

**AGREEMENT FOR CASH ADVANCE, REPAYMENT  
OF SAME, AND GUARANTY OF REPAYMENT**

THE UNDERSIGNED hereby requests the City of LeRoy ("CITY") make a cash advance of \$10,000.00 to MARY LOU FLEGEL, d/b/a "The Coop," and EMPIRE CAPITAL CORPORATION, an Illinois corporation (the two aforesaid entities being hereinafter collectively referred to from time to time as "DEVELOPER"), as directed in writing by one or more of the undersigned DEVELOPER(s), in order to enable DEVELOPER to undertake a business project in furtherance of the LeRoy First Tax Increment Financing District Redevelopment Plan of CITY, as said plan was amended and enacted dated June 2, 1997, and in accordance with the project as proposed by DEVELOPER and accepted by CITY in a resolution or motion adopted by the LeRoy City Council prior to the execution of this agreement. In consideration of CITY making the aforesaid cash advance on or before January 31, 2002, the undersigned each, individually, agree with CITY as follows:

1. "Cash advance" means one or more financial transactions whereby monies are advanced to the account of DEVELOPER, as directed by DEVELOPER, in furtherance of the redevelopment business project proposed by DEVELOPER and approved by CITY as aforesaid. "Indebtedness" is used in its broadest sense and includes all obligations of any debtor, alone or with others, incurred before or after the date of this guaranty, voluntarily or involuntarily, due or not due, absolute, inchoate, contingent, liquidated or unliquidated, and interest on any one or more such obligations. "DEBTOR" means DEVELOPER, as well as Empire Capital Corporation, individually, and Mary Lou Flegel, individually.

2. Upon written direction from either or both of the undersigned, CITY may pay DEVELOPER, or either of them, from time to time, or to the account or for the benefit of either, any amount at any time up to and including a total amount advanced, collectively, from all times that advances may be made, of \$10,000.00. It is the intention of CITY and of the undersigned that the cash advance or advances, as previously described herein, shall be repaid to CITY out of LeRoy First Tax Increment Financing District incremental revenues otherwise due DEVELOPER, and that CITY may withhold from the increments first due DEVELOPER the amounts necessary to refund to CITY the entire amount of the aforesaid cash advance, until the same is paid in full, before any increments from the aforesaid tax increment financing district are paid over to DEVELOPER, or either of them. In the event all of the aforesaid cash advance (or advances) has not been repaid by the date LeRoy First Tax Increment Financing District is terminated, or by November 1, 2007, whichever date shall first occur, the remaining due but unpaid balance of any of the aforesaid cash advance (or advances) shall be due to CITY November 1, 2007, in full. CITY shall be required to make no further written demand for repayment of said cash advance (or advances) before proceeding to enforce this agreement after November 1, 2007. Further, there shall be no interest due on the aforesaid cash advance (or advances), or any part thereof, from the date the cash advance (or advances) is made until November 1, 2007. After November 1, 2007, as to any of the aforesaid cash advances remaining due, principal plus interest at the rate of 10% per annum to be calculated on the outstanding balance of the cash advance (or advances) remaining due, beginning November 1, 2007, shall be due. CITY may not alter, compromise, accelerate, extend, or change the time

or manner for the payment of the aforesaid indebtedness, nor increase or reduce any rate of interest on that indebtedness, nor release or add any one or more guarantors or endorsers, nor accept additional or substituted security, nor release or subordinate any security, without first giving notice in writing to each of the undersigned, as set forth later in this document. No exercise or non-exercise by CITY of any right given under this agreement, no dealing by CITY with DEBTOR, or either of them, and no change, impairment, or suspension of any right or remedy of CITY shall, in any way, affect any of the obligations of the undersigned under this agreement or any security furnished by any of the undersigned or give any of the undersigned any recourse against CITY.

3. In addition to all liens and rights of setoff which CITY may have against any property of any DEBTOR, CITY shall have a general lien on any right of setoff against all tax increment financing increments due DEBTOR (or either of them) from time to time or which may be subsequently in the possession of or on deposit with CITY. Each lien or right of setoff may be exercised with or without demand upon or notice to any DEBTOR or guarantor, shall continue in full force unless specifically waived or release by CITY, in writing, and shall not be deemed waived by any conduct of CITY, by any failure to exercise the right, or by any neglect or failure in so doing.

4. CITY need not take any action against any DEBTOR, or against any other person, firm, or corporation or resort to any security held by it at any time before proceeding against any other DEBTOR.

5. Until all guaranteed indebtedness has been paid in full, no DEBTOR shall have any right of subrogation unless expressly given to such DEBTOR in writing by CITY.

6. The liability of each DEBTOR under this instrument shall continue notwithstanding the incapacity, death, or disability of any other DEBTOR, or of any other or others. The failure by CITY to file or enforce a claim against the estate (either in administration, bankruptcy, or other proceeding) of any DEBTOR, or of any other or others, shall not affect the liability of any other DEBTOR hereunder, nor shall any DEBTOR be released from liability if recovery from any DEBTOR, or any other person, becomes barred by any statute of limitations or is otherwise prevented. Each DEBTOR and guarantor signed hereunder waives and agrees not to assert or take advantage of the defense of the statute of limitations in any action under this agreement or for the collection of any cash advance or other credit guaranteed by this instrument.

7. So long as any of the undersigned have any liability to CITY remaining under this agreement, each undersigned DEBTOR will file all claims against any other DEBTOR in any bankruptcy or other proceeding in which the filing of claims is required by law upon any indebtedness of any DEBTOR to any other DEBTOR and shall assign to CITY all of the rights of any such DEBTOR under those claims. If any DEBTOR does not file any such claim, CITY is hereby authorized, pursuant to bankruptcy rules, to act as attorney in fact on behalf of any said DEBTOR for that purpose, to do so in the name of any said DEBTOR, or in CITY's discretion to assign the claim to and cause proof of claim to be filed in the name of a nominee of CITY. In all like cases, whether an administration, bankruptcy, or otherwise, the person or persons authorized to pay the claim must pay to CITY the full amount payable on the claim in the proceeding before making any payment to any of the undersigned, and to the fullest extent necessary for that purpose each of the undersigned hereby assigns to CITY all rights of each of the undersigned to any payments or distributions to which each of the undersigned might otherwise be entitled. If the amounts paid are greater than the guaranteed obligations outstanding, CITY shall promptly pay the amount of the excess to the party entitled to that amount.

8. With or without notice to any of the undersigned, CITY, in its sole discretion, (a) may apply all payments from any DEBTOR, or from any other DEBTOR under this or any other instrument, or realized from any security, in whatever manner and order or priority as CITY sees fit, to any obligation of any DEBTOR, whether or not the obligation is due at the time of application, and (b) either before or after revocation of this instrument may refund to any DEBTOR any payment received by CITY upon any obligation.

9. In case of a default, CITY may maintain an action on this agreement whether or not all DEBTORS are joined in that action or a separate action is brought against any undersigned DEBTOR. The rights of CITY are cumulative and shall not be exhausted by its exercise of any of its rights under this agreement or otherwise against any of the undersigned DEBTORS or by any number of successive actions until and unless all indebtedness has been paid and each of the obligations of each of the undersigned under this agreement has been fully performed.

10. This is a continuing agreement for repayment of a debt. Notice of its acceptance is waived. It shall remain in full force until and unless each of the undersigned delivers to CITY written notice revoking it as to indebtedness incurred subsequent to delivery. A revocation shall not affect any obligation of any of the undersigned under this agreement with respect to indebtedness incurred pursuant to this agreement nor shall it affect any obligation of any other DEBTOR signing this agreement.

11. Each of the undersigned agrees to pay to CITY without demand reasonable attorney's fees and all costs and other expenses incurred by CITY in collecting or compromising any indebtedness of any of the undersigned under this agreement or in enforcing this agreement against any of the undersigned.

12. Should any one or more provisions of this agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective.

13. This agreement shall be enforceable in any court of competent jurisdiction by any of the parties hereto by appropriate action at law or in equity, to secure the performance of the provisions herein contained. Upon a breach of this agreement, any of the parties in any court of competent jurisdiction, by any action or proceeding at law or in equity, may be awarded damages for failure of performance, may obtain rescission and damages for repudiation or material failure of performance, or may exercise any other remedy available at law or in equity.

14. This agreement shall be construed, governed and administered in accordance with the laws of the State of Illinois without regard to the principles of conflicts of law.

15. Except as otherwise expressly provided herein, this agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof, and constitutes a full integration of the understandings and agreements of the parties to this agreement.

16. Sections or paragraph headings, or parts thereof, that may be used in various places throughout this agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this agreement or any of its provisions.

17. Except as otherwise provided in this agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist on strict compliance shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

18. All notices, consents, waivers, or other communications required or permitted hereunder shall be sufficient if given in writing and delivered personally, or by telephone facsimile followed by mail, or by express mail or certified or registered mail, as follows (or to such other addressee or address as shall be set forth in a notice given in the same manner):

IF TO: Mary Lou Flegel d/b/a "The Coop"

IF TO: Empire Capital Corporation

219 E. Center Street  
LeRoy, Illinois 61752

312 Blue Jay Drive  
LeRoy, Illinois 61752

IF TO: City of LeRoy

City Clerk, City of LeRoy  
207 S. East Street, P.O. Box 51  
LeRoy, Illinois 61752

and copy to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. This agreement shall be executed in four or more counterparts, each of which shall be deemed to be an original and all of which, together, shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this agreement or any counterpart hereof to account for any other counterpart.

20. This agreement shall be binding upon and inure to the benefit of CITY, its successors and assigns, and shall bind the heirs, executors, administrators, assigns and successors in interest of Mary Lou Flegel, d/b/a "The Coop", an individual, and of Empire Capital Corporation, an Illinois corporation.

21. If one or more DEBTORS sign this agreement, the obligation of all DEBTORS under this agreement shall be joint and several.

22. Whenever the context of this agreement requires, the masculine gender includes the feminine or neuter (and vice versa), and the singular number includes the plural (and vice versa).

EXECUTED AT LE ROY, ILLINOIS, this 3rd day of December, 2001.

CITY OF LEROY

BY: Robert Rice  
Robert Rice, Mayor of the City of LeRoy  
McLean County, Illinois

X Mary Lou Flegel  
Mary Lou Flegel, d/b/a "The Coop"

ATTEST: Sue Marcum (SEAL)  
Sue Marcum, City Clerk of the City of  
LeRoy, McLean County, Illinois

EMPIRE CAPITAL CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_ (Seal)

Its: \_\_\_\_\_