

ORDINANCE NO. 2010 - 2

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BY AND BETWEEN THE VILLAGE OF BISMARCK, ILLINOIS AND
STEWART GRAIN CO., INC., IN CONNECTION WITH
REDEVELOPMENT PROJECT AREA NO. 1**

WHEREAS, Stewart Grain Co., Inc. (the "**Developer**"), has submitted a proposal to the Village of Bismarck, Illinois (the "**Municipality**") for redevelopment of a part of the Municipality's Redevelopment Project Area No. 1 (the "**Redevelopment Project Area**"); and, thereafter, the Municipality and the Developer have engaged in negotiations related to a Redevelopment Agreement (including all exhibits and attachments in connection therewith, the "**Redevelopment Agreement**") concerning redevelopment incentives and assistance related to the preservation, development and redevelopment of a part of the Redevelopment Project Area.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BISMARCK, VERMILION COUNTY, ILLINOIS, as follows:

Section 1. Approval. The Redevelopment Agreement, in substantially the form thereof presented before the meeting of the President and Board of Trustees at which this ordinance is adopted, shall be and is hereby ratified, confirmed and approved, and the Village President and Village Clerk are authorized to execute and deliver the Redevelopment Agreement for and on behalf of the Municipality; and upon the execution thereof by the Municipality and the Developer, the appropriate officers, agents, attorneys and employees of the Municipality are authorized to take all supplemental actions, including the execution and delivery of related supplemental opinions, certificates, agreements and instruments not inconsistent with the Redevelopment Agreement, desirable or necessary to implement and otherwise give full effect to the Redevelopment Agreement. Upon full execution thereof, the Redevelopment Agreement shall be attached to this ordinance as Exhibit "A", but any failure to so attach shall not abrogate, diminish or impair the effect thereof.

Section 2. Bid Waiver. Pursuant to Section 8-9-1 of the Illinois Municipal Code bidding requirements, if any, related to the Redevelopment Agreement and related documents and related contracts entered into or to be entered into shall be and are hereby waived. The Developer shall be responsible for compliance with applicable law related to the Redevelopment Agreement, including without limitation the Prevailing Wage Act.

STATE OF ILLINOIS)
COUNTY OF VERMILION) SS.
VILLAGE OF BISMARCK)

CERTIFICATION OF ORDINANCE

I, Bev Madden, do hereby certify that I am the duly selected, qualified and acting Village Clerk of the Village of Bismarck, Vermilion County, Illinois (the "**Municipality**"), and as such official I am the keeper of the records and files of the Municipality and of its President and Board of Trustees (the "**Corporate Authorities**").

I do further certify that the attached ordinance constitutes a full, true and correct excerpt from the proceedings of the Municipality's Corporate Authorities held on March 23, 2010, insofar as same relates to the adoption of Ordinance No. 2010 - 2, entitled:

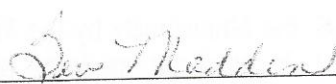
AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF BISMARCK, ILLINOIS AND STEWART GRAIN CO., INC., IN CONNECTION WITH REDEVELOPMENT PROJECT AREA NO. 1,

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

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

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of the Village of Bismarck, Illinois, this 23 day of March, 2010.

(SEAL)



Village Clerk

payment (from the Special Account defined below) of Eligible Redevelopment Project Costs or debt service with respect to obligations issued by the Municipality to finance such Eligible Redevelopment Project Costs; and

WHEREAS, the Municipality and the Developer desire to segregate in a special account within the Fund the Incremental Taxes derived from the Development Area, which separate account shall be designated the "**Stewart Grain Co., Inc. Special Account**" (the "**Special Account**"); and

WHEREAS, the Municipality has determined that the Development Project requires the incentives requested as set forth in EXHIBIT A and that the Development Project will as a part of the Redevelopment Plan and Redevelopment Project, promote the health, safety and welfare of the Municipality and its citizens by attracting private investment to prevent blight and deterioration and to provide employment and generally to enhance the economy of the Municipality.

NOW, THEREFORE, THE MUNICIPALITY AND THE DEVELOPER, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, agree as follows:

1. ACQUISITION OF PROPERTY AND CONSTRUCTION OF PROJECT IMPROVEMENTS

The Developer represents and warrants that it has acquired the interest in the Development Area, as described in EXHIBIT A; and the Development Area is located wholly within the Area.

The Developer shall commence acquisition and construction (which shall include, as applicable, repair, rehabilitation and remodeling of existing facilities) of facilities constituting the Development Project, and complete such acquisition and construction, occupy the property and begin operations as set forth in the timetable in EXHIBIT A.

2. INCENTIVES

The Municipality shall pay directly (at the Developer's request) or reimburse the Developer for Eligible Redevelopment Project Costs permitted by the Act from Incremental Taxes (generated solely and only from the Development Area, and not otherwise, as set forth above) and deposited into the Special Account of the Fund but only to the extent of applicable percentage provided for in EXHIBIT A, and only for the term of the Redevelopment Plan or such lesser period as provided in this Agreement.

3. PAYMENT FOR ELIGIBLE PROJECT COSTS

Payments to the Developer for Eligible Redevelopment Project Costs shall be made only upon requisitions therefor (each a "**Requisition**") submitted from time to time by the Developer to the Municipality's Village President or Village Treasurer and upon approval of the Village President (or the Village President's designee, as the case may be), and in each case subject to the availability of funds in the Special Account, including, as the case may be, if at all, and not otherwise.

All Requisitions must be accompanied by appropriately supporting documentation, including, as applicable, verified bills or statements of suppliers, contractors, or professionals, lien waivers and contractor affidavits.

fails or delays must, upon receipt of written notice of the existence of such event of default, immediately commence to cure, correct or remedy such event of default and thereafter proceed with diligence to cure such event of default. The party claiming such event of default shall give written notice of the claimed event of default to the other party specifying the event of default complained of. Except as required to protect against immediate, irreparable harm, the party asserting an event of default may not institute proceedings against the other party until thirty (30) days after having given such notice. If such event of default is cured within such thirty (30) day period, the event of default shall not be deemed to constitute a "default" under this Agreement. If the event of default is one which cannot reasonably be cured within a thirty (30) day period, upon request and with appropriate showings the cure period shall be extended for such time as is reasonably necessary for the curing of the same, so long as there is diligent proceeding to cure such event of default. If such event of default is cured within such extended period, the event shall not be deemed to constitute a default under this Agreement. However, an event of default not cured as provided above shall constitute a default under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any event of default or default shall not operate as a waiver of any such event of default or default of any rights or remedies it may have as a result of such event of default or default.

The sole remedy of the Developer in the event of a default by the Municipality under any of the terms and provisions of this Agreement shall be to institute legal action against the Municipality for specific performance or other appropriate equitable relief. Under no circumstances shall the Municipality be subject to any monetary liability (beyond the available Incremental Taxes) or be liable for damages (compensatory or punitive or otherwise) under the provisions, terms and conditions of this Agreement. Except as to the foregoing, the parties shall have all remedies with respect to this Agreement available under applicable law. Notwithstanding anything herein to the contrary, the Municipality shall be liable for no amount hereunder in excess of Incremental Taxes duly deposited into the Special Account.

7. LIMITED LIABILITY TO OTHERS

Except as otherwise expressly provided herein, the Municipality shall not be obligated to make any payments to any person other than the Developer, nor shall the Municipality be obligated to pay any contractor, subcontractor, mechanic, materialman providing services or materials to the Developer for or in respect of the Development Project.

8. TIME; UNAVOIDABLE DELAY

Time is of the essence of this Agreement. Provided, however, the Developer shall not be deemed in default with respect to any obligations under this Agreement on its part to be performed if the Developer fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the Municipality (or the Municipality's agents or, employees) or third parties, or any other similar cause beyond the reasonable control of Developer, including but not limited to delays in acquiring interests in or possession of real estate caused by the parties who are contractually obligated to convey and grant to the Developer, for which the Developer shall have a day for day extension for any deadlines hereunder, if such event is claimed in writing delivered within ten (10) days of the occurrence of the event giving rise thereto.

With a copy to:

Tel:
Fax:
E-mail

With a copy to:
Charles D. Mockbee, III, Esq.
Mockbee Law Office
711 N. Gilbert Street
Danville, IL 61832
Tel: (217) 446-9208
Fax: (217) 446-6584
E-mail: mockbeelaw@att.net

14. SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the Municipality and the Developer to and, subject to Paragraph 9 above, to their respective successors and assigns.

15. NO JOINT VENTURE, AGENCY, OR PARTNERSHIP CREATED

Neither anything in this Agreement nor any acts of the Municipality and/or the Developer under this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between them. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the Municipality, in his or her individual capacity, and neither the members of the Corporate Authorities nor any other official or employee of the Municipality shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

16. INDEMNIFICATION

(A) Except for any claims, suits or actions caused by the intentional or negligent acts of the Municipality or the Municipality's employees, agents, officers or contractors, the Developer, and any person claiming rights hereunder through the Developer, agrees to indemnify and defend (including the payment of the Municipality's attorneys fees and related costs) the Municipality from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of contract or any other claim or demand brought against the Municipality arising from any alleged claims, acts or omissions in connection with the Private Development, the Development Project, the Development Area and this Agreement, whether or not suit is filed.

(B) In order further to induce the Municipality to enter into and accept its obligations and undertakings hereunder and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to the extent lawful, the Developer agrees, as follows:

(a) Definitions. As used in this Section, certain additional terms shall have the meanings, as follows:

"Environmental Laws" means all applicable laws, governmental rules and regulations of any federal, state, regional or local governmental agency, including, without limitation, all applicable federal, state and local laws, rules and regulations pertaining to air and water quality, hazardous waste, waste disposal and other environmental matters, including, but not limited to, the Clean Air,

Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation and Recovery, Comprehensive Environmental Response, Compensation and Liability, Illinois Environmental Protection and Illinois Responsible Property Transfer Acts and with respect to Hazardous Substance and any Hazardous Substance Activity.

"Hazardous Substance" means any substance that is at any time defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations, including, without limitation, the Environmental Laws, as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or "EP toxicity," including, without limitation, asbestos, polychlorinated biphenyls and also including petroleum products, by-products and wastes, or by-products associated with the extraction, refining or use of petroleum or petroleum products, whether or not so listed or classified in such laws or regulations.

"Hazardous Substance Activity" means any actual, proposed or threatened storage, holding, existence, use, release, emission, discharge, generation, processing, abatement, removal, cleanup or detoxification, disposition, handling or transportation of any Hazardous Substance from, under, into or on or in respect of the property subject to this Agreement or the surrounding property, or any other activity or occurrence that causes or would cause such event to exist.

(b) Representations and Warranties of the Developer. The Developer represents and warrants to the Municipality that: **(a)** the Developer will be in compliance with all applicable Environmental Laws relating to the Development Area and the use of the property subject to this Agreement; **(b)** except in compliance with all applicable Environmental Laws, the Developer has not engaged in any Hazardous Substance Activity on such property, nor to the best knowledge of the Developer, after due inquiry and investigation, except for (if none, so state): none, has any Hazardous Substance Activity otherwise occurred in violation of any applicable Environmental Laws; **(c)** except for (if none, so state): none, no investigations, inquiries, orders, hearings, actions or other proceedings by or before any governmental agency are pending or, to the best knowledge of the Developer, after due inquiry and investigation, threatened in connection with any Hazardous Substance Activity or alleged Hazardous Substance Activity; **(d)** the use of the property subject to this Agreement for its intended purpose is not expected to result in any Hazardous Substance Activity in violation of any applicable Environmental Laws; **(e)** except for (if none, so state): none, no notice of any order, directive, complaint or other communication, written or oral, has been made or issued by any governmental agency nor has the Developer received a written notice from any other third party alleging the occurrence of any Hazardous Substance Activity in violation of any applicable Environmental Laws or demanding payment or contribution for environmental damage or injury to the Development Area; and **(f)** except for (if none, so state): none, underground storage tanks or underground Hazardous Substance deposits are or were located on the Development Area, except to the extent that any of the foregoing which were located on the property are in process of being removed, remediated or taken out of service in accordance with all applicable Environmental Laws.

(c) Covenants of the Developer. The Developer shall at all times it controls all or any part of the Development Area: **(a)** keep and maintain the Development Area in compliance with, and shall not cause or permit such property to be in violation of, any Environmental Laws; **(b)** not engage in or

otherwise permit the occurrence of any Hazardous Substance Activity on the Development Area except in compliance with all applicable Environmental Laws; (c) immediately advise the Municipality in writing of (i) any and all enforcement, cleanup, removal, mitigation or other governmental or regulatory acts instituted, contemplated or threatened pursuant to any Environmental Laws affecting the Development Area, (ii) all claims made or threatened by any third party against the Developer or such property relating to the damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substance Activity (the matters set forth in clauses (i) and (ii) above hereinafter being referred to as "**Hazardous Materials Claims**"), (iii) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development Area that could cause such property or any part thereof to be the subject of a claim or cause of action under any Environmental Laws, or the Developer's receipt of any notice in connection with the foregoing, and (iv) the Developer's discovery of any occurrence or condition on the property subject to this Agreement or any real property adjoining or in the vicinity of the Development Area and such property which could subject the Developer or such property to any restrictions on ownership, occupancy, transferability or use of such property under any Environmental Laws.

(d) **Indemnity.** The Developer (and all parties claiming rights hereunder through the Developer) hereby agrees to indemnify, defend and hold harmless the Municipality from and against any and all claims and liabilities under Environmental Laws. The Developer (and all parties claiming rights hereunder through the Developer) shall pay when due any judgments or claims for damages, penalties or otherwise against the Municipality, and shall assume the burden and expense of defending all suits, administrative proceedings and resolutions of any description with all persons, political subdivisions or governmental agencies arising out of the occurrences set forth in this paragraph. If such payment is not made, the Municipality, at its sole discretion, may file suit against the Developer (and all parties claiming rights hereunder through the Developer) to compel such payment. All funds advanced by the Municipality concerning this paragraph shall bear interest at a rate equal to the published prime rate in The Wall Street Journal plus 4% per annum (in either case, the "**Advance Rate**," which rate may change from day to day) from the date or dates paid until paid by the Developer (and all parties claiming rights hereunder through the Developer).

(e) **Separate Obligation.** The obligations of the Developer (and all parties claiming rights hereunder through the Developer) under this paragraph are independent of, and shall not be measured or affected by, (i) any other amounts at any time owing pursuant to this Agreement, (ii) any other obligations of the Developer (and all parties claiming rights hereunder through the Developer) hereunder, including to holder(s) of the Note, or any other agreements delivered in connection therewith, whether they relate to compliance with Environmental Laws or the use or discharge of Hazardous Substances or otherwise, (iii) the consideration given to any party in order to acquire the property subject to this Agreement, or any portion thereof, (iv) the modification, expiration or termination of the Developer's obligations under any other document or instrument relating thereto, or (v) the discharge or repayment of any portion of any other obligations.

(f) **Survival.** The Developer's (and all parties claiming rights hereunder through the Developer) obligations hereunder shall survive the assignment, subleasing or other transfer, encumbrancing or disposition of the property subject to this Agreement. The rights of the Municipality under this Section shall be in addition to any other rights and remedies of such Municipality against the

EXHIBIT A

DEVELOPMENT PROJECT

A. GENERAL NARRATIVE DESCRIPTION OF DEVELOPMENT PROJECT:

Private Development: a grain elevator and storage facility, and related facilities and improvements at (Address): 222 Holloway Street (P.O. Box 197), in Bismarck, Illinois.

Public Improvements/Infrastructure: None.

(1) Construction (including Renovation, Repair & Remodeling)

a.	Estimated costs	\$900,000
b.	Estimated Eligible Redevelopment Project Costs	\$900,000
c.	Attach site plans or elevations	

(2) Anticipated Incremental Real Estate Taxes

a.	Real Estate Taxes (annual)	\$5,750 - \$7,800
b.	Village Sales Taxes (annual)	\$ -0-
c.	State Sales Taxes (annual)	\$ -0-

(3) Jobs Created or Retained (full-time equivalents)

Construction: 8 @ 75 days

Operational: 1

B. TIMETABLE

Commence Construction	Spring 2010	Completed Fall 2010
Complete Construction		Completed
Opening		Completed

C. OWNER/DEVELOPER-MUNICIPALITY SHARES OF TIF PROCEEDS

	Owner/Developer*	Municipality
(a) Incremental Taxes	75%	25%
(b) Village Sales Tax	0%	100%
(c) State Sales Tax	0%	100%

*Subject to sufficiency of Estimated Redevelopment Project Costs.

D. INCREMENTAL TAXES

(1) INCREMENTAL TAXES

Village Percentage	25%
Special Account Percentage	75%
Total:	100%

(2) REAL ESTATE INCREMENTAL TAXES

Projected Total NEW Equalized Assessed Valuation	\$330,905
Less: INITIAL Equalized Assessed Valuation	\$254,180
Projected Incremental increase in EAV	\$76,725
Projected Annual Real Estate Incremental Taxes	\$5,754

(3) SALES TAX (Revenue Analysis)

Total NEW Annual Sales	\$ _____
Less: INITIAL Annual Sales	\$ _____
Increment Annual Sales	\$ _____

E. DEVELOPMENT AREA

(1) DEVELOPER'S INTEREST IN DEVELOPMENT AREA:

(if other than fee ownership, describe and attach lease or other applicable document): Fee Simple

(2) DEVELOPMENT AREA:

Street Address: 222 Holloway Street
Bismarck, Illinois 61814