



Hall County Regional Planning Commission

Wednesday, November 01, 2006
Regular Meeting

Item J2

Resolution - Redevelopment Plan - Contracts for TIF

Resolution recommending approval of redevelopment plan and contracts for TIF. F. William Shellpepper, attorney for the City of Wood River, is requesting approval of a resolution supporting the use of TIF for the development of the planned ethanol plant in Wood River.

Staff Contact: Chad Nabity

Agenda Item #8

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

October 23, 2006

SUBJECT: *Resolution and recommendation of development contract for a proposed ethanol plant to be located in a blighted and substandard area in Wood River (C-15-2006C)*

PROPOSAL: This site was declared Blighted and Substandard by Wood River following the recommendation by Planning Commission in May 2006. F. William Shellpepper, Attorney for the City of Wood River, is requesting that the planning commission review the development contract and pass a resolution approving the ethanol plant project and contract as submitted.

OVERVIEW:

Hanna:Keelan Associates P.C. prepared a blight and substandard study of the property described. The area has been declared blighted and substandard in a manner consistent with State Statutes. A development proposal has been submitted by Pioneer Energy Trail L.L.C. and a development contract has been prepared. According to the terms of the contract the developer will build and operate an ethanol plant on this site and Tax Increment Financing will be used to pay for infrastructure necessary to support that production.

RECOMMENDATION:

That the Regional Planning Commission recommend that City Council **approve** the attached resolution.

_____ Chad Nabity AICP, Planning Director

PLANNING COMMISSION
COUNTY OF HALL

RESOLUTION # _____

A RESOLUTION OF THE PLANNING COMMISSION OF HALL COUNTY, NEBRASKA, MAKING RECOMMENDATIONS WITH RESPECT TO A REDEVELOPMENT PLAN, INCLUDING A REDEVELOPMENT PROJECT, IN AN AREA IN THE CITY DECLARED AS BLIGHTED AND SUBSTANDARD PURSUANT TO THE NEBRASKA COMMUNITY DEVELOPMENT LAW.

WHEREAS, the Mayor and City Council of the City of Wood River, Nebraska, have declared an area of the City as described on the attached Exhibit 'A' (the "Redevelopment Area") as blighted and substandard in accordance with Sections 18-2101 through 18-2153 of the Nebraska Revised Statutes, as amended (the "Act");

WHEREAS, the Community Development Agency of the City of Wood River has submitted to this Planning Commission for review and comment a Redevelopment Plan for the Redevelopment Area and a proposed Redevelopment Contract for a Redevelopment Project in a portion of the Redevelopment Area in the form of the attached Exhibit B;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of Hall County, Nebraska that the Planning Commission has reviewed the proposed Redevelopment Plan and Redevelopment Contract for the Redevelopment Area described on Exhibits A and B attached to this Resolution.

BE IT FURTHER RESOLVED, that the Planning Commission recommends approval of the Redevelopment as a Redevelopment Plan and the Redevelopment Contract.

BE IT FURTHER RESOLVED, that any resolution passed and approved prior to the passage, approval and publication of this Resolution which is in conflict with the terms and provisions of this Resolution is repealed to the extent of such conflict. This Resolution shall take effect and be in force and effect from and after its passage, approval and publication as required by law. The provisions of this resolution are separable, and invalidity of any phrase, clause, or part of this Resolution shall not affect the validity or effectiveness of the remainder of this Resolution.

Passed and approved by the Planning Commission this ____ day of _____, 2006.

Planning Commission of Hall County,
Nebraska

ATTEST:

Member

Member

Member

Member

Member

EXHIBIT A

Redevelopment Area #1 consists of an Area that begins at the intersection of the north line of Tenth Street and the east line of Walnut Street, thence southward across the public right-of-ways of both U.S. Highway 30 and to the center-line of the Union Pacific Railroad corridor, thence southwesterly along said center-line of the Railroad to its intersection with the extended west line of the MacColl and Leflang's 2nd Addition (also the west Corporate Limit Line), thence south along said west line to its intersection with the south line of Schultz Road, thence west along said south line to its intersection with the east line of 140th Road, thence south along said east line to its intersection with the extended east/west half section line of Section 20, T10N, R11 and 12W, of the Sixth Principle Meridian, thence west along said half section line, across 140th Road and continuing across the entire width of Section 20 to the center line of 150th Road, thence continuing westerly from center line into Section 21, 660' (1/8 of a mile), thence north along the 1/8th mile line to its intersection with the center line of the Union Pacific Railroad right-of-way, thence northeasterly along said center line to its intersection with the extended west line of the Wood Lawn Subdivision, thence north along said west line and continuing across the right-of-way line of Military Road to the north line of Military Road, thence northeasterly along said north line to its intersection with the east line of Cottonwood Street (Highway 11), thence south along said east line to its intersection with the north line of Ninth Street, thence east along said north line to its intersection with the west line of West Street, thence north along said west line to its intersection with the north line of the alley between Tenth and Eleventh Streets, thence east along said north alley line to its intersection with the east line of Main Street, thence south along said east line to its intersection with the north line of the alley between Ninth and Tenth Street, thence east along said north line to its intersection with the west line of East Street, thence north along said west line to its intersection with the north line of Tenth Street, thence east along said north line to its intersection with the east line of Walnut Street, also known as the point of beginning.

EXHIBIT B

REDEVELOPMENT CONTRACT

By

THE CITY OF
WOOD RIVER, NEBRASKA

and

PIONEER TRAIL ENERGY, L.L.C.

_____, 2006

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REDEVELOPMENT CONTRACT

This Redevelopment Contract is made and entered into as of the ____ day of _____, 2006, by and between the City of Wood River, Nebraska ("City"), and Pioneer Trail Energy, L.L.C., a Delaware limited liability company ("Redeveloper").

WITNESSETH

WHEREAS, the City in furtherance of the purposes and pursuant to the provisions of Section 2 of Article VIII of the Nebraska Constitution and Sections 18-2101 to 18-2154, Reissue Revised Statutes of Nebraska, 1997, as amended (collectively the "Act"), and pursuant to Resolution No. ____ of the City dated June 20, 2006, has designated an area in the City as blighted and substandard;

WHEREAS, pursuant to Section 18-2119 of the Act, the City has solicited proposals for redevelopment of the blighted and substandard area and Redeveloper submitted a redevelopment contract proposal;

WHEREAS, the City and Redeveloper desire to enter into this Redevelopment Contract for acquisition and redevelopment of a parcel in the blighted and substandard area;

NOW, THEREFORE, in consideration of the Redevelopment Area and the mutual covenants and agreements herein set forth, the City and Redeveloper do hereby covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

"Act" means Section 2 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2154, Reissue Revised Statutes of Nebraska, 1997, as amended, and acts amendatory thereof and supplemental thereto.

"Administrative Agent" means the administrative agent appointed pursuant to the Senior Credit Facility.

"Agency" means the Community Development Agency of the City of Wood River, Nebraska.

“Borrowers” means, collectively, the Redeveloper, BFE Operating Company, LLC and Buffalo Lake Energy, LLC.

“Certificate of Completion” means a certificate, executed by a manager or other duly authorized officer of Redeveloper, representing and warranting that the Project is substantially complete.

"City" means the City of Wood River, Nebraska.

“Credit Agreement” means the Credit Agreement dated [____], 2006, among BFE Operating Company, LLC, as Borrower, Buffalo Lake Energy, LLC, as Borrower, Redeveloper, as Borrower, BFE Operating Company, LLC, as Borrowers’ Agent, the lenders party thereto, BNP Paribas, as Administrative Agent and Arranger, and Deutsche Bank Trust Company Americas, as Collateral Agent, as amended, supplemented or modified and in effect from time to time.

"Governing Body" means the Mayor and City Council of the City.

"Holder" means the holders of TIF Indebtedness issued by the City from time to time outstanding,

“Project” means the improvements to the Redevelopment Area, as further described in Exhibit B attached hereto and incorporated herein by reference and, as used herein, shall include the Redevelopment Area real estate.

“Project Cost Certification” means a statement prepared and signed by an independent certified public accountant verifying the payment of Project Costs identified on Exhibit D.

"Project Costs" means only costs or expenses incurred by Redeveloper to acquire, construct and equip the Project pursuant to the Act as identified on Exhibit D.

“Redeveloper” means Pioneer Trail Energy, L.L.C., a Delaware limited liability company.

"Redevelopment Area" means that certain real property situated in the City of Wood River, Hall County, Nebraska, which has been declared blighted and substandard by the City pursuant to the Act, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

"Redevelopment Contract" means this redevelopment contract between the City and Redeveloper with respect to the Project.

"Redevelopment Plan" means the Redevelopment Plan for the Redevelopment Area, as set forth in the Redevelopment Contract, prepared by the Agency and approved by the City pursuant to the Act, as amended from time to time.

"Resolution" means the Resolution of the City as supplemented from time to time, approving this Redevelopment Contract.

"Senior Credit Facility" means the facilities granted to Redeveloper by the Senior Lenders under the Credit Agreement and the other financing documents contemplated thereby, and any refinancing thereof, including but not limited to any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

"Senior Lender" means each lender named under the Credit Agreement or any successors or assigns thereof.

"TIF Indebtedness" means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premiums, if any, thereon, incurred by the City pursuant to Article III hereof on the terms and conditions as specified on the attached Exhibit C and secured in whole or in part by TIF Revenues.

"TIF Revenues" means incremental ad valorem taxes generated by the Project which are allocated to and paid to the City pursuant to the Act as further described in Section 3.01 hereof.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Contract shall be construed and interpreted in accordance with the following provisions:

(a) Wherever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word "may" shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(b) The phrase "at any time" shall be construed as meaning "at any time or from time to time."

(c) The word "including" shall be construed as meaning "including, but not limited to."

(d) The words "will" and "shall" shall each be construed as mandatory.

(e) The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(f) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(g) The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II REPRESENTATIONS

Section 2.01 Representations by City.

The City makes the following representations and findings:

(a) The Agency is a duly organized and validly existing community development agency under the Act.

(b) The Redevelopment Plan has been duly approved and adopted by the City pursuant to Section 18-2109 through 18-2117 of the Act.

(c) The City has requested proposals for redevelopment of the Redevelopment Area pursuant to section 18-2119 of the Act, and deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper as specified herein.

(d) The Redevelopment Plan will achieve the public purposes of the Act by, among other things, increasing employment, improving public infrastructure, increasing the tax base, and lessening conditions of blight and substandard in the Redevelopment Area.

(e) (1) The Redevelopment Plan is feasible and in conformity with the general plan for the development of the City as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Act, and

(i) the Project would not be economically feasible without the use of tax-increment financing,

(ii) the Project would not occur in the Redevelopment Area without the use of tax-increment financing, and

(iii) the costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the City and have been found to be in the long-term best interest of the community impacted by the Project.

(f) The City has determined that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational

and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight.

Section 2.02 Representations of Redeveloper.

The Redeveloper makes the following representations:

(a) The Redeveloper is a Delaware limited liability company, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract.

(b) The execution and delivery of the Redevelopment Contract and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Contract or, except as disclosed in writing to the City, as to any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Any financial statements of the Redeveloper or its member delivered to the City prior to the date hereof are true and correct in all respects and fairly present the financial condition of the Redeveloper and the Project as of the dates thereof; no materially adverse change has occurred in the financial condition reflected therein since the respective dates thereof; and no additional borrowings have been made by the Redeveloper since the date thereof except in the ordinary course of business, other than the obligations of the Redeveloper in respect of the TIF Indebtedness contemplated hereby, the borrowing incurred under the Senior Credit Facility and any other borrowings disclosed to or approved by the City.

ARTICLE III OBLIGATIONS OF THE CITY

Section 3.01 Division of Taxes.

In accordance with Section 18-2147 of the Act, the City hereby provides that any ad valorem tax on real property in the Project for the benefit of any public body be divided for a period of fifteen years after the effective date of this provision as set forth in this section. The effective date of this provision shall be January 1, 2007, and shall continue for a period not to exceed fifteen (15) years until December 31, 2021.

(a) That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for such bodies; and

(b) That proportion of the ad valorem tax on real property in the Redevelopment Area in excess of such amount, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the City to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the City for financing or refinancing, in whole or in part, such Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the City shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Project shall be paid into the funds of the respective public bodies.

Section 3.02 Issuance of TIF Indebtedness.

The City shall incur TIF Indebtedness in the form and principal amount and bearing interest and being subject to such terms and conditions as are specified on the attached Exhibit C. No TIF Indebtedness will be issued until Redeveloper has (a) acquired fee title to the Redevelopment Area; (b) obtained financing commitments as described in Section 5.01; (c) obtained approvals necessary for construction of the Project from the Nebraska Department of Environmental Quality; and (d) entered into a contract for construction of the Project. The City shall have no obligation to find a lender or investor to acquire the TIF Indebtedness, but rather shall issue the TIF Indebtedness to or to the order of Redeveloper upon payment of the principal amount thereof. The City, with the prior written consent of the Administrative Agent, may (but is not obligated to), from time to time and subject to the provisions of the Act, issue additional TIF Indebtedness secured by the TIF Revenues for the purpose of funding additional Project Costs, if projected TIF Revenues are projected to be sufficient to pay principal and interest on such additional TIF Indebtedness.

Section 3.03 Pledge of TIF Revenues.

The City hereby pledges the TIF Revenues as security for the TIF Indebtedness.

Section 3.04 Grant of Proceeds of Bonds.

Subject to Section 4.04 hereof, the City will grant to Redeveloper the proceeds of the TIF Indebtedness incurred as described on Exhibit C. An amount equal to interest payable on such TIF Indebtedness prior to projected receipt of TIF Revenues shall be retained by the City and applied for such purpose or, at the option of the City, deposited in a reserve fund of Redeveloper to be applied for such purpose.

Notwithstanding the foregoing, the amount of the grant shall not exceed the amount of Project Costs certified pursuant to Section 4.02. The grant shall be paid to the Redeveloper upon receipt of requisitions for Project Costs which include supporting

documentation reasonably requested by City and shall, if requested by Redeveloper, be made in one or more advances.

Section 3.05 Creation of Fund.

The City will create a special fund to collect and hold the TIF Revenues. Such special fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Sections 3.02 and 3.03 above.

ARTICLE IV
OBLIGATIONS OF REDEVELOPER

Section 4.01 Construction of Project; Insurance.

(a) Redeveloper will complete the Project and install all improvements, buildings, fixtures, equipment and furnishings necessary to operate the Project. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. The City agrees, subject to its governing ordinances, to approve a use permit for construction and operation of the Project. Until construction of the Project has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the City as to the actual progress of Redeveloper with respect to construction of the Project. Promptly after completion by the Redeveloper of the Project, the Redeveloper shall furnish to the City a Certificate of Completion. The certification by the Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of Redeveloper and its successors and assigns to construct the Project. As used herein, the term "completion" shall mean substantial completion of the Project.

(b) Any contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations, surety and performance bonds and a penal bond as required by the Act (which penal bond shall be satisfied by the surety and performance bonds provided by the contractor chosen by the Redeveloper). The City and the Redeveloper shall be named as additional insureds. Any contractor chosen by the Redeveloper or the Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor or the Redeveloper, as the case may be, shall furnish the City with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the City prior written notice in the event of cancellation of or material change in any of the policies.

Section 4.02 Cost Certification.

Redeveloper shall submit to City a certification of Project Costs, on or before the date of submission of the Certificate of Completion, prepared by a certified public accountant acceptable to City, which shall contain detail and documentation showing the payment of Project

Costs specified on the attached Exhibit D in an amount at least equal to the grant of the proceeds of the TIF Indebtedness to Redeveloper pursuant to Section 3.04.

Section 4.03 Redeveloper to Operate Project.

Redeveloper or its permitted successors or assigns will operate the Project for not less than 15 years from the effective date of the provision specified in Section 3.01 of this Redevelopment Contract.

Section 4.04 City Costs.

Redeveloper shall reimburse the City, on the date of execution of this Redevelopment Contract for legal fees and costs then due, and again upon the issuance of TIF Indebtedness, for legal fees and costs incurred by the City in connection with this Redevelopment Contract; it being understood that such costs shall be netted from the grant of the proceeds of the TIF Indebtedness pursuant to Section 3.04 above.

Section 4.05 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as any TIF Indebtedness is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.06 Pay Real Estate Taxes.

Redeveloper intends to create a taxable real property valuation of the Redevelopment Area and Project of Twenty Two Million Dollars (\$22,000,000.00) no later than January 1, 2007. Redeveloper shall create a taxable real property valuation of the Redevelopment Area and Project of not less than Forty Four Million Dollars (\$44,000,000) as of January 1, 2008. During the period that any TIF Indebtedness is outstanding, Redeveloper will (1) not protest a real estate property valuation on the Redevelopment Area below Forty Four Million Dollars (\$44,000,000.00) after substantial completion or occupancy; (2) not convey the Redevelopment Area or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes; and (3) cause all real estate taxes and assessments levied on the Redevelopment Area and Project to be paid prior to the time such become delinquent during the term that any TIF Indebtedness is outstanding.

Section 4.07 Payment in Lieu of Taxes.

Redeveloper agrees to make payments in lieu of taxes, immediately upon receipt of notice from City, if for any reason at any time TIF Revenues received by the City are not sufficient to

pay the scheduled principal and interest on the TIF Indebtedness when due (without regard to any acceleration thereof). This obligation of Redeveloper to make payments in lieu of taxes shall be limited fully to the dollar amount necessary to enable the City to pay the scheduled principal and interest obligation on the TIF Indebtedness (without regard to any acceleration thereof) when the TIF Revenues generated by the Project are otherwise insufficient to make such payments due to a valuation established by Hall County below the protest value set forth in Section 4.06 above.

Section 4.08 No Assignment or Conveyance.

Redeveloper shall not convey, assign or transfer the Redevelopment Area, the Project or any interest therein prior to the termination of the 15 year period commencing on the effective date specified in Section 3.01 hereof, without the prior written consent of the City, which the City shall grant or deny within fifteen (15) days of receipt of written request from Redeveloper, which consent shall not be unreasonably withheld, and which the City may make subject to any terms or conditions it deems appropriate, except for the following conveyances, which shall be permitted without consent of City:

(a) any conveyance as security for indebtedness (including the indebtedness under the Senior Credit Facility) incurred by Redeveloper for Project Costs or any subsequent physical improvements to the Redevelopment Area;

(b) any conveyance to any person or entity which owns more than 50% of the voting equity interests of Redeveloper (if Redeveloper is a corporation, partnership, limited liability company or other entity) or with respect to which Redeveloper owns more than 50% of the voting equity interests, provided that any such successor owner of the Project agrees to assume all obligations of the Redeveloper and be bound by all terms and conditions of this Redevelopment Contract;

(c) any merger, consolidation, split off, split-up, spin off or other reorganization of Redeveloper which does not result in a substantial change of control or management of the Redeveloper, provided that any such successor owner of the Project agrees to assume all obligations of the Redeveloper and be bound by all terms and conditions of this Redevelopment Contract;

(d) any conveyance or assignment by the collateral agent appointed in connection with the Senior Credit Facility (or any nominee or designee thereof) in the event such collateral agent, nominee or designee becomes owner of the Project due to foreclosure proceedings or otherwise exercises any right of assignment or transfer in respect of the Project in connection with any enforcement of remedies under the Senior Credit Facility.

Section 4.09 Limitation of Recourse.

Notwithstanding anything in this Redevelopment Contract to be the contrary, the liability of the Redeveloper under this Redevelopment Contract or in respect of any TIF

Indebtedness or otherwise in respect of any claim, rights or remedies (contractual, at law or in equity or otherwise) that any party (including the City and any Holder) may have shall be limited solely to the payment of (a) the real estate taxes levied on the Redevelopment Area and Project pursuant to Section 4.06 hereof; and (b) the payments in lieu of taxes payable by the Redeveloper under Section 4.07 hereof (collectively, the "Recourse Payments"). Specifically, but without limiting the generality of the foregoing, (i) other than the Recourse Payments, the Redeveloper shall not be liable to the City, any Holder of or participant in the TIF Indebtedness or any other person for any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorney's fees and expenses, or court costs arising out of damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the Project during the fifteen (15) year term of this Redevelopment Contract described in Section 3.01 of this Redevelopment Contract or arising out of any action or inaction of Redeveloper, whether or not related to the Project, or resulting from or in any way connected with specific events, including the management of the Project, or in any way related to the enforcement of this Redevelopment Contract, any TIF Indebtedness or any other cause pertaining to the Project; and (ii) in no event shall the City, or any Holder of, or participant in, the TIF Indebtedness or any other person have any recourse to the Redeveloper's assets or property or the assets or property of any officer, director or holder of equity interest in the Redeveloper, other than to the Recourse Payments. This Section 4.07 shall not limit the obligation of BioFuel Energy, LLC under the Guaranty provided pursuant to Section 6.02.

ARTICLE V FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES

Section 5.01 Financing.

Redeveloper shall pay all Project Costs and any and all other costs related to the Redevelopment Area and the Project which are in excess of the amounts paid from the proceeds of the TIF Indebtedness granted to Redeveloper. Prior to issuance of the TIF Indebtedness, Redeveloper shall provide City with evidence satisfactory to the City that private funds of debt and/or equity have been committed to the Redevelopment Project in amounts sufficient to complete the Redevelopment Project. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project.

Section 5.02 Encumbrances.

Redeveloper shall not create any lien, encumbrance or mortgage on the Project or the Redevelopment Area without the prior written consent of the City except (a) encumbrances which secure indebtedness (including the indebtedness under the Senior Credit Facility) incurred to acquire, construct and equip the Project or for any other physical improvements to the Redevelopment Area; and (b) encumbrances on the Project or Redevelopment Area in compliance with the Senior Credit Facility.

ARTICLE VI
DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 General Remedies of City and Redeveloper.

Subject to the further provisions of this Article VI AND Section 4.09 hereof, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform or in breach of its obligations.

Section 6.02 Guaranty.

BioFuel Energy, LLC, a Delaware limited liability company which holds indirectly one hundred percent (100%) of the membership interest of Redeveloper, shall provide an unlimited and unconditional guarantee guarantying that any and all TIF Indebtedness issued by the City will be paid in full.

Section 6.03 Remedies in the Event of Other Redeveloper Defaults.

In the event the Redeveloper fails to perform any of the nonmonetary provisions of this Redevelopment Contract and Redeveloper fails to cure such nonmonetary default after thirty (30) day written notice from the City, or if such failure cannot be cured within a thirty (30) day period, or Redeveloper fails to diligently prosecute such cure efforts, Redeveloper shall be in default. In such an instance, the City may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law but subject to Section 4.09 hereof in all respects; provided, however, that the default covered by this Section shall not give rise to a right of rescission or termination of this Redevelopment Contract.

Section 6.04 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Redevelopment Contract, neither the City nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Redevelopment Area for redevelopment, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the

Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the City or of the Redeveloper with respect to construction of the Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereof in writing, and of the cause or causes thereof and requested an extension for the period of the forced delay.

Section 6.05 Limitation of Liability; Indemnification.

Notwithstanding anything in this Article VI or this Redevelopment Contract to the contrary, neither the City, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The sole obligation of the City under this Redevelopment Contract shall be the issuance of the TIF Indebtedness and granting of a portion of the proceeds thereof to Redeveloper, as specifically set forth in Sections 3.02 and 3.04. The obligation of the City on any TIF Indebtedness shall be limited solely to the TIF Revenues pledged as security for such TIF Indebtedness. Specifically, but without limitation, City shall not be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. The Redeveloper releases the City from, agrees that the City shall not be liable for any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project.

ARTICLE VII
MISCELLANEOUS

Section 7.01 Notice Recording.

This Redevelopment Contract or a notice memorandum of this Redevelopment Contract shall be recorded with the County Register of Deeds in which the Redevelopment Area is located.

Section 7.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Contract shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Contract shall run with the Redevelopment Area. The Redevelopment Contract shall not be amended except by a writing signed by the party to be bound.

IN WITNESS WHEREOF, City and Redeveloper have signed this Redevelopment Contract as of the date and year first above written.

THE CITY OF WOOD RIVER, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____ and _____, Mayor and City Clerk, respectively, of the City of Wood River, Nebraska.

(S E A L)

Notary Public

PIONEER TRAIL ENERGY, L.L.C.,

By: _____
Manager

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____, Manager of Pioneer Trail Energy, L.L.C., on behalf of the limited liability company.

(S E A L)

Notary Public

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EXHIBIT A

DESCRIPTION OF REDEVELOPMENT AREA

Lot One (1) and Lot Two (2), Cargill Subdivision to the City of
Wood River, Hall County, Nebraska

EXHIBIT B

DESCRIPTION OF PROJECT

An ethanol production facility, including all necessary receiving, storage, processing, pollution control, waste handling, and shipping buildings, equipment and furnishings and ancillary facilities sufficient to produce, from corn, approximately one hundred fifteen million (115,000,000) gallons per-year fuel grade, denatured ethanol production annually.

EXHIBIT C

TIF INDEBTEDNESS

1. Principal Amount: Series A: The maximum amount, which, together with interest accruing thereon, can be fully amortized by December 31, 2021, solely from projected TIF Revenues based on the current aggregate ad valorem tax rate (together with the City's ad valorem tax rate) applicable to the Redevelopment Area times an assumed project valuation of \$44,000,000 and a debt service coverage ratio of 1.25.

Series B: The remaining amount which can be fully amortized based on the assumptions with respect to the Series A Indebtedness but without assuming a debt service coverage ratio. Any holder or placement agent of the Series B TIF Indebtedness may require payments due under the Series B TIF Indebtedness be placed into a reserve fund or other form of escrow to securitize payment of the Series A TIF Indebtedness.

2. Payments: Semi-annually or more frequent, with interest only until 2009, in substantially equal amounts sufficient to fully pay the TIF Indebtedness in full on or before December 31, 2021.
3. Interest Rate: To be determined by Redeveloper, not to exceed Twelve percent (12%).
4. Maturity Date: On or before December 31, 2021.

EXHIBIT D

PROJECT COSTS

All Project Costs payable from the proceeds of TIF Indebtedness pursuant to the Act including:

1. Redevelopment Area Acquisition cost
2. Site work and site preparation
3. Utility extensions, installation of gas, water, sewer and electrical lines and equipment
4. Construction of roadways and rail service lines
5. Pollution control equipment