

AGREEMENT

THIS AGREEMENT dated this 8th day of December, 2009 by and between the **Myersville Volunteer Fire Company, Inc.**, a Maryland not-for-profit corporation (hereinafter "the Fire Company") and the **Town of Myersville**, a Maryland municipal corporation (hereinafter "the Town").

Recitals

A. The Fire Company is the owner of improved real estate located within the Town of Myersville, Maryland situated at 301 Main Street, Myersville, Maryland which it obtained by the following three (3) Deeds: (1) Deed dated September 10, 1956 and recorded among the Land Records of Frederick County, Maryland at Liber 577, folio 587, (2) Deed dated January 2, 2001 and recorded among the Land Records of Frederick County, Maryland at Liber 2801, folio 339 and (3) Deed dated December 27, 2002 and recorded among the Land Records of Frederick County, Maryland at Liber 3631, folio 67 (hereinafter collectively "the Property").

B. The improvements located on the Property consist of, among other things, a building of approximately 38,000 square feet, driveways and parking areas, sidewalks, generator, siren system, SWM facility, and gas tanks (hereinafter "the Improvements"). These Improvements are used by the Town and Fire Company, with the Town using approximately 40% and the Fire Company 60% (minus banquet hall and engine bay), and are more fully defined in Exhibit "A" of this Agreement.

C. The Improvements are used by both the Fire Company and the Town for various local governmental purposes and functions, including, but not limited to, the Town Municipal Center and Town Hall, a Fire and Rescue Station, a banquet hall, community center, kitchen, meeting rooms, and office space for other governmental and community operations.

After recording, return to:

John R. Clapp
1 W. Church St., 2nd Floor
Frederick, MD 21701

IMP TO SURV \$ 0.00
RECORDING FEE 0.00
TOTAL 0.00
Page | 1
REC'D BY: [unclear]
SKG LHM 03/21/02
Oct 18, 2012 03:22 PM

D. The construction of the Improvements was funded, in part, through the issuance by the Town of a \$3,382,900.00 Town of Myersville Infrastructure Bond, 2002 Series A (“the 2002 Bond”) which was purchased by the Maryland Community Development Administration (“the CDA”). The CDA purchased the 2002 Bond with funds obtained by the CDA through the issuance of its own Infrastructure Bonds (“the CDA Bonds”). Both the 2002 Bond and the CDA Bonds were issued as tax-exempt municipal bonds.

E. The construction of the Improvements was also funded, in part, through a \$2.0 million secured Line of Credit (LOC) obtained from First United Bank and Trust (“the Line of Credit”). A total of \$804,510.71 was used from the Line of Credit for the design and construction of the Improvements. The LOC was subsequently paid off and converted to a promissory note in October of 2008 and is scheduled to be paid off concurrent with the Bond.

F. The construction of the Improvements was also funded, in part, by the Town through use of \$1,618,854.38 from its cash reserves.

G. The construction of the Improvements was also funded, in part, by the Fire Company through use of \$267,316.30 from its cash reserves.

H. The construction of the Improvements, the issuance of the 2002 Bond, the securing of the LOC, and the use of the Town and Fire Company cash reserves were undertaken with the agreement and understanding of both the Fire Company and the Town that the costs for the Improvements would be shared by both parties at 60% and 40% respectively, including any cash reserves expended by either party as credit toward their total proportionate obligation as described herein. This agreement and understanding is reflected and recorded in the minutes of Town meetings on file with the Town.

I. The parties further agreed that upon completion of the Improvements, they would enter into a formal written agreement to re-state and supplement their agreement as to the repayment of the 2002 Bond, the Line of Credit and the cash, and as to the long-term use of and ongoing

payment of expenses for the Improvements. A figure outlining those expenses described herein are further reflected and delineated in the attached Exhibit "B".

J. As of July 1, 2008 the Improvements have been completed, or substantially completed, and are currently being used by both parties; therefore, in accordance with their prior understandings and agreements, the parties wish to formalize their agreement herein.

K. On April 9, 2002, the parties entered into a Lease Agreement (hereinafter "the Lease"), by which the Town leased from the Fire Company a portion of the Property for a period of thirty-three (33) years, under certain terms and conditions. This Agreement is intended to supplement the terms of the Lease; provided, however, that in the event of any inconsistency between this Agreement and the Lease, the terms of this Agreement shall control.

NOW, THEREFORE, in consideration of the mutual covenants and promises of each of the parties hereto, and other good and valuable consideration, the sufficiency of which is acknowledged by both parties, they do hereby agree, for themselves their successors and assigns, as follows:

1. **Incorporation of Recitals.** The parties acknowledge the statements made in the Recitals stated above and the accuracy thereof and incorporate all of the Recitals herein.

2. **Ownership of Property; Use and Occupancy of the Property:**

A. The Fire Company shall remain the owner of the Property, subject to any liens, easements, restrictions, covenants, and other encumbrances on the Property. The Town shall not acquire any ownership interest in the Property through adverse possession, prescription or other long term use. The ownership interest of the Fire Company shall be subject to the terms and conditions of this Agreement and the right and entitlement of the Town to use and occupy portions of the Property as set forth herein.

B. The Town and the Fire Company, respectively, shall be entitled to the exclusive use and occupancy of those areas designated, respectively, for either Town use and occupancy or Fire Company use and occupancy on the attached Exhibit "A".

C. Each party shall be entitled to permit third parties to use their respective designated areas, or any portions thereof, either gratuitously or for payment, and without notice to or advance consent or permission of the other.

D. The areas designated for Town use and occupancy, as delineated in Exhibit "A", shall be used by the Town for the general functions of Town government as directed by the Mayor and Council, and for use by third parties as authorized by the Mayor and Council. During the term of this Agreement, the Town shall have the peaceful and quiet use of the areas designated for Town use and occupancy without hindrance or interruption by the Fire Company, or any person or persons lawfully claiming by, through or under the Fire Company.

E. The areas designated for Fire Company use and occupancy, as delineated in Exhibit "A", shall be used by the Fire Company to provide for general fire and rescue operations and for use by third parties as authorized by the Fire Company. During the term of this Agreement, the Fire Company shall have the peaceful and quiet use of the areas designated for Fire Company use and occupancy without hindrance or interruption by the Town, or any person or persons lawfully claiming by, through or under the Town.

F. Each party shall use and occupy their respective areas of the Property and the Improvements subject to and in accordance with all applicable zoning and other governmental regulations. Each party shall use its portion of the Property and Improvements so as not to conflict with the fire laws or regulations or with any insurance policy thereon or with any statutes, rules or regulations now existing or subsequently enacted or established by the local, state, or federal governments. Neither party shall use or permit the use of the Property or the Improvements, or any part thereof, for any disorderly, unlawful or extra hazardous purpose.

G. Each party shall have use of the parking provided for the Property subject to those spaces marked with signage on the Property and designated for specific users and/or uses. The

Town shall generally have allocated on a first come first serve basis those spaces along the frontage and along the southern retaining wall of the Property. The Fire Company shall generally have allocated on a first come first serve basis those spaces on the north and south side of the engine bay. However, in the event either entity may need use of the parking areas generally designated for the other as described herein, nothing shall prohibit either party from making use of those spaces, which are generally intended for their individual allocation but overall may be jointly used.

3. Payments

Recitals: The total cost of the Improvements as paid for from the 2002 Bond, the Line of Credit, and the Cash Reserves was \$6,003,489.31. The parties wish to divide this total cost between the parties on the basis of a 60/40 split, based in part upon their respective usage areas of the Property, with the Town paying 40% of the total cost (or, \$2,401,395.72), and the Fire Company paying 60% of the total cost (or, \$3,602,093.59). After giving credit to each party for their respective cash reserve contribution already made [i.e., \$1,618,854.38 (Town); \$267,316.30 (Fire Company)], the Town's remaining obligation is \$782,541.34, and the Fire Company's remaining obligation is \$3,334,777.29. The remaining obligation of the Town approximates the amount borrowed on the Line of Credit, and the remaining obligation of the Fire Company approximates the amount of the 2002 Bond. Therefore, the parties agree as follows:

A. The Fire Company shall pay to the Town, without notice, abatement, deduction or set-off, those amounts for which the Town is obligated under the terms of the 2002 Bond, the related Pledge Agreement, Repayment Agreement and other Program Documents. Said payments shall be made to the Town on an annual or bi-annual (twice per year) basis, or on such other schedule as agreed to by and between the parties, until the obligations of the Town under the Bond are satisfied and paid in full. Said payments shall be made in a timely manner so as to permit the Town to pay its obligations under the 2002 Bond in a timely manner. The obligation of the Fire Company to make the payments set forth in this paragraph shall continue and be independent of whether the Town, for any reason, terminates or discontinues its use and occupancy of all or any portion of the Property or whether this Agreement terminates for any reason. Payments by the Fire Company under this paragraph shall be submitted to the offices of the Town, 301 Main Street,

Myersville, Maryland, 21773. Checks shall be made payable to "Town of Myersville".

B. The Town shall be solely liable for the payments, as they come due, under the Line of Credit, and shall indemnify and hold harmless the Fire Company from any liability thereon. The obligation of the Town to make the payments set forth in this paragraph shall continue and be independent of whether the Town, for any reason, terminates or discontinues its use and occupancy of all or any portion of the Property or whether this Agreement terminates for any reason.

C. Town shall continue to pay to the Fire Company the annual lease payment required under the terms of the Lease, and shall continue to pay said amounts until the expiration of the Term of this Agreement.

4. Payment of Utilities

A. The Fire Company shall pay and be responsible for 60% of the costs of utilities to serve the Property and Improvements thereon, unless otherwise specified herein.

B. The Town shall pay and be responsible for 40% of the costs of utilities to serve the Property and the Improvements thereon, unless otherwise specified herein.

C. The Fire Company shall be responsible for costs associated with the annual Frederick County Landfill fee.

D. The Town shall be solely responsible for costs associated with lawn maintenance and snow removal for the Property and the Improvements thereon.

5. Repairs

A. All "major" repairs, replacements and maintenance to the Property or the Improvements shall not be made unless and until the parties have consulted with one another regarding those major repairs, replacements and maintenance and the parties have entered into a joint agreement regarding those major repairs, replacements and maintenance and the funding of them. Each party shall promptly report to the other any problems requiring major repairs, replacements or maintenance. Neither party shall order major repairs, replacements, or maintenance without prior written approval from the other, and each party shall be solely liable for such expenses incurred without the other's prior written approval. "Major repair, replacement, or maintenance" is defined as any one repair, replacement or maintenance which costs \$5,000.00 or more.

Notwithstanding the foregoing, in the event that an emergency arises requiring immediate attention and repair, such emergency repairs may be undertaken by either party without consultation with the other; provided, however, that such emergency repairs may be undertaken only to the extent so as to address and alleviate the immediate emergency. The cost of such emergency repairs shall be shared by the parties in accordance with the provisions stated elsewhere in this agreement.

B. Consistent with other sections of this agreement and based on approximate usage, both parties will be jointly responsible, on a *pro rata* basis, for all "minor" repairs, replacement and maintenance to the Property and Improvements and the payment therefore. The Fire Company shall be responsible for 60% of the cost of all such minor repairs, replacement and maintenance, and the Town shall be responsible for 40% of the cost of all such minor repairs, replacement, maintenance. "Minor repair, replacement and maintenance" is defined as any one repair, replacement or maintenance which costs more than \$500.00, but less than \$5,000.00.

Each party shall be solely responsible, without contribution from the other, for regular and periodic repairs and maintenance to and replacement of that portion of the Property and Improvements which is under their respective use, occupancy and control as set forth in Paragraph 2 above and which costs, for any one such item, less than \$500.00.

Subject to the provisions above, the Town shall maintain the areas under its exclusive use and occupancy in the same general condition in which they existed at the time of the execution of this Agreement, normal wear and tear excepted.

C. The Town shall not make any physical alterations, additions or improvements to the Property or the Improvements without first obtaining the Fire Company's written consent. Any alterations, additions or improvements made by the Town shall become and remain the property of the Fire Company at the termination of this Agreement; however except for pedestrian walkways, the Fire Company may require the Town to remove any such alterations, additions or improvements

and to restore the Property or Improvements to the same condition as they were at the commencement date of this Agreement, normal wear and tear excepted.

6. Indemnification

A. The Fire Company hereby agrees to indemnify, defend and save the Town harmless from any and all liability or claims for any loss, injury or damage to persons or property occurring anywhere on or about those portions of the Property and Improvements which are designated as under the exclusive use and occupancy of the Fire Company.

B. The Town hereby agrees to indemnify, defend and save the Fire Company harmless from any and all liability or claims for any loss, injury or damage to persons or property occurring anywhere on or about those portions of the Property and Improvements which are designated as under the exclusive use and occupancy of the Town.

7. Insurance

A. The Fire Company shall, at all times, insure the Property and the Improvements of which are designated as under the exclusive use and occupancy of the Fire Company with a policy of insurance issued by an insurance and/or casualty company against damage by water, fire, wind, storm, and other hazards to the full fair market value of the Property. The Fire Company shall also maintain at all times and with respect to the Property and the Improvements a policy of comprehensive liability insurance for personal injury and for property damage issued by an insurance and/or casualty company. The Town shall be named as an additional insured on all such policies.

In the event that the Fire Company fails or refuses to obtain any insurance required hereunder, the Town shall have the option, but shall not be obligated, to obtain such insurance in which event the Town shall be entitled to recover from the Fire Company the cost of such insurance.

B. The Town shall at all times, insure the Property and the Improvements of which are designated as under the exclusive use and occupancy of the Town with a policy of

insurance issued by an insurance and/or casualty company against damage by water, fire, wind, storm, and other hazards to the full fair market value of the Property. The Town shall also maintain at all times and with respect to the Property and the Improvements a policy of comprehensive liability insurance for personal injury and for property damage issued by an insurance and/or casualty company acceptable to the Town.

In the event that the Town fails or refuses to obtain any insurance required hereunder, the Fire Company shall have the option, but shall not be obligated, to obtain such insurance in which event the Fire Company shall be entitled to recover from the Town 40% of the cost of such insurance.

8. Termination of Fire Company In the event that the Fire Company, either voluntarily or involuntarily, dissolves, forfeits its corporate charter, makes an assignment for the benefit of creditors, or becomes subject to a receivership, bankruptcy or reorganization, then, in any of those events, this Agreement shall, at the option of the Town, remain in force and effect in which case, the Agreement shall be binding upon any successor entity, receiver, trustee or assignee. Upon the occurrence of any such event, the Town shall have the first option to acquire by conveyance the Property and Improvements on terms agreed to by and between the Town and any successor entity, receiver, trustee or assignee.

9. Notices. Any notices from one party to the other, including any notices required to be given under the terms of this Agreement, shall be either hand-delivered or mailed, postage prepaid, to the following:

As to the Fire Company:

Myersville Volunteer Fire Co. Inc.
301 Main Street P.O. Box 95
Myersville, MD 21773

As to the Town:

Town of Myersville
301 Main Street P.O. Box 295
Myersville, MD 21773

Either party may designate a new address to the other by written notice.

10. **No Partnership** Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture of or between the Fire Company and the Town or create any other relationship between the parties hereto.

11. **Assignment.** Neither party shall assign, transfer, or convey their rights or obligations or any portion thereof under this Agreement, either in whole or in part, without the prior written permission of the other, nor may such permission be denied for any reason at the sole discretion of the other.

12. **Integration, Modification or Waiver.** This Agreement contains the entire understanding between the parties. There are no representations, terms, conditions, statements, warranties, promises, covenants or understandings, oral or written, other than those expressly set forth herein. No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement. The failure of either party to insist in any one or more instances upon the strict performance of any of the terms of this Agreement by the other party shall not be construed as a waiver or relinquishment of such term or terms for the future, and the same shall nevertheless continue in full force and effect.

13. **Mediation of Disputes:** In the event of a dispute between the parties regarding any matter relating to this Agreement, then the parties agree, as a condition precedent, to submit their dispute to mediation prior to instituting litigation in a court of competent jurisdiction. A party may, however, file an action in a court of competent jurisdiction to resolve a dispute if, after good faith efforts have been made to proceed to mediation, the other party refuses or fails to engage in mediation. The parties shall engage in at least two (2) mediation sessions of at least two (2) hours

each, and they shall equally divide the cost of mediation. The parties shall jointly select the individual mediator to conduct the sessions. In they cannot agree on a mediator, then each shall select one mediator and the selected mediators shall select a third mediator to conduct the mediation sessions.

14. **Term.** The term of this Agreement shall commence on the date of this Agreement written above and shall expire on the date of the ninety-ninth (99th) annual anniversary of this Agreement. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed by their respective authorized representatives.

ATTEST:

TOWN OF MYERSVILLE

Kathy Gaver

By: Wayne S. Creadick

Kathy Gaver, Town Clerk

Wayne Creadick, Mayor

ATTEST:

MYERSVILLE VOLUNTEER

FIRE COMPANY, INC.

Spencer C. Cawley
Witness

By: Raymond F. Hinkle, Pres.

President

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 7th day of December, 2009, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Ray Hinkle, President of Myersville Volunteer Fire Company, Inc., known to me (or satisfactorily shown to be), and who, as President of the said Myersville Volunteer Fire

Office Copy Do Not Remove

Company, Inc., executed the foregoing document for the purposes therein contained and who further acknowledged that, as President of Myersville Volunteer Fire Company, Inc., he is authorized to do so and that his act is the act of the Corporation.

WITNESS my hand and Notarial Seal.

Kathy E. Lawer
Notary Public

My Commission Expires: 9/1/2010

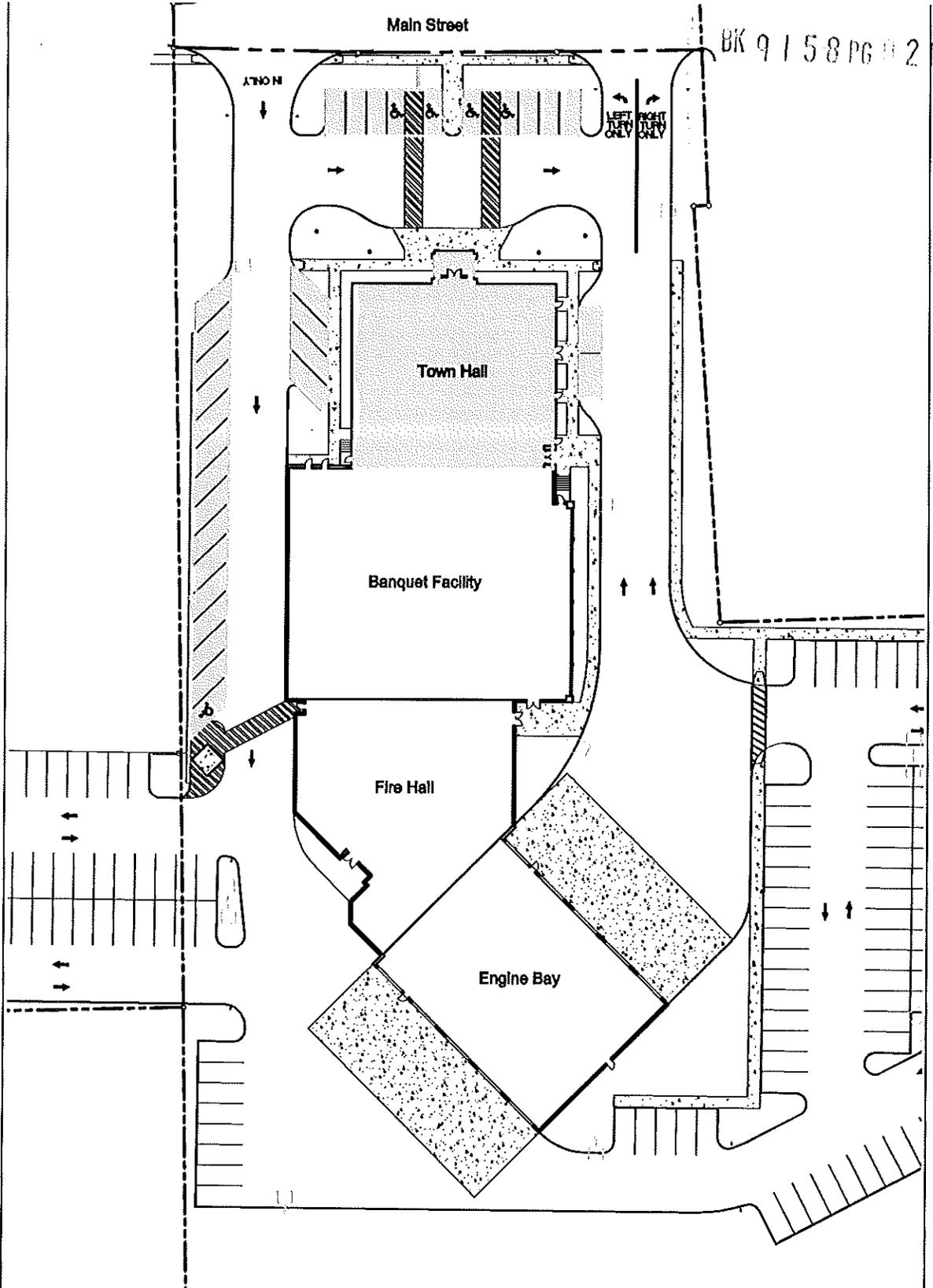
STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 7th day of December, 2009, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, personally appeared **Wayne Creadick**, Mayor of the Town of Myersville, known to me (or satisfactorily shown to be), and who, as Mayor, executed the foregoing document on behalf of the Town of Myersville for the purposes therein contained and who further acknowledged that, as Mayor, he is authorized to do so and that it is the act of the Town of Myersville.

WITNESS my hand and Notarial Seal.

Kathy E. Lawer
Notary Public

My Commission Expires: 9/1/2010



TAX MAP: 700-244	DISTRICT: XXXX
DRAWING NUMBER 1 OF 1	
DRAWN BY: JTD	DATE: 02/24/10
CHECKED BY: XXX	DATE: XX/XX/XX
SCALE: 1" = 50'	

FREDERICK SEIBERT & ASSOCIATES, INC. © 2010



CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS
 128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
 20 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
 (301) 791-9800 (301) 414-7478 (717) 867-1007 FAX (301) 790-4099

JOB NUMBER: 3886

Agreement Exhibit A

MMC CKBK DEPOSITS	Bond	LOC	Town	MVFC	misc		CHECKS WRITTEN
131,500.00	2003 131,500.00					131,500.00	126,659.10
356,757.80	2004 356,757.80					356,757.80	358,904.28
1,658,303.60	2005 1,658,303.60					1,658,303.60	1,627,230.54
1,890,651.32	2006 1,153,438.60		666,648.72	70,564.00		1,890,651.32	1,900,993.95
690,506.14	2007	446,200.00	244,009.80		296.34	690,209.80	709,337.05
362,000.00	2008	362,000.00				362,000.00	365,433.57
17,000.00	2009	17,000.00				17,000.00	3,800.00

5,106,718.86	3,300,000.00	825,200.00	910,658.52	70,564.00	296.34	5,106,718.86	5,092,358.49
33,270.37			33,270.37		int	33,270.37	14,360.37
55,307.61			27,653.81	27,653.81	int	55,307.61	CLOSE BALANCE
82,900.00	82,900.00					82,900.00	IN BOND CK
59,869.64			59,869.64		int	59,869.64	358,006.72
435.00			435.00			435.00	
435.00			435.00			435.00	
145.00			145.00			145.00	
65,877.73				65,877.73	int	65,877.73	783,803.73
56,398.43				56,398.43	int	56,398.43	
64,143.82			64,143.82		int	64,143.82	2,531,576.52
4,561.00			4,561.00			4,561.00	
180,824.29			180,824.29			180,824.29	
16,135.20			16,135.20			16,135.20	
114,124.45			114,124.45			114,124.45	
32,598.00			32,598.00			32,598.00	
56,588.46			56,588.46		int	56,588.46	
(70,564.00)				(70,564.00)		(70,564.00)	FIRE CO PAID BACK
70,845.61				70,845.61	int	70,845.61	4,837,683.48 OK
(296.34)					(296.34)	(296.34)	
7,893.69			7,893.69			7,893.69	
456.96			456.96			456.96	
220.60			220.60			220.60	
2,783.55				2,783.55		2,783.55	
5,000.00			5,000.00			5,000.00	
1,313.88			1,313.88			1,313.88	
(69,900.00)		(69,900.00)				(69,900.00)	
73,914.39			73,914.39			73,914.39	5,568,407.26
(6,521.00)		(6,521.00)					
72,928.61			29,171.44	43,757.17		72,928.61	
(1,150.00)			(1,150.00)			(1,150.00)	
590.87			590.87			590.87	6,003,469.31

911,130.82	82,900.00	(76,421.00)	708,195.86	196,752.30	(296.34)	911,130.82
6,017,849.68	3,382,900.00	748,779.00	1,618,854.38	267,316.30		6,017,849.68

6,003,469.31 - wip
 14,360.37 - Balance in check book
 14168.89 Difference in interest income

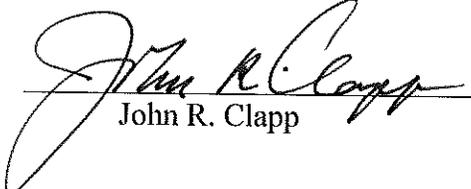
PRINCIPAL PAID	60,500.00		60,500.00			2,400,000.00
	62,900.00		62,900.00			40.00
	67,800.00		67,800.00			60,000.00
	69,900.00	69,900.00				
	72,400.00		28,960.00	43,440.00		

PRIN PYMT	333,500.00	69,900.00	28,960.00	234,640.00		
		818,679.00	1,647,814.38	501,956.30		

87,197.17						
58,131.44						
145,328.61						
		60%	40%			
72,400.00	PRIN	43,440.00	28,960.00			
72,928.61	INT	43,767.17	29,171.44			

815,000.00 LOC
 2,916,600.00 BOND
 3,731,500.00 TOTAL DEBT
 rd. ins. fee

I, the undersigned, hereby certify that I am an Attorney duly admitted to practice before the Court of Appeals of the State of Maryland, and that the within instrument was prepared under my supervision.


John R. Clapp