

2/2/2009

8-R-09

**A RESOLUTION**

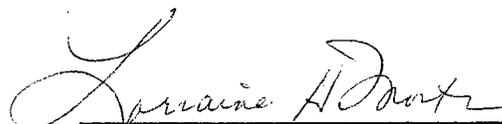
**Authorizing the Interim City Manager to Negotiate and Sign  
a Reimbursement Agreement between the City and  
Farmer's Best IV, Inc. (430 Asbury Avenue)**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF EVANSTON, COOK COUNTY, ILLINOIS:

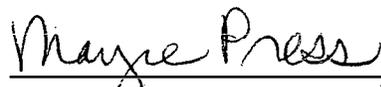
**SECTION 1:** That the Interim City Manager is hereby authorized and directed to sign the Reimbursement Agreement for sales tax revenue sharing with Farmer's Best IV, Inc., attached hereto and made a part hereof as Exhibit A.

**SECTION 2:** That the City Manager is hereby authorized and directed to negotiate any additional conditions of the agreement as may be determined to be in the best interests of the City.

**SECTION 3:** That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

  
\_\_\_\_\_  
Lorraine H. Morton, Mayor

Attest:

  
\_\_\_\_\_  
Mayre Press, Deputy City Clerk

Mayre Press, Deputy City Clerk

Adopted: February 9, 2009

**EXHIBIT A**

**REIMBURSEMENT AGREEMENT**

## REIMBURSEMENT AGREEMENT

**THIS REIMBURSEMENT AGREEMENT** (“**Agreement**”) is made and entered into this 10<sup>th</sup> day of February, 2009, by and between the CITY OF EVANSTON, Illinois, an Illinois home rule municipal corporation (the “**City**”), and FARMER’S BEST IV, Inc., an Illinois corporation, doing business as “Fresh Foods Market” (the “**Proprietor**”), (individually, the City and Proprietor are each referred to herein as a “**Party**” and collectively as the “**Parties**”).

### **RECITALS:**

**WHEREAS**, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or ordinance; and

**WHEREAS**, the City is a home rule municipality in accordance with Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970; and

**WHEREAS**, Proprietor is the sub-lessee of a vacant commercial property of approximately 14,664 square feet (the “**Store**”) located at the intersection of Asbury Avenue and Oakton Street in Evanston, which is located on real estate legally described in **Exhibit A** attached hereto and made part hereof (the “**Property**”), doing business as Fresh Foods Market; and

**WHEREAS**, Proprietor has sub-leased the Store and has announced an intention to establish a grocery store which will generate sales and service of food, meats, produce and beer and wine to the community; and

**WHEREAS**, said Store location will result in the rehabilitation and operation of a store vacant since 2006 and substantial additional sales tax revenue to the City; and

**WHEREAS**, Proprietor has expressed its willingness to remain in the City for eleven (11) years if the City agrees to rebate a portion of any sales tax revenue received by the City that are generated by the redevelopment of the Store; and

**WHEREAS**, Proprietor must rehabilitate and convert the Store in order to operate a grocery market sales store therein; and

**WHEREAS**, the Parties agree that extraordinary costs associated with the acquisition and redevelopment of the Property, require certain incentives from the City, and the incentives that will be offered to offset these extraordinary costs shall be in the form of rebates from the City’s portion of local sales taxes generated on the Property; and

**WHEREAS**, the City desires to increase sales tax revenues, Property tax revenues, retain existing businesses, diversify the tax base, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and other governmental entities; and

**WHEREAS**, the City has determined that providing financial assistance in the form of such rebates is a proper exercise of its home rule powers; and

**WHEREAS**, the City, in reliance on anticipated growth of Fresh Foods Market as estimated by the firm of Kane/McKenna, which has prepared certain pro forma sales tax projections, copies of which are attached hereto and made a part hereof as **Exhibit B**, setting forth certain potential real estate and sales tax revenues to the City and certain other governmental bodies; and

**WHEREAS**; pursuant to the City's authority as a home rule municipality, the City Council of the City has made the following findings with respect to the Property and the Project;

- A. The Project is expected to create job opportunities within the City;
- B. The Project will serve to further stabilize areas adjacent to the Property;
- C. Without this Agreement, the Project would not be possible;
- D. The Proprietor meets standards of credit-worthiness and financial strength;
- E. The Project will maintain the neighborhood commercial base of the City;
- F. The Project will protect and enhance the sales tax base of the City; and
- G. This Agreement is made in the best interest of the City.

**WHEREAS**, the Proprietor represents and warrants that the Project requires economic assistance from the City and, but for the undertakings of the City as set forth in this Agreement, the Proprietor would not be able to proceed with the Project, and

**WHEREAS**, the City has agreed, pursuant to the terms of this Agreement, to provide certain sales tax sharing provisions in order to insure the economic feasibility of the Project which will have the benefits described above.

#### **AGREEMENTS:**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged, it is mutually agreed by the Parties hereto as follows:

**SECTION 1: Recitals**. The Parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

#### **SECTION 2: Defined Terms**.

**"Fresh Foods Market"** means a new food and beverage sales and service facility with ancillary services operated by Proprietor in the Store on the Property.

**“City’s Tax Revenue Share”** means any and all Retailers Occupation Taxes, Retailers Service Occupation Taxes, Retailers Use Tax, Retailers Service Use Tax, or any other **“sales tax”** or successor tax that may be enacted by the City, the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois which City is able to verify by reference to the documents described in **Section 5F and Section 10** hereinafter as being assessed, accruing or arising as a result of retail operations on or about the Property during the term hereof and received by the City from the State of Illinois or such other governmental agency or body created as aforesaid.

**“Eligible Project Costs”** means costs incurred by the Proprietor for the Project, specifically the costs of procuring refrigeration equipment and expanding the Store to approximately 19,900 square feet and related expenses required for converting the Store to a fresh food market.

**“Legal Requirements”** means all applicable Federal, State or local statutes, codes and ordinances.

**“Maximum Rebate”** means \$1,000,000.00.

**“Revenue Year”** means the twelve (12)-month period commencing on the day of the opening of Fresh Foods Market in the Store, and each twelve (12)-month period thereafter.

**SECTION 3. Proprietor’s Responsibilities.**

For the term of this Agreement, Proprietor’s responsibilities shall include the following:

A. Proprietor shall convert the Store into a grocery market and improve the Property in accord with its representations to the City’s Economic Development Committee, City staff, and the City’s consultant. Said conversion and improvement (the **“Project”**) includes: demolition; expansion of the Store’s internal area to approximately 19,900 square feet; cleanup; new refrigeration; new flooring; new Fresh Foods Market logo standards; interior decoration; all electrical; all carpentry; all mechanicals; repainting of the interior of the Store; re-striping and refurbishing and generally improving the parking lot and planted areas; and other improvements as determined.

(1) Proprietor shall provide evidence of financing for the Project to the City or its Agent no later thirty (30) days after the effective date of this Agreement. Proprietor shall apply for permits necessary for the Project no later forty-five (45) days after the effective date of this Agreement. Proprietor shall commence the Project no later than sixty (60) days after the effective date of this Agreement. Proprietor shall secure a certificate of occupancy for the Store (issuance of said certificate of occupancy shall hereinafter be referred to as **“Project Completion”**) no later than one hundred eighty (180) days after the effective date of this Agreement. Proprietor shall begin operations of and open the Fresh Foods Market no later than two hundred ten (210) days after the effective date of this Agreement. Proprietor shall maintain and operate the Fresh Foods Market thereafter for the term of this Agreement.

(2) The Proprietor shall complete the Project in substantial conformity with the Proprietor’s Project Budget attached hereto as **Exhibit C (the “Project Budget”)**

(3) Proprietor shall construct and complete the Project in a good and workmanlike manner in accord with all Legal Requirements.

(4) The Proprietor, at its expense, shall secure or cause to be secured any and all permits, documents, zoning relief, or plats which may be required for the Project by City Code, and any other governmental agencies having jurisdiction over such construction, development or work, or such portion of the work being performed, including, without limitation, any applications and permits, documents or plats which may be required to be obtained from any local, federal or state environmental protection agency, the Metropolitan Water Reclamation District of Greater Chicago, or from any other agency which may have or exercise any jurisdiction of any type whatsoever in connection with the Project. Except as provided in this Agreement, the costs of the Project shall be borne and paid for by the Proprietor or its landlord.

**B.** Should Proprietor violate any of Proprietor's responsibilities contained in any section of this Agreement before the Expiration Date (as defined in **Section 23** hereof), said violation may, in the City's sole determination, be considered a material breach of this Agreement. Upon the occurrence of a material breach, the Proprietor shall (jointly and severally if more than one party), within sixty (60) days of receipt of written notice of material breach from the City, return to the City an amortized refund of all actual monies received. Such amortization shall be calculated as follows depending upon when said breach occurs:

<b>Revenue Year of Agreement In Which Breach Occurs</b>	<b>Percent of Tax Rebate Monies Proprietor Must Refund to City</b>
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%
11	0%

**C.** Notwithstanding any other provision of this Agreement, in the event that Proprietor (i) declares insolvency or bankruptcy; (ii) makes an assignment for the benefit of creditors; or (iii) is unable to meet its financial obligations, causing it to cease doing business as a grocery store facility, then this Agreement shall be deemed terminated and of no further force and effect, and the Parties are relieved of all covenants, conditions, obligations and liabilities hereunder.

**SECTION 4. City Responsibilities.**

In consideration of Proprietor's work on the Project, the City agrees to reimburse Proprietor for a portion of its Eligible Project Costs (as defined in **Section 2**) from a portion of the City's Tax Revenue Share (as defined in **Section 2**). For each Revenue Year, the City shall disburse to the Proprietor seventy-five percent (75%) of City's Tax Revenue Share collected from the taxable activities of the Property until the earlier of the following occurs: the Proprietor receives the Maximum Rebate; or the Expiration Date (as defined in **Section 23** of this Agreement).

City's payment or reimbursement of Eligible Project Costs shall be made on a semi-annual basis, within sixty (60) days after both of the following: the last day of the first six (6) months of each Revenue Year; the last day of each Revenue Year.

Notwithstanding anything to the contrary herein contained, the City shall have no obligation to disburse to Proprietor any portion of the City's Tax Revenue Share accruing or arising after the Expiration Date (as defined in **Section 23** of this Agreement).

**SECTION 5. Proprietor's Use of City Sales Tax Reimbursement.**

**A.** All monies paid to Proprietor by the City pursuant to this Agreement (the "**Sales Tax Reimbursement**") shall be utilized by Proprietor for the payment of or reimbursement for the Eligible Project Costs. In no event will the monies paid by the City to the Proprietor exceed the Maximum Rebate.

**B.** The following shall be conditions precedent to the City's obligation to pay any monies to the Proprietor:

- (1) The Proprietor shall not, without the prior consent of the City, have made any adverse material changes to the scope of the Project;
- (2) The Proprietor shall accomplish Project Completion (as defined in **Section 3A(1)** of this Agreement); and
- (3) The Proprietor shall provide the City or its agent with the following:
  - a. a certified copy by the architect of the final Project Budget;
  - b. lender disbursement statement as of Project Completion including all eligible costs; and
  - c. a certified copy of Proprietor's loan agreement for the Project .

**C.** The City shall have sixty (60) days after receipt of these documents within which to verify the sufficiency of the information contained therein as to Eligible Project Costs. The Parties agree that no audit of the Eligible Project Costs shall be necessary if the total amount of such costs contained in the budget submitted pursuant to this section has not varied more than \$100,000.00 from that contained in Proprietor's Project Budget submitted pursuant to **Section 3** hereof. If it is determined that an audit of said costs is necessary, an independent auditor,

agreeable to both Parties, shall conduct said audit within ninety (90) days of said determination. The expense of said audit shall be borne by Proprietor, who will cooperate in all reasonable ways with the conduct of the audit.

**D.** Within thirty (30) days after delivery of the aforesaid documentation, Proprietor agrees to deliver to City reasonably satisfactory evidence of payment of such Eligible Project Costs, such as a contractor's sworn statement, and evidence of lien free completion, such as waivers of lien or a clean title policy.

**E.** The City shall make all reasonable efforts to ascertain the City's Tax Revenue Share from the Illinois Department of Revenue for each Revenue Year. Proprietor agrees to obtain and provide the City with the ST-1 forms for the Property after the date of this Agreement. Proprietor further agrees to use all reasonable efforts to obtain and provide the City with the ST-1 forms. Provided the City obtains the City's Tax Revenue Share information from the Department of Revenue or, failing that, provided the Proprietor has caused the ST-1 forms or other similar information to be delivered, the City shall provide Proprietor with a report of all of the City's Tax Revenue Share for the Property received during the prior six (6) month period, together with a payment in the amount of Proprietor's pro rata share of any and all of the City's Tax Revenue Share received by the City and then due and owing Proprietor, pursuant to **Section 4** hereof. Within ninety (90) days after each Revenue Year, the City shall notify Proprietor of the actual amount of the City's Tax Revenue Share received for such Revenue Year. C) The City shall take whatever action necessary and the Proprietor agrees to cooperate and provide any information necessary to determine the amount of Sales Taxes generated by the Project. The Proprietor shall take all reasonable actions necessary to provide the City with any and all documentation and shall provide the City with a power of attorney letter, if necessary, addressed to and in a form satisfactory to the Department of Revenue authorizing the Department to release all general sales tax information to the City.

**F.** The Sales Tax Reimbursement set forth herein shall be subject to the following additional terms and conditions:

(1) Such sales tax shall be payable solely from City's Tax Revenue Share actually received by the City from the Department of Revenue and originating from the taxable activities of the Property, and the City shall not be obligated to pay any Sales Tax Reimbursement identified herein from any other fund or source.

(2) The Parties acknowledge that the Agreement to distribute Sales Tax Reimbursement as herein provided is predicated on existing law. If the State of Illinois should reduce the City's Tax Revenue Share generated from the Store and/or Property, the Parties hereto agree that the City may, at its discretion, enact or adopt an ordinance under its Home Rule powers providing for a replacement tax equal to the amount so eliminated or reduced by the State of Illinois. Said ordinance shall contain the same terms as to the amount and manner of receipt of said monies as were so eliminated or reduced. This Agreement shall be applicable to such replacement tax as if it were the sales tax. In the alternative, the Proprietor agrees to provide the City with a Payment In Lieu of Taxes as determined by the City so as to be comparable to the original sales tax.

(3) The City shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing a source of funds for the Sales Tax Reimbursement herein.

(4) To the fullest extent permitted by law, the City shall treat information received from the Proprietor pursuant to this **Section 5**, as confidential proprietary business information under the Illinois Freedom of Information Act.

**G.** The City and Proprietor agree that this Agreement is for the benefit of the Parties hereto and not for the benefit of any third party beneficiary. Except as otherwise provided herein, no third party shall have any rights or claims against the City that arise from this Agreement.

**SECTION 6. Permit Processing.** The City shall diligently process all applications by Proprietor for all approvals, permits and inspections relating to the redevelopment of the Property in accordance with the provisions of this Agreement, including, but not limited to, demolition permits, grading permits, building permits, occupancy permits, site work improvements and all required engineering plans and specifications. A reasonable failure on the part of the City to grant any required approval or issue any required permit shall not be deemed a default, or the cause of a default, by the City under this Agreement provided the Proprietor's plans do not conform to the City's ordinances and code. The City shall not oppose any application pending for permit before another governmental body or agency, provided such application is consistent with all Legal Requirements.

**SECTION 7. Signage.** The signage for the Project shall be substantially as depicted and set forth on the Site Plan, and shall be submitted for approval in accordance with the City's ordinances, resolutions and regulations in effect at the time this Agreement is executed.

**SECTION 8. Access to Utilities.** If required, the City shall permit Proprietor to make the usual and customary connections to water and storm sewer facilities to serve the Project in accordance with the Site Plan and approved engineering plans and all applicable City ordinances and requirements.

**SECTION 9. Certificate of Completion.** After Project Completion, upon application of Proprietor, the City will make a determination as to Proprietor's satisfaction of its obligations under this Agreement, and upon such reasonable determination shall certify as to such satisfaction. The certification by the City shall be conclusive determination of the satisfaction and termination of such obligations of Proprietor under this Agreement, including the obligations set forth in this **Section 9** with regard to the verification of Eligible Project Costs. The certification shall be in such form as will enable it to be recorded. Upon written request by the Proprietor for any such certificate of completion, the City shall, within sixty (60) days after receipt of the same, provide the Proprietor, as the case may be, with either a certificate of completion or a written statement indicating in adequate detail how Proprietor has failed to satisfy said obligations in accordance with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Proprietor to obtain the certification. Proprietor shall resubmit a written request for a certificate of completion upon compliance with the City's response, and such certificate shall be issued by the City in accordance with the provisions hereof.

**SECTION 10. Sales Tax Reports:** Concurrent with the filing of any and all reports with the Illinois Department of Revenue or any successor agency. Proprietor shall furnish or cause to be furnished to the City (to the attention of the City's Finance Director) copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity. In the event the State of Illinois is unable or unwilling to provide such information to the City, Proprietor shall, upon at least thirty (30) days prior written request therefore, provide the City with all documentation available to Proprietor that the City reasonably deems necessary to accurately determine the amount of the City's Tax Revenue Share. To the extent permitted by law, the City shall maintain the confidentiality of the information contained in such reports.

Proprietor acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the City to Proprietor pursuant to this Agreement. Proprietor further covenants and agrees, that upon the request of City, Proprietor shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to Proprietor, in order to release the above-described sales tax information to the City. Proprietor and City agree and acknowledge that any disbursements of City's Tax Revenue Share due it for any Revenue Year can only be made from and to the extent of sales data submitted in accordance with this **Section 10**. Proprietor agrees to make the obligations contained in this **Section 10** a part of any contract or instrument to further sub-lease or otherwise convey any portion of the Property.

**SECTION 11. Reimbursement Mechanism.** The City shall remit in full to Proprietor the portion of the City's Tax Revenue Share to which Proprietor is entitled in such amounts and at such times as determined in **Section 4**, **Section 5B** and **Section 11** hereof. The City shall be liable to Proprietor for disbursement of monies hereunder only to the extent of the City's Tax Revenue Share actually received from the Illinois Department of Revenue or other applicable governmental agency or body. Any payments determined to be due to Proprietor from the City based upon sales tax returns and shall be reduced by the amount of any and all collection fees imposed upon City by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collection of the Sales Tax Revenue.

**SECTION 12. Insurance**

Any contactor chosen by the Proprietor or the Proprietor itself shall be required to obtain and keep in force at all times until completion of rehab improvements, policies of insurance including coverage for contractor's general liability and completed operations. The Proprietor, as a sub-leaser, 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 and damage. The contractor or the Proprietor, as the case may be, shall name the City of Evanston as an Additional Insured and 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 or material change in any of the policies.

**SECTION 13. Casualty / Extension of Term.**

In the event of a casualty or destruction of substantially all of the improvements on the Property during the term of this Agreement, and Proprietor elects not to rebuild said improvements or fails to promptly commence and diligently pursue said reconstruction and recommence its retail operations on the Property within twelve (12) months after the date of said casualty, Proprietor shall be obligated, after satisfying its landlord if any, to refund to the City, from insurance casualty insurance proceeds received by Proprietor, and pari passu with Proprietor's equity, the portion of the City's Tax Revenue Share theretofore received by the Proprietor. The City shall be named as beneficiary and co-payee on any and all insurance proceeds. The City's interests shall be limited to the amount of Maximum Reimbursement.

**SECTION 14. Indemnification.**

Proprietor agrees to indemnify and hold harmless the City, its officials, whether appointed or elected, and whether or not serving at the time of commencement of this Agreement, its officers, employees, volunteers and agents (the "**City Indemnified Parties**"), from any and all claims, actions and suits (together with the City's reasonable attorneys' fees and costs) at law or in equity (collectively, "**Claims**") arising solely out of this Agreement or out of the operation of food sales Stores or alleged to have arisen solely out of acts of Proprietor, provided, however, that said indemnification is hereby expressly limited to the extent of reimbursement payments actually made by the City to Proprietor hereunder; and further provided, however, that the foregoing obligation shall not extend to the extent any Claim arises out of the gross negligence or willful misconduct of any City Indemnified Party.

**SECTION 15. Mutual Assistance.** Proprietor and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

**SECTION 16. Additional Agreements and Covenants of Proprietor.** In accordance with the City's financial commitment to the redevelopment of the Project, Proprietor agrees and covenants with the City as follows:

A. Proprietor shall not: further sub-lease the Property, the Store, or any portion thereof to any tax-exempt entity; seek an appeal of property taxes levied on the Property; cause the Property owner to seek an appeal of property taxes levied on the Property.

B. Proprietor agrees that the general contractor hired by Proprietor to complete the Project shall use good faith, commercially reasonable efforts to hire, train and retain, or cause to be hired, trained or retained, during such Property improvement contract at least one (1) laborer who resides in the City.

C. Proprietor shall maintain all exterior building lighting in accordance with all Legal Requirements.

D. Proprietor shall not utilize any of the following outdoors: public address; audio paging; public address horns; loudspeakers; or any other type of device for use in public address systems.

E. Proprietor shall record a copy of this Agreement with the Office of Recorder of Deeds of Cook County.

**SECTION 17. Anti-Discrimination, Minority Business Enterprises, Etc.**

A. Proprietor agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Proprietor agrees to make good faith, commercially reasonable efforts to have its general contractor and major subcontractors, to the extent they hire new employees and can include minorities, women and City residents to work on the Initial Construction of Project, hire minorities, women or City residents, in any combination, at a cumulative rate of twenty-five percent (25%) of the total trade labor work force. Proprietor agrees to make good faith, commercially reasonable efforts to hire minorities, women or City residents, in any combination, at a cumulative rate of twenty-five percent (25%) of the total work force of the Fresh Foods Market store. Nothing herein shall require Proprietor or its contractors or major subcontractors to displace any employees in its current work force to achieve the foregoing goal. The foregoing requirement shall apply to the Project taken as a whole.

B. Notwithstanding the foregoing provisions, Proprietor shall be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

C. Proprietor's contracts with contractors and major subcontractors for construction of the Project shall contain provisions, which are consistent with the requirements of this Paragraph 17.

**SECTION 18. No Discrimination Construction – Business Participation.**

A. Proprietor, agrees to comply with all applicable laws prohibiting discrimination against, or segregation of, any person, or group of persons, on account of sex, race, color, creed, national origin, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

B. Proprietor shall exercise its good faith, commercially reasonable efforts to secure minority, women, and City business enterprises to **participate** in all construction and service contracts for the Project.

**SECTION 19. Employment Opportunities Marketing.**

Proprietor agrees to cooperate with the City to seek to employ Evanston residents if the Proprietor increases its workforce.

**SECTION 20. Default Remedies.**

Except as otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any terms or conditions by any party hereto, such party shall, upon written notice from the non-defaulting party, proceed promptly to cure or remedy such default or breach within sixty (60) days after receipt of such notice. If any such default is incapable of being cured within said sixty (60) day period, and the defaulting party commences to cure the default within said sixty (60) day period and proceeds with due diligence, then such party shall not be deemed to be

in default under this Agreement. Notwithstanding the foregoing, with respect to the City's obligations under Paragraph 3 hereof, the City shall have five (5) business days after receipt of notice to cure or remedy a default. In case any action hereunder is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above periods, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, an action to restrain any such default or breach of its obligations, an action to compel specific performance by the party in default or breach of its obligations, an action to recover damages against any party liable pursuant to the provisions hereof, or any other action at law or in equity.

However, notwithstanding the foregoing, the sole remedy of Proprietor in the event of a default by the City in any of the terms of this Agreement is to institute legal action for payment of amounts owed Proprietor. Under no circumstance will the City have any other monetary liability or damages, compensatory or punitive, under the provisions, terms and conditions of this Agreement, except for payment of Proprietor's reasonable attorneys fees in the event it obtains final non-appealable judgment against the City for breach of this Agreement. In addition, notwithstanding the foregoing, the sole remedy of City in the event of a default by the Proprietor in any of the terms of this Agreement is to institute legal action for payment of the reimbursement amounts owed the City. Under no circumstance will the Proprietor have any other monetary liability or damages, compensatory or punitive, under the provisions, terms and conditions of this Agreement, except for payment of the City's reasonable attorneys fees in the event it obtains final non-appealable judgment against the Proprietor for breach of this Agreement.

Except as otherwise set forth in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way; it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

It is further agreed by the Parties hereto, that the City shall have the right to suspend and stop all payments to the Proprietor hereunder upon Proprietor's breach of this Agreement (after applicable notice and expiration of applicable cure period), even if said payments shall be due and owing to the Proprietor at the time of said breach.

**SECTION 21. Entire Agreement.** This Agreement sets forth all the promises, inducements, Agreements, conditions and understandings between Proprietor and City relative to the subject matter hereof, and there are no promises, Agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth.

**SECTION 22. Survival of Terms, Binding upon Successors.** The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement (and specifically including, without limitation, those covenants, terms, conditions, representations, warranties, agreements and undertakings which survive the termination of this Agreement) shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives, and the covenants, provisions and Agreements herein contained shall run with the Property and shall expire twelve (12) months after the Expiration Date (as defined herein).

**SECTION 23. Term of Agreement.** The term of this Agreement shall commence as of the date of execution hereof and shall expire upon the earliest of the following (the “**Expiration Date**”): eleven (11) years after the opening day of the Fresh Foods Market; when Proprietor has received the Maximum Rebate; Proprietor’s material breach of this Agreement.

**SECTION 24. Governing Law.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois (without giving effect to Illinois choice of law principles).

**SECTION 25. Supplemental Agreements.** The Parties agree to cooperate in order to execute such supplemental Agreements, memoranda and similar documents as may be necessary to implement the terms of this Agreement.

**SECTION 26. Force Majeure.** Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation or labor and material shortages. An extension of time for any such cause shall be for the period of the delay, which period shall run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than thirty (30) days after the start of the cause or not more than thirty (30) days after the party claiming such extension could have first reasonably recognized the start of the cause, whichever is later.

**SECTION 27. Notices.** Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given, served and received on the date of delivery, if delivered to the persons identified below in person, by courier service or by facsimile copy transmitted on a business day before 5:00 p.m., or the next business day thereafter if not so transmitted (with original copy mailed the same day in accordance with the provisions of this Paragraph), or five (5) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City Manager  
City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
Facsimile: 847-448-8083

Copy to:

1<sup>st</sup> Assistant Corporation Counsel  
City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
Facsimile: 847-448-8093

If to Proprietor:

Fresh Foods  
915 Court of Shorewood, Unit 6  
Vernon Hills, IL 60061  
Attention: Dean Theo  
Facsimile: 847.247.0002

Copy to:

Steven J. Rothschild  
Rothschild Law Group  
2207 Lakeside Drive  
Bannockburn, IL 60015  
Facsimile: 847.283.6001

**SECTION 28.**        **Severability.** If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purposes of the Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

**SECTION 29.**        **City Approval.** A copy of the ordinance (or other City action) approving of the terms and conditions of this Agreement and authorizing and directing the City Manager to execute this Agreement on the City's behalf, certified by the City Clerk, shall be provided to Proprietor.

**SECTION 30.**        **Amendments.** This Agreement may be amended from time to time with the written consent of the Parties hereto.

**SECTION 31.**        **Miscellaneous.** The Parties hereto acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the City are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

**SECTION 32.**      **Execution of this Agreement.** This Agreement shall be signed last by the City and the City Manager shall affix the date on which he/she signs and approves this Agreement on the first page hereof, which date shall be the effective date of this Agreement.

\*      \*      \*      \*      \*

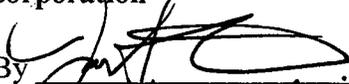
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth above.

CITY OF EVANSTON, an Illinois  
municipal corporation

By:   
Name: ROLANDA B. RUSSELL  
Its: INTERIM CITY MANAGER

Farmer's Best IV, Inc., an Illinois  
corporation

By:   
Name: JAMES STIVERS  
Its: PRESIDENT

ATTEST

By:   
RODNEY GREENE, City Clerk

[SEAL]

**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL 1:**

LOTS 1 AND 2 (EXCEPT THAT PART OF SAID LOTS LYING EAST OF A LINE 40 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 25) IN BLOCK 3 IN KELLY AND O'BRIEN'S SOUTH EVANSTON SUBDIVISION OF THE SOUTH ½ OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

THAT PART OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 25, TOWNSHIP 41, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION WITH A LINE 40.0 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION THENCE SOUTH ALONG SAID PARALLEL LINE TO A POINT ON THE SOUTH LINE OF LOT 2 IN BLOCK 3 IN KELLY & O'BRIENS SOUTH EVANSTON SUBDIVISION OF THE SOUTH ½ OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SAID SECTION THENCE WEST ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID LOT 2 THENCE NORTH ALONG THE WEST LINE OF LOTS 1 AND 2 AND BLOCK 3 IN SAID SUBDIVISION TO THE NORTHWEST CORNER OF LOT 1 IN SAID SUBDIVISION THENCE WEST TO THE NORTHEAST CORNER OF LOT 15 BLOCK 3 IN SAID SUBDIVISION THENCE SOUTH ALONG THE EAST LINE OF LOTS 14 AND 15 IN BLOCK 3 IN SAID SUBDIVISION TO THE SOUTH LINE OF THE NORTH 6 ⅔ FEET OF SAID LOT 14; THENCE WEST ALONG SAID SOUTH LINE TO A POINT IN THE WEST LINE THEREOF THENCE NORTH ALONG THE WEST LINE OF LOTS 14 AND 15 IN BLOCK 3 AND SAID WEST LINE EXTENDED NORTH TO A POINT ON A LINE 16.0 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 15 THENCE EAST ALONG SAID PARALLEL LINE TO A POINT ON A LINE 201.018 FEET (AS MEASURED ALONG SAID PARALLEL LINE) WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION; THENCE NORTH ALONG SAID PARALLEL LINE TO A POINT ON A LINE 185.014 FEET (AS MEASURED ALONG SAID PARALLEL LINE) SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION THENCE LAST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 30.65 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION 65.20 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 1.65 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION TO A POINT ON A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION THENCE EAST ALONG SAID PARALLEL LINE TO THE POINT OF BEGINNING, EXCLUDING THAT PART LYING WEST OF THE WEST LINE OF LOTS 1 AND 2 IN BLOCK 3 DESCRIBED ABOVE AS EXTENDED NORTH ALL IN COOK COUNTY, ILLINOIS.

EXCEPTING ALSO THAT PART OF THE ABOVE DESCRIBED PARCEL 2 FALLING WITHIN PARCEL 1.

**PIN:** 10-25-203-011-0000  
10-25-206-007-0000  
10-25-206-008-0000

**COMMONLY KNOWN AS:** 430 Asbury Avenue, Evanston, Illinois

**EXHIBIT B**  
**SALES TAX PROJECTIONS**



Sales tax inflation factor  
after 2013

1.50%

Retail Sales Tax Analysis  
Proposed Farmer's Best Market  
Original Proposal for Sales Tax Sharing

	2015	2016	2017	2018	2019	2020
<b>Projected Sales Taxes:</b>						
Sales Subject to 1% Local Sales Tax per Farmer's Best Market estimates for 2009 to 2013	19,282,721	19,571,962	19,865,542	20,163,525	20,465,978	20,772,967
Sales Subject to 1% Home Rule Sales Tax Assumes 90% food/drug sales and 10% subject to HR tax Existing 1% local sales tax amounts	1,928,272	1,957,196	1,966,554	2,016,352	2,046,598	2,077,297
Existing 1% home rule sales tax amounts	-	-	-	-	-	-
Grocery Store local sales tax 1%	192,827	195,720	198,655	201,635	204,660	207,730
Grocery Store home rule sales tax 1% home rule	19,283	19,572	19,866	20,164	20,466	20,773
Total	212,110	215,292	218,521	221,799	225,126	228,503
<b>Base Allocations:</b>						
City Base Year allocation	Not applicable	-	-	-	-	-
Amount due City for services to be determined						
Neighborhood contribution to be determined						
Total	-	-	-	-	-	-
Cumulative	-	-	-	-	-	-
Net for Project and City	212,110	215,292	218,521	221,799	225,126	228,503
Project Allocation	75%					
Cumulative	700,000	700,000	700,000	700,000	700,000	700,000
Maximum allocation	700,000					
Assumes increase to initial proposal	40%					
City Allocation	25%	212,110	215,292	218,521	221,799	225,126
until cap achieved						
Cumulative	594,078	809,370	1,027,891	1,249,690	1,474,815	1,703,318

75/25

**EXHIBIT C**  
**PROJECT BUDGET**

PROJECT SUMMARY  
FOR  
**FRESH FOODS**  
430 Asbury Avenue  
Evanston, IL

**COSTS TO OPEN STORE**

1. New Construction (building expansion)	\$975,000
2. Interior Build-out	\$850,000
3. Landscaping	\$ 60,000
4. Refrigeration equipment	\$800,000
5. Store fixtures	\$200,000
6. Signage	\$120,000
<b>Total Costs</b>	<b>\$3,005,000</b>