



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Lorrie Pearson, AICP, Community Development Services Director
Stephenny McMahon, Economic Development Supervisor

DATE: May 6, 2021

**SUBJECT: A RESOLUTION APPROVING A REDEVELOPMENT AGREEMENT
WITH FRASCA INTERNATIONAL, INC. (906 Airport Road)**

Introduction

The City of Urbana has been approached by Tom Frasca of Frasca International, Inc. regarding interest in a new construction project. The attached resolution and agreement would provide incentives for a new 11,005-square-foot simulator building to be located at 906 Airport Road (**Attachment: Site Plan**). The property is located within Tax Increment finance District 4 (TIF 4), and a redevelopment agreement is being sought by the developer to facilitate this redevelopment.

Background

Frasca International, Inc. designs and manufactures a complete line of simulators for all aircraft types for airlines, flight schools and military organizations worldwide. Over the years, both Frasca International and Frasca Field Airport have had a significant positive impact on the community. Founded in 1958, the flight simulator business currently employs 125 people and has delivered over 3,000 simulators to date.

Frasca will be expanding its manufacturing facility in response to strong flight simulator sales including a contract for a Level D Full Flight Simulator (FFS) for an undisclosed helicopter operator. Frasca currently operates out of an 85,000-square-foot office and manufacturing facility, which includes two additional outbuildings.

The addition will increase the facility's size to accommodate manufacturing capacity for two Level D helicopter full-flight simulators with large dome visual systems and roll-on-roll-off cockpit configurations. These Level D FFSs are the most advanced level of flight simulators and must meet strict qualification and training requirements. This addition will expand the factory's number of FFS pads to five while also increasing Frasca's capacity for building full flight simulators for larger aircraft as demand for these devices increases.

Discussion

The attached resolution would approve a redevelopment agreement with Frasca International, Inc. for property located at 906 Airport Road. This agreement would provide for City assistance through TIF 4 to help facilitate the new development. This project is expected to be completed in September 2021 at a total estimated construction cost of \$1,600,000.

The agreement would rebate 50% of incremental property taxes generated by the project through the first two years following completion. The FY 2021 EAV of \$2,002,460 will be used as the base value. Section 4.1 of the agreement establishes the terms of the rebate, including a total rebate cap of \$50,000 over two years. The terms remain consistent with City guidelines: the developer must maintain the proposed construction schedule, generate increment, and pay annual property taxes before obtaining rebates. With a partial rebate, the TIF would accrue revenue the first year after completion. If the full rebate were achieved, the rebate would represent 3.1% of project cost, or a private to public investment ratio of nearly 30 to 1.

Fiscal Impact

Both the costs and revenues associated with this redevelopment agreement will be realized by TIF 4. The maximum TIF rebate to the developer is \$50,000 over two years. Based on preliminary property tax projection estimates, it is not expected that Frasca International, Inc. will realize the full \$50,000 in incentives prior to the conclusion of the two-year period. After forgoing half of the increment for the first two years, the full increment will accrue to the TIF until it terminates in 2025 and accrue to the taxing districts thereafter.

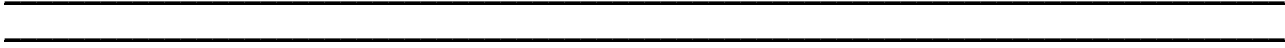
Options

1. Approve the redevelopment agreement resolution as presented.
2. Approve the redevelopment agreement resolution with changes. It should be noted that any changes will need to be agreed upon by the developer.
3. Deny the redevelopment agreement resolution.

Recommendation

The positive fiscal impact, the prospect of generating additional economic activity, facilitating the growth of a thriving local business, and past success of the developer all indicate that this agreement would be a benefit to the City and TIF 4.

Staff recommends that the City Council approve the proposed resolution authorizing the execution of the redevelopment agreement with Frasca International, Inc.



REDEVELOPMENT AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

FRASCA INTERNATIONAL, INC.

Dated as of May___, 2021

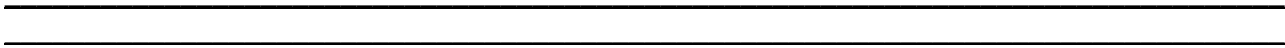


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EXHIBIT LIST

EXHIBIT A	Description of Property
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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is dated for reference purposes only as of May 1, 2021, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the “**City**”), and **Frasca International, Inc.**, an Illinois general partnership (the “**Developer**”). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and date this Agreement and deliver it to the other (the “**Effective Date**”).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et seq.*), as supplemented and amended (the “**TIF Act**”), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the “**Corporate Authorities**”) adopted a series of ordinances (Ordinance Nos. 2001-12-164, 2001-12-165 and 2001-12-166 on December 17, 2001) including as supplemented and amended (collectively, the “**TIF Ordinances**”); and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Cunningham Avenue Corridor Tax Increment Redevelopment Project Area (the “**Redevelopment Project Area**”) and approved the related redevelopment plan, as supplemented and amended (the “**Redevelopment Plan**”), including the redevelopment projects described in the Redevelopment Plan (collectively, the “**Redevelopment Projects**”); and

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below); and

WHEREAS, the Property (as defined below) is within the Redevelopment Project Area; and

WHEREAS, the Developer is unwilling to undertake the Project (as defined below) without certain tax increment finance incentives from the City, which the City is willing to provide; and

WHEREAS, the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth herein in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

“Annual Reimbursement Amounts” means, collectively, amounts to be reimbursed or paid to or as directed by the Developer from the Fund by the City under and pursuant to Section 4.1 of this Agreement.

“Eligible Redevelopment Project Costs” means those costs paid and incurred in connection with the Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act, including: (a) costs of studies, surveys, development of plans and specifications including but not limited to professional service costs for architectural, engineering, legal, financial, planning or other services; (b) property assembly costs, including site preparation and the clearing and grading of land; (c) costs of the construction of public works or improvements; and (d) up to 30% per year of interest costs incurred by the Developer related to the construction of the Project subject to the total cost limitations of such interest payments as set forth in subparagraph (D) of such Section, 5/11-74.4-3(q)(11).

“Finance Director” means the Finance Director of the City, or their designee.

“Fund” means, collectively, the “Special Tax Allocation Fund” for the Redevelopment Project Area established under Section 5/11-74.4-8 of the TIF Act and the TIF Ordinances.

“Incremental Property Taxes” means, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Property by taxing districts that is attributable to the increase in the equalized assessed value of each taxable lot, block, tract or parcel of real estate within the Property over the equalized assessed value of each taxable lot, block, tract or parcel of real estate within the Property as assigned by the Champaign County Clerk which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall be paid to the Finance Director for deposit by the Finance Director into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

“Prevailing Wage Act” means the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois, the material terms of which require all contractors and subcontractors to pay all laborers, workers and mechanics performing work on any “public works” (as therein defined) no less than the current “prevailing rate of wages” (hourly cash wages plus fringe benefits) applicable to the county where performed and to comply with all notice, recordkeeping and filing duties.

“Project” means the construction and installation upon the Property of a new 11,005 square-foot industrial structure to be used for building helicopter simulators.

“Project Commencement Dates” means, as applicable, May 11, 2021, the date on or before which construction of the Project is to commence.

“Project Completion Date” means, subject to “unavoidable delays” as described in Section 9.5 of this Agreement, the date on which the Project is completed as evidenced by the issuance by the City of a certificate of occupancy for the Project upon the Property, which such date shall not be later than December 31, 2021.

“**Property**” means the real estate in the City consisting of the parcel described on Exhibit A hereto, upon or within which the Project is to be undertaken and completed.

“**Requisition**” means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article VI of this Agreement.

“**TIF Financing**” means financing arrangements to or for the benefit of a developer arising out of the TIF Act which pay or reimburse redevelopment project costs in whole or in part.

Section 1.2. Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) definitions include both singular and plural; and
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof; and
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II **REPRESENTATIONS AND WARRANTIES**

Section 2.1. Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) **Organization and Standing.** The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City’s Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors’ or creditors’ rights, and by equitable principles.

(d) No Violation. Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) Governmental Consents and Approvals. No consent or approval by any other governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

Section 2.2. Representations and Warranties of the Developer. In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

(a) Organization. The Developer is a general partnership, duly organized, validly existing and in good standing under the laws of the State of Illinois.

(b) Power and Authority. The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's Board of Directors. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) No Violation. Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

(e) Consents and Approvals. No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this Agreement or the performance by the Developer of its obligations hereunder.

(f) No Proceedings or Judgments. There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

(g) Maintenance of Existence. During the term of this Agreement, the Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as an Illinois corporation.

Section 2.3. Disclaimer of Warranties. The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Property and the Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

ARTICLE III
CONDITIONS PRECEDENT TO THE UNDERTAKINGS
ON THE PART OF THE DEVELOPER AND THE CITY

Section 3.1. Conditions Precedent. The undertakings on the part of the City as set forth in this Agreement are expressly contingent upon each of the following:

- (a) **Construction Schedule.** The Developer shall have delivered to the City a detailed construction schedule for the commencement and completion of the Project which shall include the Project Commencement Date and the Project Completion Date; and
- (b) **City Approvals.** The Developer shall have obtained approval of the Project in accordance with all applicable laws, codes, rules, regulations and ordinances of the City, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use regulations (collectively, the “**City Codes**”), including the issuance of all required permits, it being understood that the City in its capacity as a municipal corporation has discretion to approve the issuance of any such permits.

Section 3.2. Reasonable Efforts and Notice of Termination. The Developer shall use due diligence to timely satisfy the conditions set forth in Section 3.1 above on or before the Project Commencement Date, but if such conditions are not so satisfied or waived by the City, then the City may terminate this Agreement by giving written notice thereof to the Developer. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

ARTICLE IV
CITY’S COVENANTS AND AGREEMENTS

Section 4.1. City’s TIF Funded Financial Obligations. The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs in connection with the Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid by or on behalf of the Developer and the approval thereof by the City in accordance with Article VI of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 4.1 immediately below, agrees to reimburse the Developer, or to pay as directed by the Developer, from the Fund such annual amounts (the “**Annual Reimbursement Amounts**”) related to Project upon the Property as follows:

(a) Annual Reimbursement Amounts. Such Annual Reimbursement Amounts in connection with the Project in any one calendar year shall be equal to fifty percent (50%) of the Incremental Property Taxes attributable to the Property which are actually received by the City in each such calendar year.

(b) Calculation. For the purpose of calculating the total amount of Incremental Property Taxes attributable to the Property for any such calendar year, the total equalized assessed value (the “EAV”) of the Property shall be reduced by the present EAV of the Property in the amount of \$2,002,460.00 and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Area for any such applicable calendar year.

(c) Period of Annual Reimbursements. The obligations of the City to reimburse the Developer for any Annual Reimbursement Amounts under this Section 4.1 shall commence with the calendar year immediately following the calendar year in which the Completion Date occurs, and shall terminate upon reimbursement by the City in accordance with Article VI of this Agreement not later than December 31 of the second (2nd) calendar year in which any such Annual Reimbursement Amounts in connection with the Project become due and payable pursuant to this Section 4.1 and Article VI hereof.

(d) Dollar Limitation of Annual Reimbursements. The total amount of all such annual payments of Annual Reimbursement Amounts pursuant to this Section 4.1(a) shall not exceed the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Project upon the property or \$50,000, whichever is less.

Section 4.2. Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including the payment of the Annual Reimbursement Amounts to be paid or reimbursed by the City is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement.

ARTICLE V

DEVELOPER’S COVENANTS

Section 5.1. Commitment to Undertake and Complete the Project. The Developer covenants and agrees to commence the Project on or before the Project Commencement Date and to have the Project completed on or before the Project Completion Date. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of any required permits and any failure on the part of the City to grant or issue any such required permit shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any permit application shall be processed in its usual and customary manner and that any such approval shall be made in conformance with the applicable City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

Section 5.2. Compliance with Agreement and Laws During Construction. The Developer agrees to undertake the construction and installation of the Project in conformance with this Agreement and all applicable federal and state laws, rules and regulations and all City Codes.

Section 5.3. Prevailing Wages. The Developer acknowledges that the Illinois Department of Labor currently takes the position as a matter of its enforcement policy that the TIF financing of the Project under this Agreement does not subject the Project to the Prevailing Wage Act unless the Project also receives funding from another public source. The City makes no representation as to any such application of the Prevailing Wage Act to the Project, and any failure by the Developer to comply with the Prevailing Wage Act, if and to the extent subsequently found to be applicable by any legal authority having jurisdiction, shall not be deemed a “Default” under this Agreement. Notwithstanding the foregoing sentence, the Developer agrees to assume all responsibility for any such compliance (or noncompliance) with the Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions.

Section 5.4. Management; Compliance with Laws. The Developer agrees to comply with all applicable federal and state laws, rules, regulations and all applicable City Codes and other ordinances in the continued use, occupation, operation and maintenance of the Property.

Section 5.5. Tax and Related Payment Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general ad valorem real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property or the Project or any part thereof under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Property upon which the Project is undertaken and shall be and remain in full force and effect during the term of this Agreement and following its expiration or termination, as the case may be, until December 31, 2046, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Property, the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 5.5 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of taxes, assessments, charges or other impositions levied or imposed upon the Property or any part thereof, provided that the Developer shall first have given to the City written notice of its intent to do so at least 180 days prior to initiating any such proceedings.

Section 5.6. Businesses Owned by Minorities and Females. It is the policy of the Corporate Authorities of the City to promote and encourage the use by the Developer of businesses owned by “minorities” and “females” (as such terms are defined in the Business Enterprise for Minorities, Females and Persons with Disabilities Act) in connection with the Project.

ARTICLE VI

PAYMENT PROCEDURES FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

Section 6.1. Payment Procedures. The City and the Developer agree that any Eligible Redevelopment Project Costs shall be paid solely, and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that the Eligible Redevelopment Project Costs shall be disbursed by the Finance Director for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the Finance Director as its representative to coordinate the disbursement of Annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of the Annual Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer upon completion of the Eligible Redevelopment Project Costs which have been incurred and paid. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as applicable, receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors’ and materialmen’s partial and final affidavits or lien waivers, as the case may be.

Section 6.2. Approval and Resubmission of Requisitions. The Finance Director shall give the Developer written notice disapproving any of the Requisitions within ten (10) business days after receipt thereof. No such approval shall be denied except on the basis that **(i)** all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified in Section 6.1 of this Agreement; **(ii)** a “Default” under Section 7.1 of this Agreement by the Developer has occurred and is continuing. If a Requisition is disapproved by such Finance Director, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

Section 6.3. Time of Payment. Provided that performance of this Agreement has not been suspended or terminated by the City under Article VII hereof, the City shall pay any Annual Reimbursement Amount attributable to the Project which is approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after **(i)** the date of the approval of any such Requisitions, **(ii)** the receipt by the City of evidence from the Developer of the payment in full of the total property taxes attributable to the Property in any such applicable calendar year or **(iii)** the receipt by the City of the last installment of Incremental Property Taxes in any such calendar year, whichever in **(i)**, **(ii)** or **(iii)** is later.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. The occurrence of any one or more of the events specified in this Section 7.1 shall constitute a “**Default**” under this Agreement.

By the Developer:

(1) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement that is false or misleading in any material respect; and/or

(2) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement.

By the City:

(1) The failure by the City to pay any of the Annual Reimbursement Amounts which become due and payable in accordance with the provisions of this Agreement; and/or

(2) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

Section 7.2. Rights to Cure. The party claiming a Default under Section 7.1 of this Agreement (the “**Non-Defaulting Party**”) shall give written notice of the alleged Default to the other party (the “**Defaulting Party**”) describing the nature of the Default complained of and the term or provision of this Agreement which the Non-Defaulting Party believes is in default. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice. In the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party may give the Non-Defaulting Party written notice that (i) the Default will take more than thirty (30) days to cure or remedy; (ii) the Defaulting Party has promptly commenced and is diligently pursuing such cure or remedy; and (iii) the date on or before which the Defaulting Party will have completed such cure or remedy. Provided that the Defaulting Party promptly commences and diligently pursues such cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default. During any such period following the giving of notice of the alleged Default, the Non-Defaulting party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy or has cured or remedied the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued as provided above shall constitute a “**Breach**” 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 Default or any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

Section 7.3. Remedies. Upon the occurrence of a Breach under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence of a Breach under this Agreement by the Defaulting Party shall be to institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to

proceedings to compel any legal action for specific performance, or other appropriate equitable relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of a Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable relief and under **no** circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Annual Reimbursement Amounts which become due and payable in accordance with the provisions hereof is due to insufficient Incremental Property Taxes being available to the City, any such failure shall not be deemed to be a Default or a Breach on the part of the City.

Section 7.4. Costs, Expenses and Fees. Upon the occurrence of a Default or Breach which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

ARTICLE VIII

RELEASE, DEFENSE AND INDEMNIFICATION OF CITY

Section 8.1. Declaration of Invalidity. Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 8.1 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any, in the event of a Breach of this Agreement by the City.

Section 8.2. Damage, Injury or Death Resulting from Project. The Developer releases from and covenants and agrees that the City and its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

Section 8.3. Damage or Injury to Developer and Others. The City and its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct, gross negligence, or acts or omissions of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

Section 8.4. No Personal Liability. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Corporate Authorities, officials, agents, employees or independent contractors in their individual capacities. No member of the Corporate Authorities, elected or appointed officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement.

Section 8.5. City Not Liable for Developer Obligations. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach under this Agreement; provided that nothing in this Section 8.5 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts in the event of a Breach of this Agreement by the City.

Section 8.6. Actions or Obligations of Developer. The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors (except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors), from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the construction or installation of the Project, **(iii)** the Developer's compliance with the Prevailing Wage Act if, as, and when applicable to the Project or **(iv)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the Project.

Section 8.7. Environmental Covenants. To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: **(i)** any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials, now or thereafter located upon, delivered to or in transit to or from the Property regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of any third party; **(ii)** (A) any hereafter arising violation (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials, now or hereafter located upon, delivered to

or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of any third party; (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hereafter arising hazardous substances on or about or allegedly on or about the Property; or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this paragraph, “hazardous materials” includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Section 8.8. Notification of Claims. Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects any of the Developer’s rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

ARTICLE IX **MISCELLANEOUS PROVISIONS**

Section 9.1. Entire Agreement and Amendments. This Agreement (together with Exhibit A attached hereto) constitutes the entire agreement by and between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, whether written or oral, including the Redevelopment Agreement First Amended and Restated dated as of May 1, 2015, in connection with the Property, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 9.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 9.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 9.4. Special and Limited Obligation. This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations under Section 4.1 hereof only such amount of the Incremental Property Taxes as is set forth in Section 4.1 hereof, if, as and when received, and not

otherwise.

Section 9.5. Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

Section 9.6. Waiver. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing and duly executed by the party giving such waiver. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 9.7. Cooperation and Further Assurances. The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 9.8. Notices and Communications. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail in a properly addressed envelope and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by email, telephonically confirmed as actually received, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:
Frasca International, Inc.
906 East Airport Road
Urbana, IL 61802
Attn: Tom Frasca
Tel: (217) 367-8441
Email: tfrasca@frasca.com

- (ii) In the case of the City, to:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Stepheny McMahon
Tel: (217) 328-8274
Email: slmcmahon@urbanaininois.us

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 9.9. Assignment. The Developer agrees that it shall not sell, assign or otherwise transfer any of its rights and obligations under this Agreement in whole or in part without the prior express written consent of the City, except that: (i) any assignment of the Annual Reimbursement Amounts under this Agreement as collateral; or (ii) any related sale, assignment or transfer of this Agreement in whole to a legal entity having common ownership with the Developer; may be made without the prior written consent of the City. Except as authorized in this Section 9.9 above, any assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section 9.9, including any with or without the City's prior written consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the applicable parties thereto.

Section 9.10. Successors in Interest. Subject to Section 9.9 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

Section 9.11. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

Section 9.12. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois, whether in the United States District Court for the Central District of Illinois or the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

Section 9.13. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate upon the completion of all payments for Eligible Redevelopment Project Costs in accordance with Section 4.1 and Article VI of this Agreement or the termination of the Redevelopment Project Area, whichever occurs first, provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 5.4 and Article VIII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

Section 9.14. Recordation of Agreement. Either party may record this Agreement or a Memorandum of this Agreement in the office of the Champaign County Recorder at any time following its execution and delivery by both parties.

Section 9.15. Construction of Agreement. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

**CITY OF URBANA, CHAMPAIGN COUNTY,
ILLINOIS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Date: _____

FRASCA INTERNATIONAL, INC.

By: _____
_____, President

Date: _____

[Exhibit A follows this page and is an integral part of this Agreement in the context of use.]

EXHIBIT A

Description of Property

A part of Lot 1 of Frasca Industrial Air Park, as shown on a plat recorded April 4, 1989, as Document Number 1989R05836 in the Office of the Recorder of Deeds, Champaign County, Illinois, being more particularly described as follows:

All that part of said Lot 1 of Frasca Industrial Air Park that lies within Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois.

PIN: 91-15-33-300-005

Commonly known as 906 Airport Road, Urbana, Illinois

RESOLUTION NO. 2021-05-022R

A RESOLUTION APPROVING A REDEVELOPMENT AGREEMENT WITH FRASCA INTERNATIONAL, INC.

906 Airport Road – Frasca International, Inc.

WHEREAS, the City Council of the City of Urbana, Illinois (“City”), is a home rule unit of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

WHEREAS, Frasca International, Inc. (“Developer”) intends to develop the property located at 906 Airport Road and is willing to undertake such development in accordance with the terms and conditions contained in the redevelopment agreement (hereinafter the “Agreement”) appended to this Resolution as an exhibit; and

WHEREAS, the City and the Developer desire to enter into the Agreement in substantially the form of the exhibit appended hereto and make a part hereof;

WHEREAS, the City Council, after due consideration, finds that approval of the Agreement, as herein provided, is in the best interests of the residents of the City and is desirable for the welfare of the City’s government and affairs.

NOW, THEREFORE, BE IT RESOLVED by the City Council, of the City of Urbana, Illinois, as follows:

Section 1. That a Redevelopment Agreement between the City of Urbana and Frasca International, Inc. in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Redevelopment Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED BY THE CITY COUNCIL this Date day of Month, Year.

AYES:

NAYS:

ABSTENTIONS:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this Date day of Month, Year.

Diane Wolfe Marlin, Mayor