

**CITY OF VIENNA  
CITY COUNCIL MEETING  
VIENNA CITY HALL  
205 North 4th St  
October 4, 2017  
6:30 P.M.**

**AGENDA**

1. Mayor Calls Meeting to Order.
2. Roll Call:  
Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_
3. Omnibus Consent Agenda
  - Approval of the September 20, 2017 City Council Meeting Minutes
  - Approval of the Treasurer's Report (August)
  - Approval of the WarrantMotion \_\_\_\_\_ Seconded \_\_\_\_\_  
Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_

**NEW BUSINESS**

4. Authorization and Approval of Agreement Between The City of Vienna, Illinois And The Millstone Water District (for lift station services)  
Motion \_\_\_\_\_ Seconded \_\_\_\_\_  
Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_
5. Authorization and Approval of Liquor License application requesting a Class A License for the location of 523 East Vine St (Approve/Disapprove)  
Motion \_\_\_\_\_ Seconded \_\_\_\_\_  
Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_

6. Authorization and Approval to transfer funds from TIF Fund to the Gas Fund in the amount of \$30,630.95- to amend a previous motion of purchase of a Gas Odorizer (March 1, 2017 meeting)

Motion \_\_\_\_\_ Seconded \_\_\_\_\_

Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_

7. Authorization and Approval of Resolution 17-16, A Resolution to Highly Favored Properties, LLC For Redevelopment Of Certain Property Located in The City of Vienna, IL Utilizing Tax Increment Financing

Motion \_\_\_\_\_ Seconded \_\_\_\_\_

Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_

8. Authorization and Approval of redevelopment agreement between the City of Vienna, IL and Highly Favored Properties, LLC.

Motion \_\_\_\_\_ Seconded \_\_\_\_\_

Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_

**PUBLIC COMMENT/ADDITION TO THE AGENDA**

9. **City Elected and Appointed Officials:**

- Jon Simmons, Mayor
- Aleatha Wright, City Clerk
- Josh Stratemeyer, City Attorney
- Shane Racey, City Superintendent
- Jim Miller, Chief of Police
- Brent Williams, Fire Chief
- City Council
- Phil Morris, Depot
- Margaret Mathis, City Librarian

10. **Adjournment:**

Motion \_\_\_\_\_ Seconded \_\_\_\_\_

Hill \_\_\_\_\_ Riddle \_\_\_\_\_ Myrick \_\_\_\_\_ Owen \_\_\_\_\_ Racey \_\_\_\_\_ Tuey \_\_\_\_\_

POSTED: 10-2-17

BY: *A Wright*

**AGREEMENT BETWEEN THE CITY OF VIENNA, ILLINOIS  
AND THE MILLSTONE WATER DISTRICT**

THIS AGREEMENT entered into by and between the City of Vienna, located in Johnson County, Illinois, and the Millstone Water District.

WHEREAS, the City of Vienna operates a sewerage system within said City;

WHEREAS, the Millstone Water District provides water services within said City;

WHEREAS, the parties are authorized to enter into intergovernmental agreements pursuant to the Illinois Intergovernmental Cooperation Act, 5 ILCS 220 (2004),

WHEREAS, the City of Vienna wishes to remedy delinquent sewerage charges, and the Illinois Municipal Code 65 ILCS 5/11-141-7 permits the City to make a contract with the Water District to discontinue water service to a premises with respect to which the payment of a rate or charge for sewerage service has become delinquent, and the City wishes to make such contract,

WHEREAS, the Millstone Water District is willing to enter into such agreement so long as it does not incur additional costs or loss of revenues by participation in such contract;

NOW, THEREFORE, in consideration of the mutual and singular promises set forth herein, the parties agree to the following terms and conditions:

1. The City shall fully comply with all statutory provisions and its Ordinance # \_\_\_\_\_ in making any request for discontinuation of service by the Water District.
2. Before making a request, the City shall request, and the Water District shall give, an estimate of the Water District's cost for discontinuance and resumption and estimate of its monthly water service revenues, for the affected location.
3. The City shall make any request for discontinuation of service by written notice delivered to the Millstone Water District office located in Eddyville, Pope County, Illinois.
4. Upon receipt of written notice requesting discontinuation of water service, the Water District shall discontinue water service to the location and shall not resume water service until receiving a written notice from the City that the delinquency has been removed.

5. The City shall reimburse the Millstone Water District the reasonable cost of the discontinuance and the resumption of water service, and any lost water service revenues. The City shall indemnify the Water District for any judgment and related attorney's fees resulting from an action based upon the discontinuance of service for delinquent sewerage service charges.

6. The parties further agree that this Agreement shall be for a period of \_\_\_\_\_ years from the date of execution, and in the event either party wishes to terminate this Agreement, written notice of one hundred twenty (120) days shall be provided.

7. The Agreement may be amended in writing, properly executed by both parties, and said Agreement shall be construed in accordance with the laws of the State of Illinois.

Executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF VIENNA, ILLINOIS

MILLSTONE WATER DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION TO HIGHLY FAVORED PROPERTIES, LLC FOR REDEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE CITY OF VIENNA, ILLINOIS UTILIZING TAX INCREMENT FINANCING**

WHEREAS, the City of Vienna, Illinois, (the "City") desires to redevelop and improve existing commercial property within the established Tax Increment Financing Redevelopment Project Area ("TIF District") pursuant to the TIF District Act, 65 ILCS 5/11-74.1 et. seq. et. seq. Revised Illinois Statutes ("TIF Act"); and,

WHEREAS, the City will use its best efforts and act in accordance with the TIF Act to utilize Tax Increment Financing where available to accomplish the goals set forth by the Redevelopment Plan and Project ("TIF Plan") for the City of Vienna's TIF District; and,

WHEREAS, Highly Favored Properties, LLC ("the Developer") has submitted a proposal requesting consideration by the City Council of the City of Vienna for the use of TIF Funds to support the improvement and repair of an existing commercial building; and,

WHEREAS, the City wishes to encourage the Developer to pursue a plan for redevelopment and improvements of property within the TIF District and make such expenditures as are reasonably necessary in that regard; and,

WHEREAS, the City has the ability and legal authority granted by the TIF Act to utilize TIF Funds to support economic development efforts in accordance with the goals of the established TIF Plan; and,

WHEREAS, the Corporate Authorities of the City of Vienna finds that it is in the best interest of the City of Vienna to enter into a Redevelopment Agreement with the Developer for reimbursement of certain approved costs and expenses relating to the construction of improvements and redevelopment of certain property, a copy of which is attached hereto as Exhibit "A" and made a part hereof.

**NOW, THEREFORE, BE IT RESOLVED BY THE CORPORATE AUTHORITIES OF THE CITY OF VIENNA, ILLINOIS, AS FOLLOWS:**

**SECTION 1.** The duly appointed Corporate Authority is hereby authorized to enter into a Redevelopment Agreement using Tax Increment Financing with Developer, attached hereto as Exhibit "A" and made a part hereof.

**SECTION 2.** The duly appointed Corporate Authority is hereby authorized to execute all documents and to take all other action deemed by it to be necessary and proper to effectuate the said agreement.

**SECTION 3.** The facts and statements contained in the preamble to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

**SECTION 4.** This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017

Passed by the City Council of the City of Vienna, Illinois on the \_\_\_\_\_ day of \_\_\_\_\_, 2017 on the following roll call vote:

Aldersperson	Aye	Nay	Abstain	Absent
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Vote Recorded by:

\_\_\_\_\_  
Aleatha Wright, City Clerk

Approved by the Mayor of the City of Vienna this \_\_\_\_\_ day of \_\_\_\_\_,  
2017.

\_\_\_\_\_  
Jon A. Simmons  
Mayor

ATTEST:

\_\_\_\_\_  
Aleatha Wright  
City Clerk

Recorded in the Records of the City Clerk this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Published by the authority of the Mayor and City Council of the City of  
Vienna, Johnson County, Illinois in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_,  
2017.

**HIGHLY FAVORED PROPERTIES, LLC**  
**Building #2 Construction**  
**REDEVELOPMENT AGREEMENT**

This redevelopment agreement (hereinafter referred to as "Agreement") is made and entered into as of \_\_\_\_\_, 2017, by and between the City of Vienna, Illinois, an Illinois municipal corporation, and Highly Favored Properties, LLC.

**RECITALS**

- A. On May 7, 2008, in accordance with the TIF Act, the City of Vienna approved ordinances adopting tax increment financing and the Vienna Tax Increment Financing Plan and Project, also known as the Vienna TIF #1.
- B. The Developer has submitted a Redevelopment Proposal to the City for a project which could not or would not be undertaken without the use of tax increment financing incentives
- C. The City Council, after reviewing the Redevelopment Proposal submitted by the Developer, believes that the Redevelopment Area as set forth herein in the Redevelopment Proposal, and the performance generally of this Agreement, are in the best interests of the City, and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

**AGREEMENT**

In consideration of the above premises and the mutual obligations of the parties hereto, each party hereby agrees as follows:

1. Definitions As used in this Agreement, the following words and terms shall have the following meanings:

"Affiliate": Shall mean, with respect to any business entity, any other business entity directly or indirectly controlled (including at least 51% voting control) by or under direct or indirect common control with such business entity. A business entity shall be deemed to control another business entity if such controlling business entity possess solely, directly or indirectly the power to direct, or cause the direction of, the management and policies of the second business entity whether through the ownership of voting securities, common directors, trustees, partnership interest or member interest.

"Agreement Term": The period of time in which this agreement is in full force and effect. For this agreement, that period of time will begin upon the date of execution of this agreement, that date being \_\_\_\_\_, 2017, and continuing until the date of May 7, 2031 (end of the natural life of the Vienna TIF District #1).



“City”: The City of Vienna, Johnson County, Illinois, a statutory City of Johnson County, and a political subdivision of the State of Illinois.

“City Council”: The City Council of the City of Vienna, Illinois.

“Construction Plans”: Plans, drawings, specifications and related documents, and construction schedules for the construction of the Work (as shown on the attached Concept Plan or on the attached Development Plan, if necessary), together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

“Developer”: Highly Favored Properties, LLC

“Developer’s Portion of the Redevelopment Project”: The construction of a new building on the Property for commercial uses, including all site preparation, demolition, infrastructure and utility improvements, and other work required to support such a project; all to be used for activities in accordance with the Redevelopment Plan.

“Developer’s Share”: Means, the portion of the TIF Revenues generated by the Property and received by the City annually, which are to be reimbursed back to the Developer for certain Eligible Redevelopment Project Costs. **For the purposes of this agreement, the Developer’s Share will be 75%, with the total amount reimbursed during the Agreement Term not to exceed the Reimbursement Limit.** The first payment of the Developer’s Share will be calculated based on the TIF Revenues assessed to the Property during the first year of full assessment of the Property after substantial completion of the Work, with the final payment being issued based on TIF Revenues assessed during the calendar year ending on December 31, 2031 and collected in 2032 (**See Exhibit 1 – Example Payment Schedule**). Monies are to be paid from the Special Allocation Fund, Vienna Tax Increment Financing Project Area (TIF #1). The Developer is not eligible to receive the Developer’s Share until the Work has been verified to have been completed by the City.

“Eligible Redevelopment Projects Costs”: Any and all costs incurred pursuant to Section 11-74.4-3 of the TIF Act, and that qualify under Section 11-74.4-3 (q) as determined by the City, in the City’s sole discretion.

“Property”: That property to be used by Developer as more generally defined as being located Industrial Drive in the City of Vienna, Illinois 62995 (portion of Johnson County PIN: 08-04-201-005; may be subject to changes in actual Parcel ID number) and described more fully in **Appendix A – Project Location**.

“Redevelopment Area”: A certain area of the City of Vienna known as the “Vienna Redevelopment Project Area”, also known as TIF #1.

"Redevelopment Plan": A plan entitled "Vienna Redevelopment Project Area Tax Increment Financing Redevelopment Plan" which was approved on May 7, 2008, and as from time to time amended.

"Redevelopment Project": Those activities described as the Redevelopment Project in the Redevelopment Plan, Redevelopment Proposal, and this Agreement.

"Redevelopment Project Costs": The sum total of all reasonable or necessary costs actually incurred and paid in performing the Work, and any such costs incidental to the Redevelopment Plan or Redevelopment Project, provided however, that Redevelopment Project Costs shall not include any internal costs of Developer and shall not include any amounts for overhead, margin, profit or the like in connection with goods or services supplied to Developer by any Affiliate of Developer, except to the extent that such items are commercially reasonable and competitive with similar charges in arms-length transactions.

"Redevelopment Proposal": The description of the intended scope and scale of the project as described by the Developer in the submitted application for tax increment financing assistance, as well as any and all accompanying site plans, drawings, or other descriptions of the intended project.

"Reimbursement Limit": The maximum amount of money the Developer may be reimbursed by the City from the TIF Fund in accordance with this agreement; **that amount not to exceed the total of all Eligible Redevelopment Project Costs** incurred by the Developer during the performance of the Work.

"Special Allocation Fund": The Special Allocation Fund, Vienna Tax Increment Financing Project Area #1, also known as the "TIF Fund".

"TIF Act": The Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 et. seq.

"TIF Revenues": The ad valorem taxes, if any, arising from the tax levies upon taxable real property in the portion of the TIF Redevelopment Area related to the Redevelopment Project by any and all taxing districts or municipal corporations having the power to tax real property in the TIF Redevelopment Area, which taxes are attributable to the increase in the then current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the portion of the TIF Redevelopment Area related to the Redevelopment Project (those units of Property defined in Appendix A of the Vienna Tax Increment Financing Project Area #1) over and above the Total Initial Equalized Assessed Value of each such portion of property within the TIF Redevelopment Area, all as determined by the County Clerk of the County of Johnson, Illinois, in accordance with Section 11-74.4-8 of the TIF Act. For purposes of this Agreement, the "then current equalized assessed valuation" shall mean the equalized assessed valuation for each taxable lot, block, tract or parcel of real property within the portion of the TIF Redevelopment Area related to the Redevelopment Project for the first year following full assessment of said real property after substantial completion of the Work within the Redevelopment Project.

"Work": All work necessary to prepare the Property for, and to implement the portion of, the Redevelopment Project set forth in Section 2.1.a. below, including but not limited to, the construction of a new commercial building and all necessary site preparation, demolition, infrastructure and utility improvements, and other work required to support such a project; all to be used for activities in accordance with the Redevelopment Plan.

"Zoning Approvals": All plat approvals, re-zoning or other zoning and ordinance changes, site plan approvals, conditional use permits, or other subdivision, signage, zoning, or similar approvals required from the City for the implementation of the Redevelopment Project and which are consistent with the Redevelopment Plan and this Agreement and all Federal, state and local laws, ordinances, codes and regulations (except that with respect to the City's Zoning Ordinances, such applications may contain such non-conformance or variance to the extent contemplated by the Redevelopment Plan and this Agreement).

Capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Redevelopment Plan.

2. Redevelopment Project The City and Developer agree to carry out the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement.

2.1 Developer Undertakings. The Developer agrees, subject to the terms and conditions hereof to undertake the Developer's Portion of the Redevelopment Project, viz.:

- a) The acquisition of the Property.
- b) The construction of a new building of approximately 2,800 square feet in size on the Property for commercial uses.
- c) Any and all site preparation, demolition, infrastructure and utility improvements, installation of equipment, and other work required to support such a Redevelopment Project; all to be used for activities in accordance with the Redevelopment Plan.
- d) The Developer agrees to begin the project within sixty (60) days of the execution of this agreement, and to complete the project within one hundred eighty (180) days of the execution of this agreement. The Developer may be granted extensions to these deadlines with written consent from the City.

2.2 City Undertaking. The City agrees, subject to the terms and conditions hereof, to use diligent efforts to expeditiously consider all Zoning Approvals necessary to commence and complete the Redevelopment Project so long as the application and documentation of such Zoning Approval Requests are in compliance with the Redevelopment Plan and all applicable Federal, state and local laws, ordinances, codes and regulations.

3. Acceptance of Proposal/Developer Selection: The City hereby accepts the Redevelopment Proposal, as amended hereby, and selects the Developer exclusively to perform the Work as outlined herein, in accordance with the terms of this Agreement. In the event of any conflict between the Redevelopment Proposal or Redevelopment Plan and the terms hereof, the terms hereof shall control.

4. Plans and Approvals

4.1 Changes During the progress of the Work, the Developer may make such reasonable changes, including, without limitation, modification of the construction schedule, including dates of commencement and completion, modification of the areas in which this work is to be performed, expansion or deletion of items, and any and all such other changes as site conditions or orderly development may dictate and as may be in substantial conformance with the Redevelopment Plan and this Agreement, provided that the Developer shall first obtain the consent of the City, which consent shall not be unreasonably withheld or delayed, before the Developer makes any such changes.

4.2 Zoning Approvals The City agrees to cooperate with the Developer and to expeditiously process and timely consider all applications for the Zoning Approvals which are in substantial conformance with the Redevelopment Plan and this Agreement, and are not contrary to any Federal, state or local law, ordinance, code or regulation (except that with respect to the City's Zoning Ordinances, such applications may contain such nonconformance or variance to the extent contemplated by the Concept Plan, the Redevelopment Plan and this Agreement), all in accordance with the applicable City ordinances and laws of the State of Illinois, and to take all further actions relating to Zoning Approvals (after processing in accordance with applicable laws and ordinances) as are consistent with the Redevelopment Plan and this Agreement.

5. Payment of the Developer's Share

5.1 Requests for Payment of the Developer's Share The Developer shall submit Requests for Payment of the Developer's Share ("Requests") in substantially the same form as set forth in **Exhibit 2 - Request for Reimbursement** on or before December 31<sup>st</sup> of any given year during the Term of this agreement in order to be eligible to receive payment of the Developer's Share for taxes payable during that year. All Requests shall be accompanied by invoices, statements, vouchers or bills for the amount requested (including evidence of payment thereof as to any amounts for which payment or reimbursement is requested) and lien waivers for all services or materials furnished by subcontractors, except as to any retainage, related to amounts for which reimbursement is requested. The Developer must also show proof that all Real Estate Property Taxes attributable to the Property are paid in full and to date and that all sales tax owed to the City of Vienna paid in full. Payment of

the Developer's Share will be forfeited for any year in which appropriate requests for payment, including all applicable documents and proof of payment, are not supplied by December 31<sup>st</sup>. Forfeited payments will not count towards the applicable Reimbursement Limit, and will not be recoverable in future years. The acquisition, production, and submission of all necessary documents and information required to effectuate payment of the Developer's Share will be the responsibility of the Developer.

5.2 City's Determination of Payment of the Developer's Share The City shall approve or disapprove any Request within 45 days of the submittal thereof. If the City disapproves any Request or any portion thereof, it shall state in writing the reasons therefore and provide the Developer a reasonable opportunity to clarify or correct the Request.

5.3 Payment of the Developer's Share In the event that the Developer has complied with and satisfied all obligations of this agreement, including all obligations associated with the performance of the Work and submission of request for payment in the appropriate manner, the City shall pay the Developer the Developer's Share, to the extent monies are available in the Special Allocation Fund, within 90 days of the end of any year for which TIF Revenue was collected from the Property (*see Exhibit 1 – Payment schedule*). Such payment shall continue until such time as the earlier of the following: (i) the Developer Portion of the Redevelopment Project is no longer used for the purposes outlined in this Agreement; (ii) the Reimbursement Limit is reached; (iii) the Agreement Term is reached; (iv) the Vienna Tax Increment Financing Area (TIF #1) expires.

In the event the Developer defaults on the obligations indicated within this agreement within five (5) years from the execution of this Agreement, the Developer shall return to the City a sum of 20% of the total amount of increment granted from the City to the Developer for every year of the first five years of this Agreement in which obligations are not met. If a default occurs within one (1) year of the signing of this Agreement, the Developer will return 100% to the City. If a default occurs between one (1) year and two (2) years from the signing of this Agreement, the Developer will return 80% to the City. If a default occurs between two (2) years and three (3) years from the signing of this Agreement, the Developer will return 60% to the City. If a default occurs between three (3) years and four (4) years from the signing of this Agreement, the Developer will return 40% to the City. If a default occurs between four (4) years and five (5) years from the signing of this Agreement, the Developer will return 20% to the City.

5.4 Reimbursements Limited to Eligible Redevelopment Projects Costs Nothing in this Agreement shall obligate the City to pay or to reimburse the Developer for any cost that is not incurred pursuant to Section 11-74.4-3 of the TIF Act and that does not qualify under Section 11-74.4-3 (q) as determined by the City. The Developer shall, at the City's request, provide (a) itemized invoices, receipts or other

information, if any, requested by the City to confirm that any such costs are so incurred and do so qualify, and (b) an opinion of counsel to the Developer that such cost is eligible for reimbursement under the TIF Act.

5.5 City's Obligations Limited to Special Allocation Fund Notwithstanding any other term or provision of this Agreement, the City's obligations pursuant to this Agreement are limited to monies in the Special Allocation Fund, and from no other source, up to the Reimbursement Limit, should the Work be completed. This agreement does not compel the City's General Fund, or any other source of funds, to provide monies for any amount or obligation identified herein.

6. Notices Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally,

1) In the case of the Developer, to:

Rick Nannie  
45 Industrial Drive  
Vienna, Illinois 62995

2) In the case of the City, to:

Vienna City Hall  
205 North 4<sup>th</sup> Street  
Vienna, Illinois 62995

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

7. Conflict of Interest The parties agree to abide by all applicable federal, state and local laws, ordinances and regulations relating to conflict of interest. Additionally, but not in limitation of the foregoing, no member of the City Council or any branch of government of the City who has any power of review or approval of any of the undertakings contemplated herein shall participate in any decisions relating thereto which affect his or her personal interests or the interests of any corporation, partnership or other entity in which he or she is directly or indirectly interested. Any member, official, employee or agent of the City now having or subsequently acquiring any personal interest, direct or indirect, or now having or subsequently acquiring any interest in any corporation, partnership or association which has any interest in the Redevelopment Area, or in any contract or proposed contract in connection with the redevelopment, rehabilitation or financing of the Redevelopment Area, shall immediately disclose in writing to the City Council the nature of such interest and seek a determination with respect to such interest by the City Council and in the meantime shall not participate in or attempt to influence any actions or discussions relating to the Redevelopment Area.

8. Maintenance of Redevelopment Area The Developer shall maintain or cause to be maintained all of the Work and the Developer's Portion of the Redevelopment Project, the Property and all buildings and improvements within its control in the Redevelopment Area in accordance with all federal, state and local laws, regulations, codes and ordinances.

9. Representative Not Personally Liable No official, agent, employee, or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

10. Release and Indemnification

(a) Developer covenants and agrees that the City and its governing body members, officers, agents, servants and employees shall not be liable for, and agrees to indemnify and hold harmless the officers, agents, servants, and employees 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 Acquisition of the Property or construction of the Work.

(b) The City and its governing body of members, officers, agents, servants, and employees shall not be liable for any damage or injury to the persons or property of the Developer or any of its Affiliates or its officers, agents, servants or employees or any other person who may be about the Property Work due to any act of negligence of any person except to the extent that such liability is covered by and payable under applicable liability insurance.

(c) 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 governing body members, officers, agents, servants or employees in their individual capacities.

(d) No official, employee, agent or representative of the City shall be personally liable to the Developer or any of its Affiliates in the event of a default or breach by any party under this Agreement.

(e) Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or any of its Affiliates for damages arising in any way from this Agreement, or any other obligation or agreement made in connection therewith or from any breach thereof, or arising from a declaration by a final judgment by a court of competent jurisdiction that all or any portion of the Act is unconstitutional or that any ordinance of the City adopted in connection with the Redevelopment Proposal, Redevelopment Plan or the TIF Act is invalid or unconstitutional in whole or in part; provided that nothing in this Section shall limit claims by Developer or any of its Affiliates against the Special Allocation Fund or actions by Developer

seeking specific performance of relevant contracts.

(f) The Developer agrees to indemnify and hold the City, its employees, agents and independent contractors, harmless from, and against any and all suits, claims, damages, liabilities and costs and attorneys fees (a "claim"), resulting from, arising out of, or in any way connected with (1) the Redevelopment Plan or Redevelopment Proposal or their approval, (2) this Agreement, the City's ownership, control, operation or condition of all or any part of the property located within the Property; or any other agreement or obligation made in connection therewith or their approvals, (3) any legal action brought challenging all or any of the foregoing or challenging or counterclaiming in any eminent domain action, (4) the construction of the Work, and (5) the negligence or willful misconduct of the Developer, its employees, agents or independent contractors in connection with the management, development, redevelopment and construction of the Work. In any action concerning or to enforce any of the terms and conditions of this Agreement or any related obligations of Developer, the Developer shall pay all the City's expenses, attorney's fees, and costs and the City may withhold from any amounts otherwise due the Developer under this Agreement or any other obligation of the City to the Developer, any amounts due from the Developer under this Agreement or any other obligation of the Developer to the City.

11. Nondiscrimination In the performance of their obligations hereunder, Developer shall not discriminate on the basis of race, religion, sex, color, national origin, veteran status, age or physical handicap, and the parties shall take such affirmative action as may be appropriate to afford opportunities to everyone in all operations on the Property, including enforcement, contracting, operating, maintenance and purchasing. Developer shall comply with all applicable federal, state and local laws, ordinances, executive orders and regulations regarding equal employment, nondiscrimination and affirmative action.

12. Representation of the City The City represents and warrants that:

(a) Organization and Authority The City (i) is an Illinois municipal corporation, and (ii) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement. The City has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(b) No Defaults or Violations of Law The execution and delivery of this Agreement will not conflict with or result in a breach of any of the terms of, or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party of by which it is bound or the City's charter, or any of the rules or regulations applicable to the City.

13. Representations of the Developer The Developer represents and warrants that:



(a) Organization and Authority The Developer (i) is duly organized under the laws of the State of Illinois and is in good standing under the laws of the State of Illinois, and (ii) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement. The Developer has been authorized by all necessary corporate action to execute and deliver this Agreement, which shall constitute the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms and that the Agreement shall constitute the legal, valid and binding obligation of the Developer enforceable by City in accordance with its terms.

(b) No Defaults or Violations of Law The execution and delivery of this Agreement, and the General Contract by the Developer will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Developer is a party or by which they are bound or their respective articles incorporation, bylaws, or any of the rules or regulations applicable to the Developer of any court or other governmental body.

(c) Pending Litigation Except with regard to those matters which counsel to the City and counsel to the Developer have discussed, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer, except claims which if adversely determined will not, in the opinion of counsel to the Developer, materially and adversely affect the financial condition or operations of the Developer. In addition (except with regard to those matters which counsel to the City and counsel to the Developer have discussed), no litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement by the Developer or which would in any manner challenge or adversely affect the corporate existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer of the terms and provisions of this Agreement.

(d) Full Disclosure There is no fact which the Developer has not disclosed to the City in writing which materially affects adversely or, so far as the Developer can now foresee, will materially affect adversely the financial condition of the Developer or its ability to own and operate its properties or to carry out its obligations under this Agreement or the General Contract.

14. Inspection The Developer shall allow authorized representatives of the City access to the work site from time to time upon reasonable advance notice prior to the completion of the Work for reasonable inspection thereof.

15. Choice of Law This Agreement shall be taken and deemed to have been fully executed by parties in, and governed by the laws of, the State of Illinois for all purposes and

intents.

16. Entire Agreement; Amendment The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.
17. Entire Agreement; Termination The City shall retain the right to terminate this Agreement at any of the following moments: (i) the Reimbursement Limit is reached; (ii) the date the Vienna Tax Increment Financing Area (TIF #1) expires; (iii) the Developer has failed to meet to the deadlines for the start or completion of the Work as outlined within section 2.1, and no extensions have been granted.
18. Prevailing Wage The Developer agrees that any work performed by or for the Developer under this Agreement shall comply with all applicable provisions of the prevailing wage laws and with all other applicable laws, ordinances, and regulations governing fair labor practices.
19. Severability In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.
20. Assignment The rights and obligations of the Developer under this Agreement shall be fully assignable by means of written notice to the City. The City shall not unreasonably withhold its consent provided that the nature of the Redevelopment Project is not substantially changed. No such assignment shall be deemed to release the Developer of its obligations to the City under this Agreement unless the specific consent of the City to release the Developer's obligations is first obtained in writing.
21. Time; Force Majeure. Time is of the essence of this Agreement; provided, however, Developer shall not be deemed in material breach of this Agreement with respect to any obligation under this Agreement on its part to be performed if Developer fails to timely perform the same and such failure is due in whole or in part to strike, lock out, labor trouble (whether legal or illegal), civil disorder, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the City (or the City's agents, employees or invitees) or similar causes beyond the reasonable control of Developer ("Force Majeure"), in which case the time for performance shall be extended for a period equal to the period of the delay caused by such Force Majeure.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective names and caused their respective seals to be affixed thereto, and attested as to the date first above written.

"CITY"

CITY OF VIENNA, ILLINOIS

DATE \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

"DEVELOPER"

HIGHLY FAVORED PROPERTIES, LLC

DATE \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

**APPENDIX A**

**PROJECT LOCATION**

**Johnson County Parcel ID(s):** 08-04-201-005 (subject to change)

## EXHIBIT 1

### Example Payment Schedule

The following payment schedule assumes that the project is completed in 2017, with the first year of full assessment occurring in 2018.

The City is allowed + 90 days from the end of the year during which TIF Revenues for a certain tax year are collected into the TIF Fund to disburse payment of the Developer's Share.

Due to the uncertain date that taxes owed to the TIF Fund are actually collected and deposited into the TIF Fund by the City, TIF Revenues which should be collected in any given year may not be reimbursed back to the Developer until the following year.

TAX YEAR YEAR	YEAR ASSESSED	YEAR COLLECTED	YEAR REIMBURSEMENT DISBURSED
2018	2018	2019	2019/2020
2019	2019	2020	2020/2021
2020	2020	2021	2021/2022
2021	2021	2022	2022/2023
2022	2022	2023	2023/2024
2023	2023	2024	2024/2025
2024	2024	2025	2025/2026
2025	2025	2026	2026/2027
2026	2026	2027	2027/2028
2027	2027	2028	2028/2029
2028	2028	2029	2029/2030
2029	2029	2030	2030/2031
2030	2030	2031	2031/2032
2031	2031	2032	2032/2033