ORDINANCE NO. 17-08-22

VILLAGE OF MCLEAN, ILLINOIS

AN ORDINANCE APPROVING AN ADDENDUM TO REDEVELOPMENT AGREEMENT AND A SUPPLEMENTAL REDEVELOPMENT AGREEMENT WITH ILLINOIS VALLEY PROPERTIES, LLC

WHEREAS, the Village of McLean, Illinois (the "Village") has, pursuant to statute, designated a redevelopment project area and approved redevelopment plans;

WHEREAS, the Village has received a proposal from Illinois Valley Properties, LLC (the "Developer") whereby the Developer proposes to develop the McLean Industrial Park (the "Project Site") and develop the site thereon, which is expected to generate substantial tax revenue and employment opportunities;

BE IT ORDAINED BY THE PRESIDENT AND VILLAGE BOARD OF THE VILLAGE OF MCLEAN, ILLINOIS, AS FOLLOWS:

- 1. The Addendum to Redevelopment Agreement with Illinois Valley Properties, LLC and the Supplemental Redevelopment Agreement with Illinois Valley Properties, LLC attached hereto are both hereby approved.
- 2. The President and Clerk of the Village are authorized to execute the Addendum to Redevelopment Agreement with Illinois Valley Properties, LLC and the Supplemental Redevelopment Agreement with Illinois Valley Properties, LLC and other documents, and to perform all acts, necessary to carry out the intent of this ordinance.
 - 3. This Ordinance shall take effect upon passage and publication as provided by law.

PASSED ON A ROLL CALL VOTE AND APPROVED THIS 22nd DAY OF August, 2017.

Attest: Sharon Leipold, Clerk

VILLAGE OF MCLEAN, ILLINOIS

By: Aaron Hammel, Acting Village President

SUPPLEMENTAL REDEVELOPMENT AGREEMENT WITH ILLINOIS VALLEY PROPERTIES, LLC

THIS AGREEMENT is entered on the date and year hereinafter set forth by and between the Village of McLean, McLean County, Illinois, an Illinois municipal corporation hereinafter "VILLAGE", and Illinois Valley Properties, LLC, an Illinois LLC, hereinafter "DEVELOPER".

WITNESS

WHEREAS, VILLAGE and DEVELOPER entered into an ADDENDUM to Redevelopment Agreement which was by the agreement of the parties effective on a retroactive basis to December 31, 2015, which shall be hereinafter referred to as "ADDENDUM"; and

WHEREAS, in paragraph 16 of the ADDENDUM, the parties agree to enter into a subsequent development agreement for the subdivision of lot 3 as Phase II of the development of the project; and

WHEREAS, DEVELOPER desires to subdivide lot 3 into two lots; and

WHEREAS, VILLAGE has previously created a TIF District and a Redevelopment Plan that includes the development of Lot 3 in McLean Industrial Park as described in the ADDENDUM that DEVELOPER intends to develop; and

WHEREAS, DEVELOPER and VILLAGE have entered into negotiations for the DEVELOPMENT of Phase II pursuant to the ADDENDUM; and

WHEREAS, this Agreement shall be hereinafter referred to as "THIS SUPPLEMENTAL AGREEMENT"; and

WHEREAS, VILLAGE and DEVELOPER hereby agree that development of the industrial park at this site identified in the ADDENDUM should continue as modified by THIS SUPPLEMENTAL AGREEMENT.

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, including but not limited to the mutual undertakings hereinafter set forth the parties agree as follows:

- 1. <u>Private Development of Phase II</u>: DEVELOPER agrees to subdivide lot 3 into two lots, as set forth on the attached Exhibit "A", which is attached hereto and incorporated herein by reference. The DEVELOPER will pay for the cost of this subdivision of lot 3 into two separate lots. The survey will be recorded at the sole cost and expense of the DEVELOPER as soon as reasonably possible after the effective date of THIS SUPPLEMENTAL AGREEMENT.
- 2. <u>Public Improvements</u>: In the ADDENDUM, DEVELOPER agreed to complete over time the public improvements as set forth in paragraph 2 of the ADDENDUM. The concrete street described in paragraph 2(b) of the ADDENDUM shall be completed as set forth in the plat

of McLean Industrial Park by, on or before April 30 2018. However, if delay is caused or contributed to by act or neglect of the VILLAGE or those acting to or for or under the VILLAGE, labor disputes, casualties, acts of God, public enemy, government, embargo, restrictions, action or non-action of public utilities or of local, state or federal government affecting the work, or other causes beyond the DEVELOPER'S control, then the time of completion of said construction shall be extended for the additional time caused by such delay. DEVELOPER shall dedicate the remaining portion of Illinois Valley Drive to the VILLAGE after a certificate of completion has been received by the DEVELOPER. Lots 4 and 5 of McLean Industrial Park and Lot 1 of McLean Industrial Park 2nd Addition shall obtain sewer service from VILLAGE through connection to the VILLAGE sewer main located in the right-of-way of Wood Drive. Such connection to the sewer system shall be in a manner and method approved by VILLAGE and at the sole cost and expense of DEVELOPER. Lot 2 of McLean Industrial Park 2nd Addition shall be connected to the VILLAGE sewer main located in the right-of-way of Wood Drive either through the installation of another sewer main or through the installation of a private sewer line. Such connection to the VILLAGE sewer main for Lot 2 of McLean Industrial Park 2nd Addition shall be the sole cost and expense of DEVELOPER and shall be in a manner and method approved by VILLAGE. No building permit shall be issued for construction of any improvements on Lots 4 and 5 of McLean Industrial Park nor for any of the lots in the McLean Industrial Park 2nd Addition until the VILLAGE has approved, in advance, the connection to the sewer main located in the right-of-way of Wood Drive.

- 3. <u>Wood Drive Access</u>: As set forth in paragraph 2(j) of the ADDENDUM, lot 3 may not access Wood Drive unless a new agreement is reached between the parties. This is the new agreement that was contemplated by paragraph 2(j) of the ADDENDUM. Paragraph 2(j) of the ADDENDUM is modified so that lot 1 of the re-plat of lot 3 of McLean Industrial Park as set forth on the attached Exhibit "A" may access Wood Drive as a secondary access to the lot provided that no semi-trucks or other vehicles that are required to be on a truck route may access this lot through Wood Drive. It is expressly understood that the access to Wood Drive from this lot shall be in a manner and method as approved by VILLAGE and is only for use as a restricted secondary access.
- 4. Manner of Development of Subdivision and Construction of Improvements: DEVELOPER shall, at times, operate MCLEAN INDUSTRIAL PARK in conformance with all applicable law, rules and regulations including any and all ordinance of the VILLAGE. DEVELOPER shall at no time store any hazardous or special waste at MCLEAN INDUSTRIAL PARK or discharge any noxious or hazardous fumes, liquids, or solids into the atmosphere or groundwater, or otherwise into the environment, except for substances used in the ordinary course of the DEVELOPER'S business. No materials, hazardous or otherwise, shall be stored in the open or in "plain view"; provided however, that the DEVELOPER may temporarily unload such materials in the open or in "plain view". The development of MCLEAN INDUSTRIAL PARK, both public and private improvements, shall be done by DEVELOPER in a good and workmanlike manner. DEVELOPER will coordinate development of the subdivision with VILLAGE Public Works Superintendent and Engineer. All work with respect to public improvements shall conform

to the Village's zoning and subdivision ordinances and all applicable Federal, State and local laws, regulations and ordinances, including but not limited to, environmental codes, OSHA safety requirements, life safety codes and prevailing wage laws. DEVELOPER shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing public work under this REVISED AGREEMENT, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act (a/k/a Prevailing Wages Act) (820 ILCS 130/1-12). All contracts for public improvements entered into including subcontracts, must contain a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers and mechanics performing work under the contract. DEVELOPER shall be responsible for submitting certified payroll records to VILLAGE in compliance with the requirements of the Prevailing Wages Act, and for completing such other tasks and requirements imposed by the Act.

- Certificate of Completion: Maintenance of Public Improvements: After the completion of Public Improvements that have not yet been completed and at the request of DEVELOPER, VILLAGE Engineer shall inspect the public improvements. VILLAGE Engineer shall furnish a written report to VILLAGE and DEVELOPER concerning the public improvements and deficiencies, if any, in those improvements. DEVELOPER at its' costs, shall remediate any deficiencies and take all actions necessary for the improvements to meet the required standards pursuant to VILLAGE Code, as soon as reasonably possible. One year after completion of the Public Improvements at the request of DEVELOPER, VILLAGE engineer shall again inspect the Public Improvements to determine if the Public Improvements that remain to be completed are acceptable under the provisions of VILLAGE Code. VILLAGE engineer shall notify VILLAGE and DEVELOPER in writing concerning its inspection and if any deficiencies are identified by VILLAGE Engineer. DEVELOPER shall remediate those deficiencies as soon as reasonably possible. After VILLAGE Engineer approves the Public Improvements through the foregoing inspection a certificate of completion (the "Certificate of Completion") shall be delivered to the DEVELOPER. Said certificate by VILLAGE shall be a conclusive determination of satisfaction with respect to the obligations of DEVELOPER that the construction of the Public Improvements has been completed in accordance with the provisions of this Agreement. VILLAGE will not unreasonably withhold or delay the issuance of the Certificate of Completion. Issuance of the Certificate of Completion shall evidence VILLAGE'S acceptance of the Public Improvement and upon such issuance, VILLAGE shall own and maintain such Public Improvements.
- 6. <u>Equal Employment Opportunity</u>. DEVELOPER will abide by the following with respect to the construction of the Public Improvements:
 - 6.1. <u>Non-Discrimination</u>. DEVELOPER will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex or national origin. DEVELOPER will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms

- of compensation, and selection for training, including apprenticeship. DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- 6.2. <u>Advertising</u>. DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of DEVELOPER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 7. <u>Insurance</u>. The following insurance provisions shall apply to the development of the MCLEAN INDUSTRIAL PARK:
- 7.1 Liability Insurance Prior to Completion. Prior to commencement of construction of the Public Improvements, DEVELOPER shall procure and deliver to VILLAGE, at DEVELOPER'S or general contractor's cost and expense, and shall maintain in full force and effect until each and every obligation of DEVELOPER contained herein has been fully paid, or performed, a policy or policies of comprehensive liability insurance and during any period of construction, contractor's liability insurance, structural work act insurance and worker's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) total, all such policies to be in such form and issued by such companies as shall be acceptable by VILLAGE to protect VILLAGE and DEVELOPER against any liability incidental to the use of or resulting from any accident occurring in or about the Public Improvements or the construction and improvement thereof. Each such policy shall name VILLAGE as a coinsured and shall contain an affirmative statement by the issuer that it will give written notice to VILLAGE at least thirty (30) days prior to any cancellation or amendment of its policy.
 - 7.2 <u>Builder's Risk Prior to Completion</u>. Prior to completion of the construction of the Public Improvements as certified by VILLAGE, DEVELOPER shall keep in force at all times builder's completed value risk insurance, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of work performed and equipment, supplies and materials furnished for the Public Improvements. Such insurance policies shall be issued by companies satisfactory to VILLAGE and shall name VILLAGE as a coinsured. All such policies shall contain a provision that the same will not be cancelled or modified without prior 30-day written notice to VILLAGE.
 - 7.3 <u>Completion of Construction</u>. Upon issuance of the Certificate of Completion, the insurance obligations of DEVELOPER set forth in this Section shall terminate.

8. <u>Rights of Inspection</u>. During construction of the Public Improvements, VILLAGE or its designee shall have the right at any time and from time to time to enter upon the Public Improvements for the purposes of inspection.

9. Village agrees, to provide the following incentives to the DEVELOPER:

- a. <u>VILLAGE Installed Public Improvements.</u> As an additional incentive to DEVELOPER, VILLAGE agrees to install all water mains as required in phases as they are developed. Water mains shall be installed pursuant to plans approved by VILLAGE engineer. Further, VILLAGE shall install street lights that it determines are adequate to service the area that is developed pursuant to this agreement. Street lights shall be installed in phases as the project is developed.
- b. <u>Public Improvement Cost Reimbursement.</u> VILLAGE previously entered into the ADDENDUM and is entering into THIS SUPPLEMENTAL AGREEMENT the furtherance of the redevelopment plan. The VILLAGE previously agreed in the ADDENDUM to reimburse DEVELOPER for up to \$577,000 (The "Reimbursement") of "redevelopment project costs" permitted to be reimbursed pursuant to 65 ILCS 5/11-74.4-3(q), incurred by DEVELOPER in the construction of the Public Improvements. Such costs shall be paid as set forth herein.
- Payment of Reimbursement. The payment of reimbursement to DEVELOPER of the "available increment" from lots 1, 2 4 and 5 shall continue to be paid as set forth in the ADDENDUM. With regard to the two lots that are created from lot 3 on December 1st of each year, VILLAGE shall pay shall pay Eighty Percent (80%) of the incremental real estate revenues received by VILLAGE, after payment of 15% of the incremental real estate revenues received by VILLAGE, to Olympia School District, as required by a separate agreement with Olympia School District, in such year for deposit in VILLAGE'S special tax allocation fund with respect to Project Site. The Project Site is the project described in paragraph 1 and 2. To the extent that the available increment is insufficient to fully pay the redevelopment project cost the unpaid portion of the redevelopment project cost shall carry over to future years to be reimbursed from future available increments. However, it is expressly understood that the obligation of VILLAGE to reimburse redevelopment project costs from the available increment shall cease when the TIF District ends even if DEVELOPER has not been fully reimbursed for the redevelopment project costs. Despite any other provision contained within this agreement, no payment shall be paid to DEVELOPER unless DEVELOPER is in good standing with the Illinois Secretary of State. In the event that the DEVELOPER is not in good standing with the Illinois Secretary of State, VILLAGE shall notify DEVELOPER and withhold payment until DEVLOPER becomes in good standing with Illinois Secretary of State.

- d. <u>Early Termination of Reimbursement</u>. In the event there are no private improvements constructed on the lots developed in either phase for a continuous period of five (5) years from the date that the last private improvements were constructed or if DEVELOPER violates any of the terms or conditions of this REDEVELOPMENT AGREEMENT the obligation of VILLAGE to reimburse DEVELOPER may cease and this Agreement may be terminated by VILLAGE. As a condition precedent to such termination, VILLAGE shall furnish DEVELOPER written notice of its intent to terminate this Agreement. DEVELOPER shall have six (6) months from the date of such notice to commence construction of private improvements and/or remediate all violations of the REDEVELOPMENT AGREEMENT to avoid the termination provided for in the first sentence of this section. In the absence of the commencement of private improvements and/or remediation within six (6) months this Agreement shall automatically terminate unless extended by the mutual agreement of the parties.
- e. <u>Snow Plowing</u>: Illinois Valley Drive has only been partially completed pursuant to the ADDENDUM. VILLAGE agrees, after the remaining portion of the surface of Illinois Valley Drive has been completed and before a certificate of completion has been issued by the VILLAGE, to plow snow on the street until April 1, 2019. It is expressly understood that if a certificate of completion has not been issued by the VILLAGE by, on or before April 1, 2019, the VILLAGE may not provide snow plowing service for the remaining portion of Illinois Valley Drive until a certificate of completion is issued by the VILLAGE.
- f. <u>Plat</u>: VILLAGE agrees that there should be no preliminary plat and that it will approve the final plat for the re-plat of lot 3 of the McLean Industrial Park as set forth on Exhibit "A", which is attached hereto and incorporated herein by reference. VILLAGE hereby waives all fees that are required to approve a plat.
- 10. <u>Notices</u>. All notices and demands required hereunder shall be in writing and shall be deemed given when delivered personally or three (3) days after deposit in the United States Mail, postage prepaid, certified, with return receipt requested, addressed to the parties as follows:

If to the VILLAGE:

Village of McLean

P.O. Box 84

McLean, Illinois 61754

With a copy to:

Mark J. McGrath

McGrath Law Office, P.C. 113 S. Main St., P.O. Box 139 Mackinaw, Illinois 61755 If to DEVELOPER:

Kent Seeman

Illinois Valley Construction, LLC 605 Illinois Valley Drive, Suite 1

McLean, IL 61754

- 11. <u>Assessment of Redevelopment Project Area.</u> The parties agree that the Project Site shall be assessed for general real estate taxes in the manner provided by Illinois Compiled Statutes, as amended from time to time. DEVELOPER agrees that it will not do any of the following until issuance of the Certificate of Completion:
 - a. Request a full or partial exemption from general real estate taxes; or,
 - b. Request an assessment at a value not permitted by law or
 - c. Appeal the property tax assessment of the Project Site.
- 12. No Recourse Against Public Officials. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the elected public officials of VILLAGE or its officers, agents, attorneys and employees, in any amount subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the elected public officials of VILLAGE or its officers, agents, attorneys and employees and all such claims are hereby expressly waived and released as a condition of and as a consideration for the execution of this Agreement by VILLAGE, provided such elected officials, officers, agents, attorneys and employees are acting pursuant to lawful authority and are uniformly enforcing and/or administering the laws, ordinances, practices and procedures of VILLAGE. This paragraph is a waiver of claims only with respect to the individuals named herein, and is not a waiver by DEVELOPER of any claims against VILLAGE.
- 13. <u>Miscellaneous Provisions</u>. The following miscellaneous provisions shall apply to this REDEVELOPMENT AGREEMENT.
 - a. <u>No Waiver</u>. Failure of any party to this Agreement to insist upon the strict and prompt performance of terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
 - b. <u>VILLAGE Action</u>. Where VILLAGE approval or direction is required by this Agreement, such approval or direction means the approval or direction of VILLAGE Board unless otherwise expressly provided or required by

law, and any such approval may be required to be given only after and if all requirements are inconsistent with this Agreement.

- c. <u>Recordation</u>. This Agreement or a memorandum thereof may be recorded with the Recorder of Deeds of McLean County, Illinois, by either party.
- d. <u>Incorporation of Recitals</u>. The definitions and recitals set forth in the Definition of General Terms and Preamble are hereby specifically incorporated into this Agreement.
- e. <u>Supplemental Agreement</u>. The terms and conditions set forth in this Supplemental Agreement and its Exhibit supplement the prior ADDEUNDUM entered into between the parties. The terms and conditions that are set forth within the ADDENDUM shall remain in full force and effect except as changed by this supplemental agreement. All prior oral and written understandings that transpired between the date that the ADDENDUM was signed and the date that this supplemental agreement is signed shall be of no force and effect.
- f. <u>Binding Upon Successors in Interest</u>. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, administrators, assigns, or other successors in interest.
- g. <u>Titles of Paragraphs</u>. Titles of the several parts, paragraphs, sections, or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provision.
- h. <u>Assignment</u>. DEVELOPER may not assign its rights under this Agreement, without the prior written consent of VILLAGE. However, any such assignment shall not relieve DEVELOPER of its obligations hereunder. VILLAGE may not unreasonably withhold its consent. DEVELOPER may assign this Agreement to any entity owned by, or under common ownership with, the DEVELOPER.
- i. <u>Indemnification of VILLAGE</u>. DEVELOPER agrees to indemnify, defend and hold harmless VILLAGE, its President, VILLAGE Board members, employees, agents, representatives and attorneys, in both their official and individual capacities, from and against all claims, causes of action and suits of every kind and nature, including liabilities, damages, costs and expenses and reasonable attorneys' fees brought by third parties growing out of or arising from any and all conduct of DEVELOPER, its agents, employees, attorneys and representatives in connection with the acquisition and construction of the Project Site and operation of its business in the Redevelopment Project Area. Further, DEVELOPER (not VILLAGE) shall be solely responsible for the completion of the Project Site.

j. Covenants to Run with the Land. DEVELOPER hereby subjects the Project Site to the covenants, reservations, and restrictions set forth herein. VILLAGE and DEVELOPER hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Project Site throughout the term of this Agreement. Each and every contract, deed, mortgage or other instrument hereinafter executed covering or conveying the Project Site or any portion thereof shall be conclusively held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

IN WITNESS WHEREOF, the parties to this REDEVELOPMENT AGREEMENT have entered into this REDEVELOPEMNT AGREEMENT in three duplicate originals, of equal effect.

THIS CONTRACT WILL BE DEEMED EFFECTIVE AS OF THE LAST DATE SIGNED.

DATE SIGNED BY VILLAGE: August 22, 2017

VILLAGE OF MCLEAN, ILLINOIS

Bv: 🥌

Aaron Hammel, Acting Village President

Attest:

Sharon Leipold, Village Clerk

(Remainder of page is intentionally left blank)

DATE SIGNED BY DEVELOPER:	. 23,
DEVELOPER:	
ILLINOIS VALLEY PROPERTIES, LLC	
By:	
Kent J. Seeman, Its Member	

ILLINOIS YALLEY PROPERTIES, LLC

Richard E. Schleyhahn,, Jr., Its Member

This Document Prepared by: MCGRATH LAW OFFICE, P.C. Mark J. McGrath, Attorney for VILLAGE 113 S. Main St., P.O. Box 139 Mackinaw, Illinois 61755 (309) 359-3461

