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## AGENDA ITEM SUMMARY

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**Subject: Public Hearing on Development Agreement between the City and Mark Holtkamp for construction of an senior living facility**

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**Background Summary:**

Mark Holtkamp approached the City about partnering on a 70 unit independent/ assisted living care facility that also includes memory care and nursing level care. We held public hearing on the Urban Renewal Plan and the development agreement in July 2020, we did not approve the development agreement as the legal description and platting work needed to be completed. That work is no done. Additionally Mr. Holtkamp and I along with the county assessor completed additional taxable valuation work as it appeared the building would valued higher than orginally anticipated. As you may recall the proposal calls for a 100% tax rebate over ten years which would generate somewhere between \$1.7MM and \$2MM in eligible taxes for rebate. The agreement provides for a total rebate of \$2MM over ten years, whichever comes first. Ultimately it was estimated that the building might end up with a higher value, which in turn would generate a larger increment that could be rebated. Until plans are completed and ultimately the building built, it is hard to say exactly what the final value will be. A minimum assessment agreement does not really fit the situation really here.

With the potential new assessment the final amount is likely closer to \$2MM than the original, but Mr. Holtkamp would like to stick with the \$2MM rebate as we would not need to make any other changes or re-amend the UR district and the agreement could be approved at the next council meeting.

Also, since our last meeting Mark Holtkamp successfully petitioned the state of Iowa to get permission to add the nursing care beds for his project. Letters of support for this project came from CCArea Development Corp., Charles City Business Improvement Committee and Charles City Community Revitalization overall. Letter opposing the proejct came from Sue and David Ayers of Chautauqua Guest homes. I've notified each of these entities to let them know of our discussion for January 13th.

Attached:

- Sample site plan from the Tama/Toledo project. Going to be similar in nature
- Development agreement which contains only changes in dates from the version we reviewed in July 2020.
- Two recent TIF rebate payment scenarios based on valuation low & high from assessor.

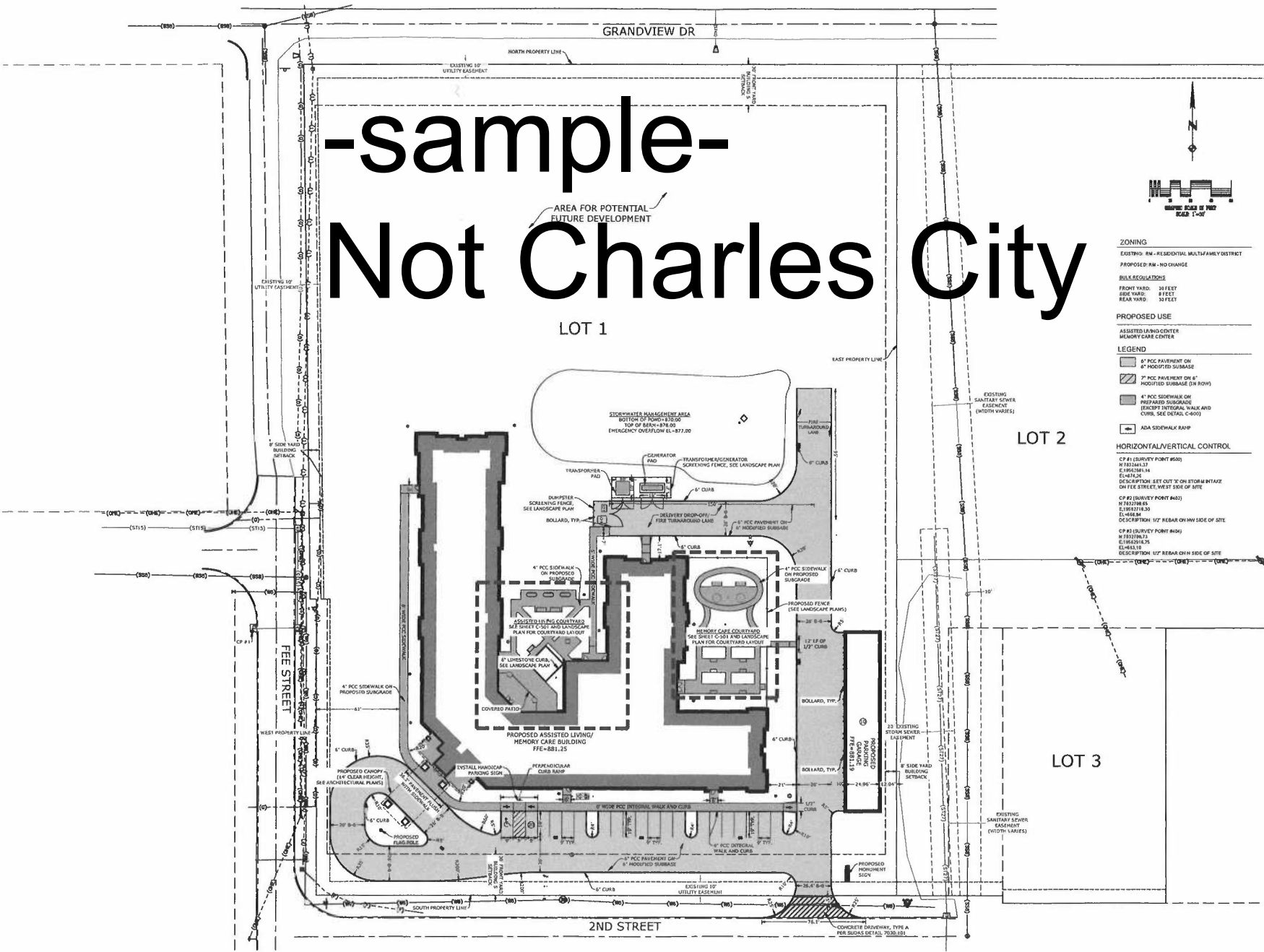
# -sample- Not Charles City

AREA FOR POTENTIAL FUTURE DEVELOPMENT

LOT 1

LOT 2

LOT 3



**ZONING**  
 EXISTING: RM - RESIDENTIAL MEDIUM DENSITY  
 PROPOSED: RM - NO CHANGE

**MINIMUM REQUIREMENTS**  
 FRONT YARD: 20 FEET  
 SIDE YARD: 8 FEET  
 REAR YARD: 25 FEET

**PROPOSED USE**  
 ASSISTED LIVING-CENTER  
 MEMORY CARE CENTER

**LEGEND**  
 6" PCC PAVEMENT ON 4" MODIFIED SUBBASE  
 2" PCC PAVEMENT ON 4" MODIFIED SUBBASE (IN ROW)  
 4" PCC SIDEWALK ON PREPARED SUBGRADE (EXCEPT INTEGRAL WALK AND CURB, SEE DETAIL C-400)  
 ADA SIDEWALK RAMP

**HORIZONTAL/VERTICAL CONTROL**

CP #1 (SURVEY POINT #60)  
 N 782344.37  
 E 396556.14  
 E 4747.26  
 DESCRIPTION: SET OUT 7' ON STORM INTAKE ON FEE STREET, WEST SIDE OF SITE

CP #2 (SURVEY POINT #42)  
 N 782378.85  
 E 3965718.30  
 E 45458.4  
 DESCRIPTION: 1/2" REBAR ON HW SIDE OF SITE

CP #3 (SURVEY POINT #48)  
 N 782378.85  
 E 3965718.30  
 E 45458.4  
 DESCRIPTION: 1/2" REBAR ON HW SIDE OF SITE

PRINTS ISSUED  
 05/22/2020 - ISSUED FOR PERMIT/BD

REVISIONS



BIRKWOOD VILLAGE OF  
 TAMA/TOLEDO  
 308 2ND AVENUE  
 TOLEDO, IA 52342

SHEET TITLE  
 SITE LAYOUT PLAN

PROJECT NUMBER: 19051

SHEET NUMBER:

C-200

DRAWN BY: DAL CHECKED BY: BWJ

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Charles City, Iowa (the “City”) and [Mark Holtkamp] (the “Developer”) as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “Commencement Date”).

WHEREAS, the City has established the South Grand Urban Renewal Area (the “Urban Renewal Area”), and the City has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain real property which is situated in the City and lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the “Property”); and

WHEREAS, the Developer has proposed to undertake the construction (the “Project”) of a new care center (the “Care Center”), including assisted living and memory care facilities, for use in its business operations on the Property; and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Developer in paying the costs of constructing and maintaining the Project; and

WHEREAS, the taxable base valuation of the Property for purposes of calculating Incremental Property Tax Revenues under this Agreement and Section 403.19 of the Code of Iowa is \$28,220 (the “Base Valuation”); and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

### A. Developer’s Covenants

1. Project Construction and Operation. The Developer agrees to undertake the Project on the Property. The Developer further agrees that he will maintain and operate the Care Center throughout the Term (as hereinafter defined) of this Agreement. At minimum, the Care Center will include assisted living and memory care facilities. Furthermore, the Developer expects to invest approximately \$13,000,000 into capital improvements for the Project, including construction work, equipment, furnishings and other capital improvements.

The Developer agrees to submit a detailed site plan (the “Site Plan”) for the development of the Project to the City for approval by the City Council. Upon approval by the City Council, the Site Plan shall be attached hereto as Exhibit B. The Developer agrees to construct the Project in accordance with the Site Plan and to complete construction of the Project by December 31, 2021. The Developer agrees to maintain compliance with local zoning, land use, building and safety codes and regulations.

**2. Property Taxes.** The Developer agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term (as hereinafter defined) and to submit a receipt or cancelled check in evidence of each such payment.

**3. No Abatement; No Property Tax Exemption.** The Developer agrees that he will not seek any tax exemption or abatement either presently or prospectively authorized under any State, federal or local law with respect to taxation of the Property throughout the Term (as hereinafter defined) including causing or allowing the property to be leased, sold, transferred to or otherwise used by an entity that is exempt from property taxes under the laws of the State of Iowa.

**4. Developer's Certifications.** The Developer agrees to submit documentation to the satisfaction of the City by no later than each October 15 during the Term (as hereinafter defined) commencing October 15, 2022, demonstrating that the Care Center is being used as part of the Developer's business operations and that such Care Center includes nursing home, independent living, assisted living and memory care facilities.

**5. Property Tax Payment Certification.** Furthermore, the Developer agrees to certify to the City by no later than October 15 of each year during the Term, as hereinafter defined, commencing October 15, 2022, an amount (the "Developer's Estimate") equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. In submitting each such Developer's Estimate, the Developer will complete and submit the worksheet attached hereto as Exhibit C. The City reserves the right to review and request revisions to each such Developer's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Floyd County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to the taxable incremental valuation of the Property.

Upon request, the City staff shall provide reasonable assistance to the Developer in completing the worksheet required under this Section A.5.

**6. Employment Requirements.** The Developer agrees to establish and maintain not less than 30 full-time employment positions full-time equivalent employment positions (the "Jobs Requirement") in connection with its operations on the Property by no later than July 22, 2022. The Developer will provide a written report (the "Annual Report") to the City by no later than October 15 of each year during the Term (as hereinafter defined), commencing October 15, 2022, detailing the number of full-time equivalent employment positions being maintained by the Developer in connection with the operation of the Project on the Property.

**7. Low and Moderate Income Housing Assistance.** The Developer hereby represents that the Care Center will be used in the commercial business operations of the Developer. The Developer further agrees that if at any time during the Term (as hereinafter defined) of this Agreement a future judicial, administrative or legislative determination is made, resulting in the City being required to satisfy the “low and moderate income assistance” requirement, as set forth in Section 403.22 of the Code of Iowa, with respect to the Project and the Care Center, then the Developer shall be liable to the City for the provision of an amount equal to the then-required low and moderate income assistance amount (the “LMI Amount”). In satisfaction of this liability, the City shall first withhold an amount equal to the LMI Amount from the Payments (as hereinafter defined) remaining to be made hereunder before seeking cash payment from the Developer.

**8. Insurance.**

(a) The Developer, and any successor in interest to the Developer, shall obtain and continuously maintain insurance on the Property and the completed Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Project (excluding excavation and footings):

- (i) Builder’s risk insurance, written on the so-called “Builder’s Risk—Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called “all risk” form of policy.
- (ii) Comprehensive general liability insurance (including operations, contingent liability, completed operations when substantially completed and contractual liability insurance) together with an Owner’s/Contractor’s Policy naming the City, as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
- (iii) Workers compensation insurance, with statutory coverage limited to employees of the Developer.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State of Iowa to assume the risks covered by such policies. Unless otherwise provided in this Section, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In lieu of separate policies, the Developer or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Developer, its successors or assigns, agrees to notify the City promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Project resulting from fire or other casualty. Furthermore, the Developer agrees to apply the proceeds from any and all casualty claims against the insurance detailed in this Section to the restoration and improvement of the Property and/or the Project.

**9. Legal and Administrative Costs.** The Developer hereby acknowledges that the City will cover the initial payment of legal fees and administrative costs (the “Actual Admin Costs”) incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the necessary amendment to the Urban Renewal Area. Furthermore, the Developer agrees that the City shall withhold an amount (the “Admin Withholding Amount”) equal to the lesser of (1) \$10,000 or (2) the Actual Admin Costs from the initial Payments, as hereinafter set forth in order to recover some or all of the Actual Admin Costs.

**10. Default Provisions.**

**A. Events of Default.** The following shall be “Events of Default” under this Agreement, and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless otherwise provided), any one or more of the following events:

- 1) Failure by the Developer to complete construction of the Project pursuant to the terms and conditions of this Agreement.
- 2) Failure by the Developer to fully and timely remit payment of property taxes when due and owing.
- 3) Failure by the Developer to keep the completed Project in service as part of the business operations a care center, including assisted living and memory care facilities, on the Property throughout the Term (as hereinafter defined).
- 4) Failure by the Developer to comply with Sections A.3 through A.8 of this Agreement.

**B. Notice and Remedies.** Whenever any event of default described in this Agreement occurs, the City shall provide written notice to the Developer describing the cause of the default and the steps that must be taken by the Developer in order to cure the default. The Developer shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Developer fails to cure the default or provide assurances, City shall then have the right to:

- 1) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- 2) Withhold Payments provided for under Section B.1 below.

**B. City’s Obligations**

**1. Payments.** In recognition of the Developer’s obligations set out above, the City agrees to make twenty (20) semiannual economic development tax increment payments (the “Payments” and each, individually a “Payment”) to the Developer during the Term (as hereinafter defined) pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the

aggregate, total amount of the Payments shall not exceed Two Million Dollars (\$2,000,000) (the “Maximum Payment Total”), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Floyd County Treasurer attributable to the taxable valuation of the Property.

Each Payment shall not exceed an amount which represents the amount of Incremental Property Tax Revenues available to the City with respect to the Property during the six (6) months immediately preceding each Payment date.

Prior to funding any Payments under this Agreement, the City will first withhold from the Incremental Property Tax Revenues an amount equal to the Admin Withholding Amount. Once an amount equal to the Admin Withholding Amount has been withheld by the City, the Payments shall be made as hereinafter set forth.

This Agreement assumes that new valuation from the Project will go on the property tax rolls as of January 1, 2022. Accordingly, Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2023, and continuing through and including June 1, 2033, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

**2. Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term, as hereinafter defined, of this Agreement, commencing in calendar year 2022, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the “Appropriated Amount”) of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Developer’s Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year’s Payments shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer’s Estimate as called for in Section A.5 above, provided however that no Payment shall be made after June 1, 2033.

**3. Payment Amounts.** The aggregate Payments to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2023 and on June 1, 2024 the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2022). Furthermore, the amount of each such Payment shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of “back-fill” or “make-up”

payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Floyd County Treasurer attributable to the taxable incremental valuation of the Property in the six months immediately preceding the extant Payment due date.

**4. Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Floyd County Auditor an amount equal to the most recently obligated Appropriated Amount.

**C. Administrative Provisions**

**1. Amendment and Assignment.** Neither party may cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken with respect to the Project, without further action on the part of the City.

**2. Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**3. Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2033 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payment Total.

**4. Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

**5. Notices.** Except as otherwise expressly provided in this Agreement, a notice or other communication under the Agreement, by either the City or the Developer to the other, shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

a) In the case of Developer, is addressed to or delivered personally to \_\_\_\_\_, Attention:\_\_\_\_\_.

b) In the case of City, is addressed to or delivered personally to City Administrator, City Hall, 105 Milwaukee Mall, Charles City, Iowa 50616.

c) The City or the Developer may upon written notice to the other, change the address to which such notices and demands are made.



The City and the Developer have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF CHARLES CITY, IOWA

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

Attest:

\_\_\_\_\_

City Clerk

**[MARK HOLTKAMP]**

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

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B**  
**SITE PLAN**

**EXHIBIT C**  
**DEVELOPER'S ESTIMATE WORKSHEET**

- (1) Date of Preparation: October \_\_\_\_\_, 20\_\_\_\_.
- (2) Assessed Taxable Valuation of Property as of January 1, 20\_\_\_\_ after applicable commercial rollback:  
\$\_\_\_\_\_.
- (3) Base Taxable Valuation of Property:  
\$28,220.
- (4) Incremental Taxable Valuation of Property (2 minus 3):  
\$\_\_\_\_\_ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):  
\$\_\_\_\_\_ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).  
\$\_\_\_\_\_ x \$\_\_\_\_\_/1000 = \$\_\_\_\_\_ (the "Developer's Estimate").