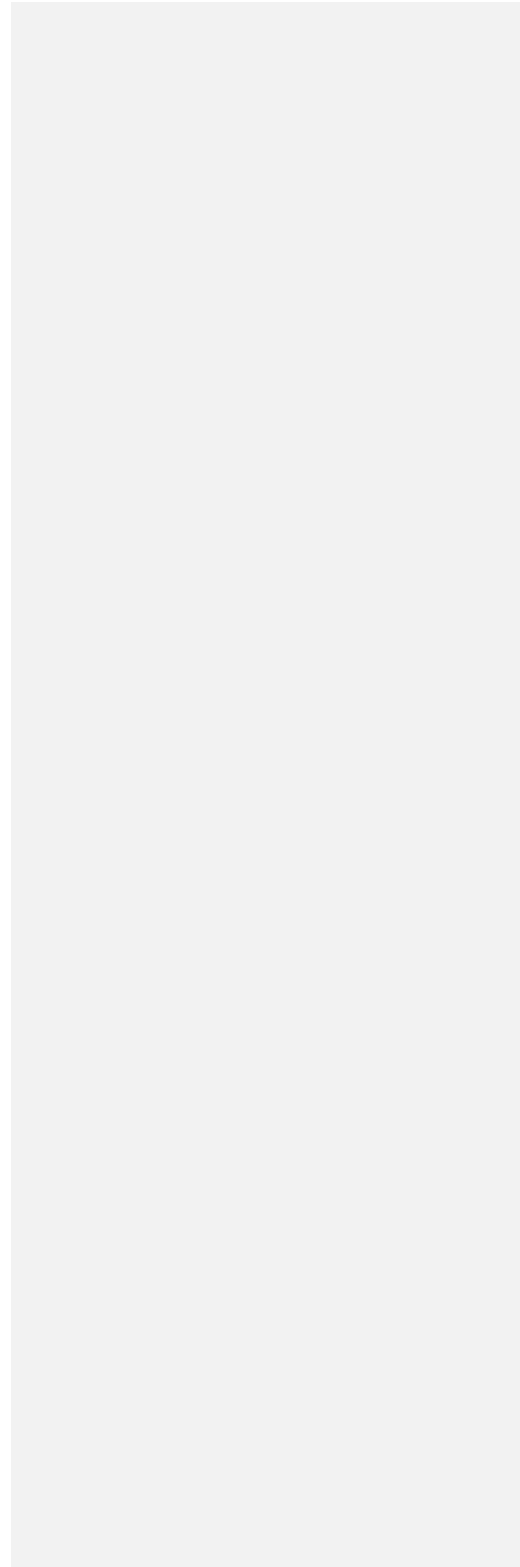


EXHIBIT B

Dimensions and Path of Road

