

# **DEVELOPMENT AGREEMENT**

Between the

**CITY OF MONMOUTH**

and

**LOVE'S TRAVEL STOPS & COUNTRY STORES**

THIS DEVELOPMENT AGREEMENT ("Agreement") made and entered into on this 18th day of June, 2019, by and between the City of Monmouth, an Illinois Municipal Corporation ("City"), and Love's Travel Stops & Country Stores ("Developer").

**WITNESSETH:**

WHEREAS, the City wishes to engage in certain lawful activities authorized by applicable law to assist private persons and entities in carrying out certain commercial development activities which are identified in the Business District Plan for the City's W. 11<sup>th</sup> Street / Route 34/67 Business District under the provisions of the Illinois Business District Development and Redevelopment Business District Law, as amended (65 ILCS 5/11-74.3-1 through 3-7), hereinafter referred to as the "Business District Law"; and

WHEREAS, the City wishes to enter into this Performance-Based Development Agreement with the Developer in order to facilitate the development of the Property (as defined below) located on the southeast corner of the intersection of West 11<sup>th</sup> Avenue and Highways 34/67; and

WHEREAS, the "Development Project" consists of purchasing an approximately 12-acre parcel from John Diffenbaugh (the "Property") and constructing a new approximately 8,000 to 11,000 square foot Love's Travel Stop, including food service and other site improvements as more particularly described herein; and

WHEREAS, the Development Project is to take place upon that certain real property described above as parcel number 09-031-013-00; and

WHEREAS, it is necessary for the successful completion of the Development Project that the City enter into this Performance-Based Development Agreement with Developer to provide for the development of the Property, thereby implementing the Business District Plan; and

WHEREAS, but for certain incentives to be provided by the City in accordance with the Business District Law and pursuant to the home rule powers of the City, which

the City is willing to provide under the terms and conditions contained herein, the Parties acknowledge and agree that but for the incentives, to be provided by the City as set forth herein, Developer cannot successfully and economically develop the Property substantially in conformance with the Development Project. The City has determined that it is desirable and in the City's best interests to assist Developer in the manner set forth herein and as this Performance-Based Development Agreement may be supplemented and amended from time to time; and

WHEREAS, the City wishes to assist private developers in carrying out projects that create commercial enterprises in the City; and

WHEREAS, the City believes that the Development Project to be located on the Property and the fulfillment generally of the terms of this Agreement are in the vital and best interests of the City and its residents, and are in accord with its duty, authority, and the public purposes and conditions arising under the Business District Law and all applicable state and local laws and requirements.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby stipulate, covenant, contract and agree as follows, to-wit:

## I. INCORPORATION OF RECITALS

The foregoing preambles are material to this Agreement and are incorporated into the Agreement and made a part of this Agreement as if fully stated herein.

## II. DEFINITIONS

- A. **"Applicable Law"** means all laws, statutes, acts, Environmental Laws ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all Governmental Authorities including, but not limited to, the City, that now or hereafter during the term of this Agreement may be applicable to the City, the Developer, and/or the Development Project, and the construction, maintenance, use and operation thereof, including those relating to employees, zoning, building, health, safety, Hazardous Materials, and accessibility of public facilities.
- B. **"Available Business District Taxes"** means 100% of the Business District Taxes imposed, civil penalties, and interest, deposited into the

Route 13/127 Business District Tax Allocation Fund (the "**Business District Fund**"), established pursuant to the Ordinance [REDACTED] and Section 5/11-74.3-6(a) of the Business District Law.

- C. "**Business District Project Costs**" see definition of "Eligible Expenses".
- D. "**Business District Administration Set-Aside**" means a portion of the Business District Taxes that is set-aside each year for the City to administer the Business District, including compliance with the terms of this Agreement, audits of the Business District Fund, coordinating notice of tenant changes to the IDOR, and similar matters.
- E. "**Business District Taxes**" means the Business District Retailers' Occupation Tax and Business District Service Occupation Tax levied by the City at a rate of 1.0% and collected by the Illinois Department of Revenue (the "IDOR") on businesses located within the Business District, plus the Business District Hotel Operators' Occupation Tax levied and collected by the City at a rate of 1.0% on persons engaged in the Business District in the business of renting, leasing, or letting of rooms in a hotel, all to pay for implementation of the Business District Plan and to pay for business district project costs set forth in said Plan, all pursuant to the authority granted by Subsections 11-74.3-3 (10) and (11) of the Business District Law.
- F. "**Certificate of Eligible Expenses**" means a document substantially in the form of **Exhibit B** to be provided by the Developer to the City in accordance with this Agreement and evidencing Eligible Expenses incurred by the Developer and eligible for reimbursement to Developer under the terms of this Agreement and the Business District Law. The Certificate of Eligible Expenses is sometimes referred to herein as a "**Certificate**".
- G. "**Eligible Expenses**" means all reasonable project costs incurred that (i) meet the definition of "business district project costs" as defined in the Business District Law and (ii) fall within one of the budget line items contained in Exhibit B, Estimated Business District Project Costs, of the Business District Plan.
- H. "**Environmental Laws**" means all statutes specifically described in the definition of Hazardous Materials and all federal, state and local environmental, health and safety statutes, ordinances, codes, rules,

regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

- I. **"Public Works Improvement"** means public infrastructure including, but not limited to construction of City streets, installation of public utilities and all work incidental thereto.
- J. **"Related Entity"** means any corporation or other business entity which owns or controls, is owned or controlled by, or is under common ownership or control with, the Developer. For purposes of the preceding sentence, "control" means either (i) ownership or voting control, directly or indirectly, of 50% or more of the voting stock, partnership interests or other beneficial ownership interests of the entity in question or (ii) the power to direct the management and policies of such entity.
- K. **"Successor"** means an entity resulting from a merger, consolidation, reorganization or recapitalization of or with the Developer.

### III. CITY'S AGREEMENT TO PROVIDE ASSISTANCE.

The following sets forth the intentions, undertakings and contractual obligations and responsibilities of the City under this Agreement.

- A. **Reimbursement of Eligible Expenses.** The City agrees to reimburse the Developer for Eligible Expenses from the Business District Taxes imposed within the City's West 11<sup>th</sup> Street/Route 34/67 Business District. Eligible Expenses incurred by the Developer, include the cost of retaining a planning consultant to assist the City in creating this Business District, reconstructing West 11<sup>th</sup> Avenue east of the intersection of Highways 34/67 to South D Street, and the extension of municipal water and sanitary sewer utilities to the Business District (development site). In addition, Eligible Expenses would include the cost of installing traffic signals at the intersection of West 11<sup>th</sup> Avenue and Highways 34/67 if so warranted by the Illinois Department of Transportation as a result of the Developer's project within the Business District.
- B. **Source of Funds.** The source of funds for reimbursement of Eligible Expenses shall be 100% of the Available Business District Taxes deposited into the Business District Fund. At the close of the City's fiscal year, if there remains a balance in the Business District Fund in excess of \$5,000, said excess shall be paid to the Developer for any Eligible

Expenses not already reimbursed. Payment of excess Available Business District Taxes, if any, shall be paid to the Developer as part of the next regularly scheduled payment.

C. **Certificate of Expenditures.**

1. The Developer shall submit to the City Clerk a Certificate setting forth the amount of reimbursement requested and the specific Eligible Costs for which reimbursement is being sought. Each Certificate shall be accompanied by:
  - a. Such bills, invoices, lien waivers or other evidence as the City shall reasonably require documenting the right of the Developer to be reimbursed under this Agreement.
  - b. An itemized list of the Eligible Expenses and description of business district project costs, as defined in the Business District Law, to which it should be assigned in the opinion of the Developer or his/her representative.
  - c. A statement showing itemization of all Eligible Expenses and those that have been reimbursed to date.
2. The City Administrator shall as soon as practical after receipt of any Certificate from the Developer, process payment provided it is an eligible expense. If the City Administrator disapproves the request in its entirety or specific expenditure items, then the City Administrator shall provide to the Developer an explanation, in writing, as to why such request was disapproved; provided, that the only reasons for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure is not considered to be eligible because such expenditure does not fall within one of business district project cost line items contained in Exhibit B, Estimated Business District Project Costs, of the Business District Plan or otherwise does not fall within the definition of business district project costs as defined in the Business District Law. If the City Administrator neither approves nor disapproves a Certificate within sixty (60) days of receipt, such Certificate and the expenses included therein will be deemed Eligible Expenses and approved.

D. **Reimbursement Payments.**

1. Reimbursement of approved Eligible Expenses shall be made within ten (10) days of the first day of each calendar quarter from the Available Business District Taxes deposited in the Business District Fund. To the extent money is not available to reimburse the Developer for said Eligible Expenses such expenses shall be reimbursed in subsequent quarters, if there are monies available for such purpose.
  2. The Developer will be reimbursed only for Eligible Expenses approved pursuant to Section III, C. above.
  3. The Finance Director shall maintain an account of all payments to the Developer under this Agreement and may set up sub-accounts within the Business District Fund to track Available Business District Taxes and payments made to the Developer or assigns.
- E. **No Interest.** There shall be no interest charged to the City or due to the Developer pursuant to this Agreement at any time, and no interest shall ever be paid to the Developer from the City pursuant to this Agreement, irrespective of whether or not the City is delinquent or otherwise tardy in making payments required hereunder.
- F. **Enterprise Zone.** The City shall take no action to eliminate the Enterprise Zone while still authorized by statute for the benefit and duration of the Development Project by which means materials can be purchased for the construction of the Development Project without the imposition of sales tax. The Developer shall not be eligible for any property tax abatement under the Enterprise Zone guidelines.
- G. **No General Obligation of the City.** THE CITY'S OBLIGATIONS TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM THE AVAILABLE BUSINESS DISTRICT TAXES DEPOSITED INTO THE BUSINESS DISTRICT FUND FROM TIME TO TIME AND SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION.

**IV. DEVELOPER AGREEMENT TO UNDERTAKE DEVELOP PROJECT AND REPORTING OF SALES TAXES.**

- A. The Developer shall undertake the Development Project, described below, in accordance with Applicable Laws, plans and specifications approved by the City and the terms and conditions of this Agreement. Once commenced, the Developer shall prosecute construction continuously with diligence until completion thereof, lien free, and be open for business within 18 months of the date of execution of this Agreement.
- B. The Developer agrees to construct between 8,000 and 11,000 square feet of a travel stop including a fast food restaurant, eight (8) gasoline fueling stations, six (6) diesel fueling bays with a CAT scale, reconstruct West 11<sup>th</sup> Avenue from its intersection with Highways 34/67 east to South D Street, extend municipal water and sewer services to the development site, and erect traffic signals on Highways 34/67 and 11<sup>th</sup> Avenue if so warranted by the Illinois Department of Transportation.
- C. **Conditions Precedent to Developer's Obligations.** Notwithstanding anything to the contrary in this Agreement, Developer's obligations under this Agreement including, without limitation, those set forth in Sections IV.A and B, above, are subject to Developer obtaining any and all required governmental permits, authorizations, approvals, licenses and the like which may be necessary to permit construction and installation of the Development Project.
- C. **Reporting of Sales.** To assist the City in confirming appropriate collection of Business District Taxes, the Developer shall use all reasonable efforts to cause businesses operating within the Business District that are owned or controlled by Developer or a Related Party of Developer, to properly collect and report all Business Tax Revenue. The Developer shall satisfy this requirement by making a good faith effort to cause the fee title holder of the Property in the District to include the obligation to execute any documents required by the IDOR to authorize the release of sales tax information to the City (e.g., PTAX 1002-21 Form) with any deed conveying any portion of the Property to any person or entity other than a Related Party and into any lease entered into with any tenants which are not Related Parties. The City shall promptly file the reporting forms after receipt thereof with the IDOR.
- D. **Confidential Information.** The City acknowledges and agrees that the information to be provided by the owners and lessees of the Property

hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof may cause harm to the owners and lessees, and to the extent permitted by state or federal law, including but not limited to Section 7(1)(g) of the Illinois Freedom of Information Act, the City agrees to hold in confidence all sales figures and other information provided by the State of Illinois, or any owner or lessee of a portion of the Property, or obtained from any such owner's or lessee's records. The City shall be permitted to disclose such information (i) to its agents or employees who are reasonably deemed by the City to have the need to know such information for purposes of this Agreement; provided, that such agents and employees shall hold in confidence such information to the extent required of the City or (ii) to the extent required by order of the court of by state or federal law. The City shall promptly notify the Developer and any affected owner or lessee as to the commencement of any legal action or request by the Attorney General in regard to such information and the Developer and/or any such owner or lessee shall have the opportunity to object to the release of any such confidential information and to take any such action as such owner or lessee deems necessary in order to protect against the release of such confidential information. Following notice by the City to the Developer, the City shall have no further obligation to litigate or contest any such action or to dispute any findings of the Attorney General.

**V. CONDITIONS PRECEDENT TO CITY'S REIMBURSEMENT PAYMENTS HEREUNDER.**

The City's obligations under this Agreement shall, for the Project, be subject to:

- A. **Plan Approval and Completion of Development Project.** City approval of plans for the Development Project and completion of said Development Project by the Developer in substantial conformance with the approved plans.
- B. **No Default.** The Developer shall be in substantial compliance with all applicable terms of this Agreement and no material default shall have occurred and be continuing hereunder.
- C. **Code Compliance.** There shall be no uncured material violations of any Applicable Law, certificate of occupancy or other governmental



requirements with respect to the Property by Developer or any Related Party of Developer.

## **VI. WARRANTIES OF THE CITY.**

The City represents and warrants to the Developer that it is empowered and authorized to execute and deliver this Agreement and to lend and deliver the assistance described herein upon proof of eligible "development project costs" pursuant to Section 5/11-74.3-3(1) of the Business District Law, and to execute and deliver all other agreements and documents, if any, required hereunder to be executed and delivered by the City. This Agreement has been, and each such document at the time it is executed and delivered will be, duly executed and delivered on behalf of the City pursuant to its legal power and authority to do so. When executed and delivered to the Developer, all such agreements shall constitute a legal, valid, and binding obligation of the City, enforceable in accordance with the terms of all such agreements.

## **VII. WARRANTIES OF THE DEVELOPER.**

- A. The Developer represents and warrants to the City that the Developer is duly organized and existing under the laws of the State of Oklahoma, and duly authorized to do business in the State of Illinois and that all proceedings of the Developer necessary to authorize the negotiation and execution of this Agreement and the consummation of the transaction contemplated by this Agreement have been taken in accordance with Applicable Law.
- B. The Developer represents and warrants to the City that this Agreement has been duly authorized, executed, and delivered by the Developer, and will be enforceable against the Developer by its terms, except to the extent that such enforceability shall be limited by bankruptcy, or solvency, or similar laws of general application affecting the enforcement of creditor rights, and by equitable principles.
- C. The Developer represents and warrants to the City that the execution and delivery of this Agreement, and the consummation of the transactions contemplated in this Agreement will not violate any provision of its operating agreement or any other contract, agreement, court order or decree to which the Developer may be a party or to which the Developer may be subject, or any applicable federal or state law or municipal ordinance.

## **VIII. DEVELOPER'S INDEMNIFICATION.**

The Developer shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise directly or indirectly from the failure of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman, from any default or breach of the terms of this Agreement by the Developer, or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer or Developer's contractor). The Developer shall, at the Developer's sole cost and expense, appear, defend and pay all charges, attorneys' fees, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the City, its agents, officers, officials or employees in any such action, the Developer shall, at the Developer's sole cost and expense, satisfy and discharge the same. This Section VIII shall not apply, and the Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the City or any of its officers, agents, employees or contractors.

Any failure by the Developer to comply with the Prevailing Wage Act, if and to the extent applicable, shall not be deemed a "Default" under this Agreement. The Developer understands that any portion of construction work associated with the Development Project that constitutes a Public Works Improvement is subject to the Prevailing Wage Act. The Developer agrees to assume all responsibility for any such compliance (or noncompliance) with the Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions.

## **IX. ENTIRE AGREEMENT.**

This document and exhibits hereto contain the entire agreement between the Developer and the City as to this Agreement and its burdens and benefits shall inure to the benefit of, and shall be binding upon the parties hereto or a memorandum thereof and their respective heirs, executors, successors, and assigns. This Agreement or a memorandum thereof shall be recorded as set forth below, and may be modified only by written amendment signed by the Developer and the City, which amendment shall

become effective upon recording by either party in the Recorder's Office in Warren County, Illinois.

#### **X. ASSIGNMENT.**

The Developer hereunder may assign the rights, duties, and obligations of the Developer only with the prior written consent of the City (which consent may not unreasonably be withheld).

Notwithstanding the foregoing, the Developer may without City's consent, assign this Agreement to any Related Entity or Successor (as such terms are defined Section II), provided that the Developer shall notify the City, in writing, of the Related Entity or Successor to which this Agreement has been assigned.

For the purposes of this Section X, consent shall be deemed given by the City upon execution of this Agreement for any assignment to any person or entity having a verified net worth of not less than Five Million and No/100 Dollars (\$5,000,000.00). If a request for consent is not denied in writing on or before thirty (30) days after written request, such consent shall be deemed given.

#### **XI. SURVIVAL OF WARRANTIES AND REPRESENTATIONS.**

Any warranty, representation, or agreement herein contained which, by its nature is intended to survive expiration or termination, shall survive the expiration or earlier termination of the Agreement.

#### **XII. NOTICE OF DEFAULT.**

In the event either party is in default hereunder (the "Defaulting Party"), the other party (the "Non-Defaulting Party") shall be entitled to take any action allowed by applicable law by virtue of said default provided that the Non-Defaulting Party first gives the Defaulting Party written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same and specifying a time period of not less than thirty (30) days in which the default may be cured by the Defaulting Party.

#### **XIII. REMEDIES UPON DEFAULT.**

- A. If, in the City's reasonable judgment, the Developer is in default of this Agreement, the City shall provide the Developer with a written statement indicating in adequate detail any failure on the Developer's part to fulfill its

obligations under this Agreement. Except as required to protect against further damages, the City may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

- B. If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the City and any cure periods described in Section XIII.A above have expired or if all or a portion of any such agreement is terminated, the City may elect to terminate this Agreement or exercise any right or remedy it may have at law or in equity, including without limitation the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of the Developer's property, the City may elect, to the extent such election is permitted by law and is not unenforceable under applicable federal bankruptcy laws, but is not required, with or without notice of such election and with or without entry or other action by the City, to forthwith terminate this Agreement. To effect the City's termination of this Agreement under this Section XI.B., the City's sole obligation shall be to record, in the office of the Warren County Recorder, a Certificate of Default executed by the Mayor of the City or such other person as shall be designated by the City, stating that this Agreement is terminated pursuant to the provisions of this Section XI.B., in which event this Agreement by virtue of the recording of such certificate, shall *ipso facto* automatically become null and void and of no further force and effect.

- C. If, in the Developer's reasonable judgment, the City is in material default of this Agreement, the Developer shall provide the City with a written statement indicating in adequate detail any failure on the City's part to fulfill its obligations under this Agreement. The Developer may not exercise any remedies against the City in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the City diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any right or remedy as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.
- D. In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance. Notwithstanding the foregoing, in the event either party shall institute and complete legal action against the other party because of a breach of any agreement or obligation contained in this Agreement, the substantially prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.
- E. The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party.

#### **XIV. NON-DISCRIMINATION.**

The Developer agrees that neither the Property nor any portion thereof, shall be sold to, leased, or used by the Developer in a manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, sexual orientation, religion, marital status, age, handicap, or national origin, and that the development of and construction and operations on the Property shall be in compliance

with all effective laws, ordinances, and regulations relating to discrimination on any of the foregoing grounds.

**XV. NOTICES.**

Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when (a) hand delivered to the party to whom the notice is addressed; (b) mailed by certified mail, return receipt requested, United States mail, postage prepaid; or (c) delivered by overnight courier delivery service (i.e. Federal Express, UPS, etc.) and addressed to the party at the address shown as follows:

- TO CITY: City Administrator and City Clerk  
100 East Broadway  
Monmouth, IL 61462
  
- WITH A COPY TO: City Attorney  
Spears and Spears  
201 W. Broadway Avenue  
Monmouth, IL 61462
  
- TO DEVELOPER: Love's Travel Stops & Country Stores, Inc.  
Attn: Vice President – Real Estate & Development  
10601 N. Pennsylvania Ave.  
Oklahoma City, Oklahoma 73120
  
- WITH A COPY TO: Love's Travel Stops & Country Stores, Inc.  
ATTN: Hugh Long, Corporate Legal Counsel  
10601 N. Pennsylvania Avenue  
Oklahoma City, OK 73120

Any party may change the address to which notices shall be sent by notice given in accordance with the terms of this Section XV.

**XVI. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

**XVII. HEADINGS.**

Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**XVIII. APPLICABLE LAW.**

This Agreement and each of its subparts and incorporated items thereto shall be interpreted under the laws of the State of Illinois and any action brought to enforce or interpret any of its provisions or otherwise involving this Agreement must be filed in Warren County, Illinois or a court of competent jurisdiction.

**XIX. SEVERABILITY.**

Should any part of this Agreement be determined to be illegal, invalid, or otherwise unenforceable, then all such remaining parts not so affected by such illegality, invalidity, or unenforceability shall continue in full force and effect, fully binding both parties, their respective heirs and assigns, as to such remaining terms.

**XX. NO JOINT VENTURE, AGENCY OR PARTNERSHIP CREATED.**

Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

**XXI. ASSURANCE OF FURTHER ACTION.**

From time to time hereafter and without further consideration, each of the parties to this Agreement shall execute and deliver, or cause to be executed and delivered, such recordable memoranda, further instruments, and agreements, and shall take such other actions, as any other party may reasonably request, in order to more effectively memorialize, confirm, and effectuate the intentions, undertakings, and obligations contemplated by this Agreement.

**XXII. DELAYED EXECUTION.**

After this Agreement is approved by the Monmouth City Council and duly signed by the Mayor and attested by the City Clerk, the Developer shall have up to ten days (10) from that date to execute this Agreement, and this Agreement shall not be binding on the parties until duly executed by both parties.

**XXIII. DISCLAIMER OF THIRD PARTY BENEFITS.**

The intentions, affirmations, authorizations and agreements between the parties hereto as expressed herein are approved solely by and between the parties hereto and no other; and provided further, however, that neither and none of such intentions, affirmations, authorizations or agreements may be relied upon by any person or entity, to such entity or person(s) detriment, or for any reason whatsoever, whether third person or otherwise. Any such reliance or purported reliance as a third party beneficiary to this Agreement or predicated upon any other relationship to any of the parties hereto and each of them, whether real or alleged, is specifically disclaimed by the parties herein.

**XXIX. TERM.**

This Agreement and the funds to be paid out accordingly, shall expire when the total amount of eligible costs have been reimbursed to the Developer, or upon the disillusion date of the Business District.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth above their respective signatures.

**THE CITY OF MONMOUTH, ILLINOIS**

**LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.**

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Rod Davies, Mayor

By: Doug Stussi, Exec VP  
Name, Title

Attest: \_\_\_\_\_  
Susan Trevor, City Clerk

By: [Signature]  
Name, Title Hugh Long, Corporate Legal Counsel



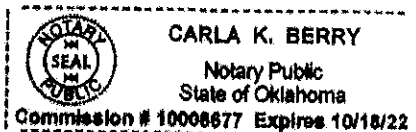
STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF WARREN )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared **Rod Davies** and **Susan Trevor** to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the **CITY OF MONMOUTH**, executing the within and foregoing instrument to which this is attached; that said instrument was signed (and sealed) on behalf of (the seal affixed thereto is the seal of said corporation) as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF Oklahoma )  
 ) SS:  
COUNTY OF Oklahoma )

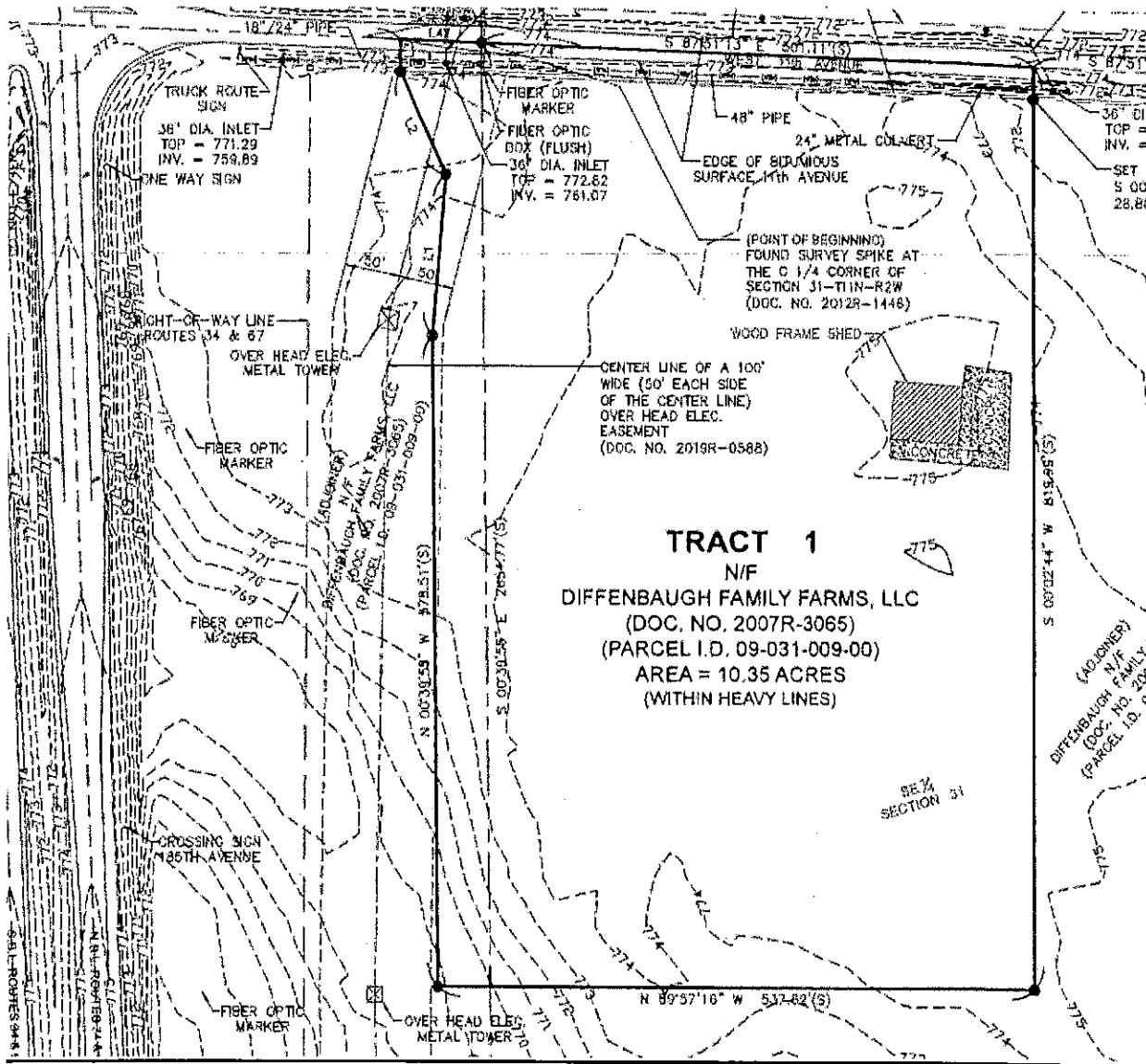
On this 4<sup>th</sup> day of June, 2019, before me, a Notary Public in and for said County and State aforesaid, personally appeared Doug Stussi to me personally known, who being by me duly sworn (or affirmed) did say that he is the Exec VP are of **Love's Travel Stops & Country Stores, Inc.**, and that said instrument was signed on behalf of the Corporation; Doug Stussi acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation, by it and by him voluntarily executed.



Carla K. Berry  
NOTARY PUBLIC

# EXHIBIT A

## Property



**EXHIBIT B**

**Form of Certificate of Eligible Expenses**

**CERTIFICATE OF ELIGIBLE EXPENSES**

(DATE)

City Clerk  
City Hall  
100. E. Broadway  
Monmouth, Illinois 61462

Attention: City Administrator

RE: **Development Agreement**, dated \_\_\_\_\_, 2019,  
by and between the City of Monmouth, Illinois, and Love's Travel Stops &  
Country Stores, Inc. and/or its Assigns (the "Developer")

You are requested to disburse funds from the West 11<sup>th</sup> Street / Route 67 Business District Fund pursuant to Section III of the above referenced Business District Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Certificate of Eligible Expenses. The terms used in this Certificate shall have the meanings given to those terms in the Development Agreement.

1. CERTIFICATE NO. \_\_\_\_\_
2. PAYMENT DUE TO: \_\_\_\_\_
3. AMOUNT TO BE DISBURSED: \_\_\_\_\_
4. The amount requested to be disbursed pursuant to this Certificate will be used to reimburse the Developer for those Eligible Expenses incurred with respect to the Development Project described in the Development Agreement.
5. The undersigned certifies that:
  - (i) The amounts included in line 3 above were made or incurred or financed and were necessary for the construction of the Development Project and were made or incurred in accordance therewith;

(ii) The amounts paid or to be paid, as set forth in this Certificate, represents a part of the funds due and payable for Eligible Expenses;

(iii) The expenditures for which amounts are requisitioned and represent proper business district project costs as defined in the Business District Law, have not been included in any previous Certificate, have not been reimbursed by other government funding sources, have been properly recorded on the Developer's books and are set forth in Schedule 1, with evidence of Eligible Expenses incurred attached for all sums for which reimbursement is requested;

(iv) ~~The amount of Eligible Expenses to be reimbursed will be made in accordance with this Certificate together with all amounts submitted in previous Certificates.~~

(v) The Developer is not in default under the Development Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under the Development Agreement.

6. Attached to this Certificate is Schedule 1 itemizing the Eligible Expenses to be reimbursed, together with copies of contractor affidavits with accompanying current lien waivers, paid invoices and/or other evidence of wire transfers covering all items for which reimbursement is being requested.

Submitted by:

Love's Travel Stops & Country Stores, Inc.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED BY CITY ADMINISTRATOR:

Date: \_\_\_\_\_