Date: Monday, March 21, 2011

To: Honorable Mayor and City Council

From: Troy Vitek, Assistant City Engineer

Request:

Consideration of a request to accept a deferral agreement for curb and gutter improvements on property located at 236 Washington Street South care of Glanbia Foods, Inc.

Background:

The corporation is constructing an addition to their building of more than 25%. The owner wishes to defer installing new curb and gutter along Washington Street South.

Approval Process:

City Code section 10-11-5(B)(2) allows the City Engineer to defer the construction.

Budget Impact:

There is no significant budget impact associated with the Council's approval of this request.

Regulatory Impact:

Approval of this request will allow the applicant to receive a Certificate of occupancy for this property and defer the required improvements until such time as the adjacent property or properties allows the City Engineer to require construction under the conditions specified in City Code Section 10-11-5(B)(2).

Conclusion:

Staff recommends that the Council approve the curb and gutter deferral as presented.

Attachments:

1. Sidewalk Improvement Deferral Agreement.
2. Copy of Warranty Deed of Property
3. Arial photograph of property.

CURB-GUTTER IMPROVEMENT DEFERRAL AGREEMENT

This Agreement made and entered into this _____ day of _____, 20___, by and between the CITY OF TWIN FALLS, State of Idaho, a municipal corporation, hereinafter called "City", and **Glanbia Foods, Inc.**, hereinafter called "Developer", for the purpose of constructing certain improvements on property sought to be developed at **236 Washington Street South**.

WHEREAS, Developer certifies that he is the owner in fee simple or the authorized agent of the owner in fee simple of the real property described on the attached Exhibit "A"; and,

WHEREAS, there is attached hereto and incorporated herein as if the same were set out in full, a certified copy of the deed to the above described real property, marked Exhibit "A", showing ownership of said real property to be in Developer, or, as the case may be, there is attached hereto and incorporated herein as if the same were set out in full, a copy of the deed to the above described real property showing ownership in fee simple in someone other than Developer together with a notarized authorization, signed by the real property owner, authorizing Developer to act on behalf of said real property owner; and,

WHEREAS, Developer desires to develop said real property in the following manner: **Addition of more than 25%**; and,

WHEREAS, the Developer is obligated to construct certain improvements, namely curb-gutter, pursuant to Title 10, Chapter 11 of the Twin Falls City Code; and,

WHEREAS, the City is authorized, pursuant to Twin Falls City Code Section 10-11-5(B)(2) to defer said improvements; and,

WHEREAS, the City Council on _____ agreed to defer construction of the aforementioned improvements,

WITNESSETH, that for and in consideration of the mutual promises, conditions and covenants contained herein, the parties agree as follows:

I.

City agrees: 1) to defer construction of the required curb and gutter along Highland Avenue West until _____, or until such time as the obligation of curb-gutter construction on adjacent property or properties allows the City Engineer to require construction under the conditions specified in City Code Section 10-11-5(B)(2).

II.

Developer agrees to: 1) complete construction of curb-gutter on the real property described above when required by the City Council.

III.

Developer further agrees that in the event the Developer fails to complete the aforementioned construction, the City may complete the construction at the City's expense and may file a lien against the aforementioned property for expenses incurred by the City in said construction.

IV.

Developer agrees to pay the total actual cost of all materials, labor and equipment necessary to completely construct all of the improvements required herein and to construct or contract for the construction of all such improvements.

V.

Developer agrees to request in writing that the City Engineer and any other required department of the City make the following inspections and to not proceed with construction until the required inspection is complete and the work has been approved in writing by the City Engineer or his authorized inspector. All such inspections shall be scheduled fifteen (15) days prior to beginning work and the request for an inspection shall be made one working day before the required inspection. Developer agrees to apply all costs resulting from his failure to properly schedule and request a required inspection or from proceeding with work before receiving approval to proceed. Developer agrees to remove or correct any rejected, unapproved or defective work or materials all as required by the City Engineer.

Required inspections shall include: 1) approval of all materials before inspection; 2) approval of forms and gravel base before pouring any concrete curb-gutter; and 3) approval of finished curb-gutter.

VI.

The Developer agrees to: 1) allow the City full and complete access to the construction; 2) provide all materials necessary to conduct all tests; and 3) provide the equipment and perform or have performed any testing of manufactured materials required by the City Engineer.

VII.

Developer agrees to obtain any necessary permits from the Twin Falls Highway District or the State of Idaho Department of Highways prior to construction improvements on their respective rights-of-way if said permits are required by the aforementioned agencies. A certified copy of said permit or the original of said permit shall be submitted to the City prior to beginning construction thereon.

This Agreement shall be recorded and shall bind the parties hereto, their heirs, successors in interest, and lawful assigns.

In the event of a breach of this Agreement, or should legal action of any kind be taken to enforce the provisions hereof, the prevailing party shall be entitled to reasonable attorney fees and cost awarded by the Court.

CITY OF TWIN FALLS, IDAHO

BY_____
Mayor

DEVELOPER

STATE OF IDAHO
On this day of , 20 , before me a notary public in and for said State, personally appeared

known to me to be the person who name subscribed to the within instrument, and acknowledged to me that executed the same.

Notary Public
Residing at Twin Falls, Idaho

STATE OF IDAHO
On this 7th day of March , 2011 , before me a notary public in and for said State, personally appeared

known to me to be the person who name subscribed to the within instrument, and acknowledged to me that executed the same.

Tina M. Thatcher
Notary Public
Residing at Twin Falls, Idaho

TINA M. THATCHER
NOTARY PUBLIC
STATE OF IDAHO

expires 5/31/2013

Glanbia Foods, Inc.
1373 Fillmore Street
Twin Falls, ID 83301-3380

Telephone (208) 733-7555
Facsimile (208) 733-9222

Corporate Certificate

of

Glanbia Foods, Inc.
(the "Corporation")

To: City of Twin Falls

WE CERTIFY THAT:

1. We are authorised by the Corporation to give this certificate.

2. Attached hereto marked "A" is a list of the present Directors, Treasurer, Chief Financial Officer, Secretary and President of the Corporation.

This certificate is given without personal liability on the part of the persons signing it, save where a statement in this certificate is made fraudulently, negligently or with intent to mislead.

Signed:

Daragh Maccabee
Director

Jeffry Williams
Director

Dated this 07 day of March 2011

"A"

Directors, Treasurer, Chief Financial Officer, Secretary and President

Board Positions		
Name	**Position**	**Appointed**
Michael Joseph Horan	Director	28/05/2009
Daragh Maccabee	Director	08/09/2006
John Joseph Moloney	Director	13/12/1999
Hannah Josephine (known as Siobhan) Talbot	Director	24/11/2004
Jeffry Williams	Director	08/09/2006

Officers		
Name	**Position**	**Appointed**
Daragh Maccabee	Secretary	08/09/2006
	Treasurer	08/09/2006
	Chief Financial Officer	06/08/2008
Jeffry Williams	President	08/09/2006

40703058

WARRANTY DEED

For Value Received, DAIRY FARMERS OF AMERICA, INC., a Kansas cooperative marketing association, successor by merger to Western Dairymen Cooperative, Inc., which was the successor by merger to Mountain Empire Dairymen's Association, Inc., hereinafter called the "Grantor," hereby grants, bargains, sells and conveys unto GLANBIA FOODS, INC., an Idaho corporation, formerly known as Avonmore West, Inc., whose address is 1572 East Highway 26, Richfield, Idaho 83349, hereinafter called the "Grantee," the following described premises situated in Twin Falls County, Idaho, to-wit:

See Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's successors and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that the premises are free from all encumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

DATED this 4th day of November, 2003.

Twin Falls County, Idaho
Recorded for:
ALLIANCE TITLE
04:09pm Nov.17,2003
2003-029807
No. of Pages: 3 Fee: $9.00
KRISTINA GLASCOCK
County Clerk
Deputy: JA

DAIRY FARMERS OF AMERICA, INC., a Kansas cooperative marketing association, successor by merger to Western Dairymen Cooperative, Inc., which was the successor by merger to Mountain Empire Dairymen's Association, Inc.

By David A. Geisler
David A. Geisler
Corporate Vice President/Legal

STATE OF MISSOURI)
: ss.
COUNTY OF PLATTE)

On this 4th day of November, 2003, before me a notary public in and for said State, personally appeared David A. Geisler, known or identified to me to be the Corporate Vice President/Legal of the Grantor that executed the above instrument and the person who executed the instrument on behalf of said Grantor and acknowledged to me that such Grantor executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Marsha A. Irwin
Notary Public

rb/real/Twin Falls Warranty Deed.wpd
N-9397

"NOTARY SEAL"
Marsha A. Irwin, Notary Public
Clay County, State of Missouri
My Commission Expires 10/3/2006

EXHIBIT "A"

Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho

Section 20: A parcel of land in the South half of the Northeast quarter of the Northeast quarter and being more particularly described as follows:

COMMENCING at the Northeast corner of Section 20, Township 10 South, Range 17 E., B.M.;

THENCE along the East boundary of said Section 20 on a bearing of South 0°04'01" West a distance of 680.88 feet;

THENCE on a bearing of North 89°31'51" West a distance of 50.00 feet to the West boundary of State Highway 74 and the real POINT OF BEGINNING;

THENCE from this REAL POINT OF BEGINNING and along the said West boundary of State Highway 74 on a bearing of South 0°04'01" West a distance of 640.82 feet to the North boundary of Highland Avenue;

THENCE along the North boundary of Highland Avenue on a bearing of North 89°28'28" West, a distance of 1,269.80 feet to the West boundary of the South half of the Northeast quarter of the Northeast quarter, Section 20;

THENCE along said West boundary of the South half of the Northeast quarter of the Northeast quarter on a bearing of North 0°02'13" East a distance of 639.58 feet to the South boundary of Diamond Avenue;

THENCE along the said South boundary of Diamond Avenue on a bearing of South 89°31'51" East a distance of 1,270.12 feet to the REAL POINT OF BEGINNING.

SUBJECT TO:

A. All claims, easements, encumbrances, and restrictions shown by the public records or placed in effect by Glanbia Foods, Inc.

B. Encroachments, or questions or location, boundary, and area which are dependent upon a correct survey or inspection of the premises for determination.

C. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof.

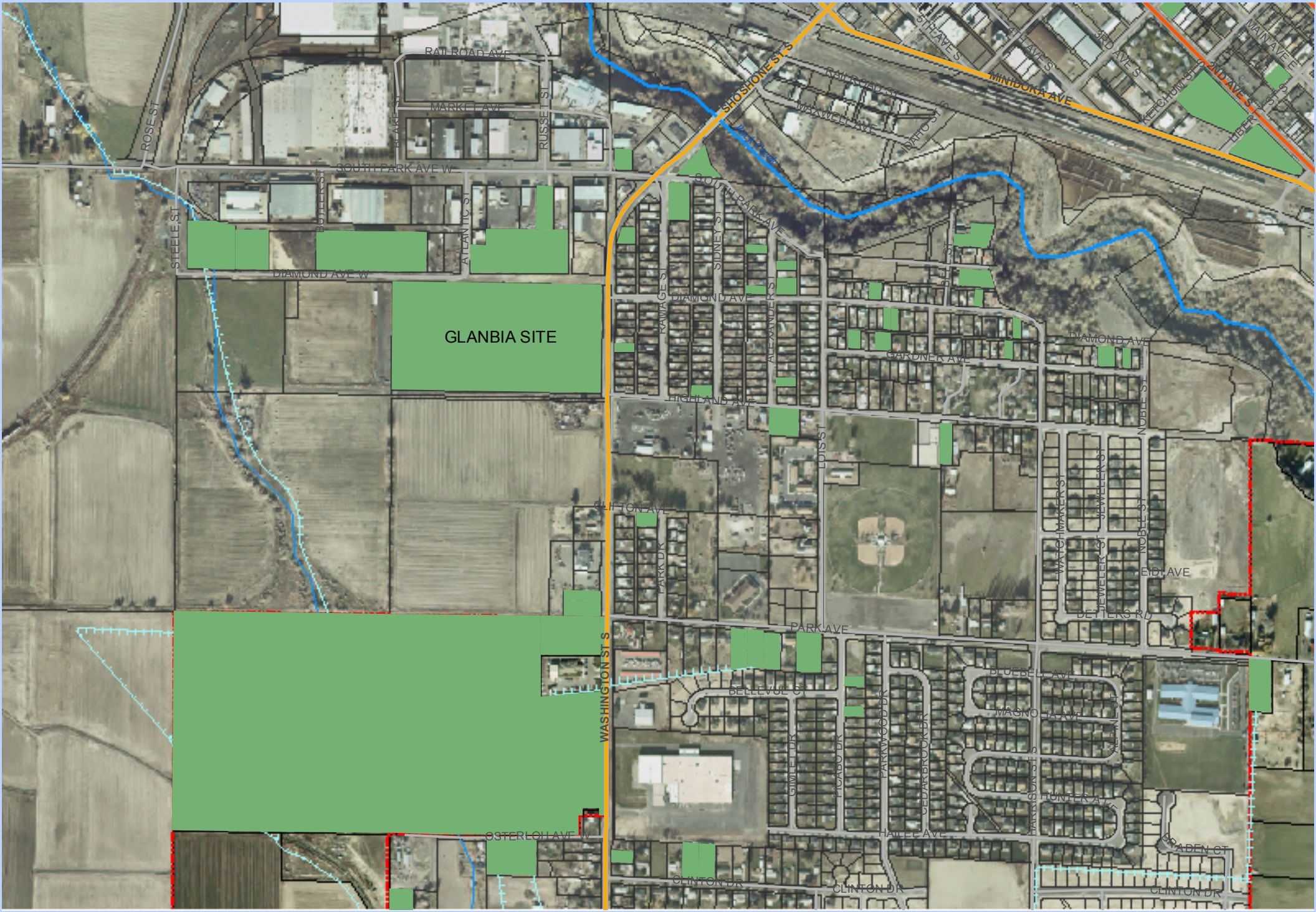
D. The following permitted encumbrances:

1. Mortgage and Chattel Security Agreement between Western Dairymen Cooperative, Inc., a cooperative corporation and Wichita Bank for Cooperatives, a corporation dated August 18, 1988, recorded November 16, 1988, as Instrument No. 947092, records of Twin Falls County, Idaho; as modified by Modification recorded August 16, 1993, as Instrument No. 1993-011749, records of Twin Falls County, Idaho.

2. UCC-1 Financing Statement from Western Dairymen Cooperative, Inc., to Wichita Bank for Cooperatives recorded November 16, 1988, as Instrument No. 947091, records of Twin Falls County, Idaho; as amended by Modification recorded July 20, 1989, as Instrument No. 957669, records of Twin Falls County, Idaho; as amended by Modification recorded March 16, 1990, as

AERIAL VIEW

Diamond Ave W
236 Washington St S
Washington St S
236 WASHIN
304 WASHIN
312 WASHIN
167 WASHIN
181 WASHIN
197 WASHIN
201 WASHIN
231 WASHIN
241 WASHIN
249 WASHIN
261 WASHIN
279 WASHIN
287 WASHIN
HIGHLAND AVE

Legend

Deferrals