

RESOLUTION NO. 1042

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH LYNCH EXCAVATING, INC. ON THE FORMER COOKSON COMMUNITY CENTER PROPERTY.

WHEREAS, the City Council has determined that the former Cookson Community Center Property is not appropriate for the provision of future Park & Recreation services to the citizens of the City of West Branch; and

WHEREAS, the City Council adopted Resolution 956 on October 3, 2011, a resolution of intent to dispose of an interest in real property generally referred to as the former Cookson Community Center; and

WHEREAS, the City Council adopted Resolution 957 on October 17, 2011, a resolution approving the disposal of the former Cookson Community Center and directing the administration to solicit sealed bids for the property; and

WHEREAS, City staff has been actively working with the Iowa Health Care Association, Main Street West Branch and potential investors over the past several months to market the property in anticipation of a sealed bid process; and

WHEREAS, City staff had been approached by Blue Sky Developers who expressed interest in examining the feasibility of a multi-family housing development on the Cookson Community Center property; and

WHEREAS, the multi-family housing development would have included the renovation of the Cookson Center building; and

WHEREAS, Blue Sky Developers requested and were provided an exclusive negotiating period with the City of West Branch on the property, as Blue Sky Developers expended time and funds to examine the feasibility of the development; and

WHEREAS, Blue Sky Developers completed the feasibility of a multi-family housing development which included the renovation of the Cookson Center building and determined that such a project is not feasible; and

WHEREAS, Blue Sky Developers provided a letter to the City of West Branch voluntarily ending this exclusive negotiating period; and

WHEREAS, the West Branch City Council discussed the solicitation of sealed bids for the former Cookson Community Center at the regular Council Meeting held on August 6, 2012; and

WHEREAS, the majority of the West Branch City Council at the August 6, 2012 Council Meeting directed staff to proceed with the sealed bid process to include online advertisements; and

WHEREAS, staff proceeded with the sealed bid process including online advertisements and accepted sealed bids until September 14, 2012; and

WHEREAS, two sealed bids, one from Blue Sky Developers and one from Lynch Excavating, Inc., were received by the deadline; and

WHEREAS, both proposals were distributed to the City Council at the September 17, 2012 Council Meeting and discussed at the October 1, 2012 Council Meeting; and

WHEREAS, Blue Sky Developers withdrew their sealed bid on Tuesday September 18, 2012; and

WHEREAS, the West Branch City Council is interested in moving forward with Lynch Excavating, Inc. with an agreement that would allow Lynch Excavating, Inc. to develop the property as one and two-family dwellings; and

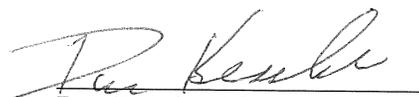
WHEREAS, the West Branch City Attorney has drafted a development agreement with Lynch Excavating, Inc. for the consideration of the West Branch City Council; and

WHEREAS, Lynch Excavating, Inc. has reviewed and is in agreement with the development agreement; and

WHEREAS, it is now necessary to approve said development agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned development agreement with Lynch Excavating, Inc. is hereby accepted.

Passed and approved this 5<sup>th</sup> day of November, 2012.

  
Don Kessler, Mayor

ATTEST:

  
Matt Muckler, City Administrator/Clerk

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT entered into by and between the City of West Branch, Iowa, hereafter to as the "City"; and Lynch Excavating, Inc., hereafter referred to as the "Developer."

WHEREAS, the City is the current owner of that certain property generally referred to as the "Cookson Property", said property being legally described as attached hereto on Exhibit "A" (the "Property"); and

WHEREAS, the City solicited bids for the redevelopment of the Property after public notice and received sealed bids for the Property; and

WHEREAS, the Developer has submitted the bid that has been selected by the City Council for the redevelopment of the Property; and

WHEREAS, it is now necessary to outline the terms of the redevelopment of the Property in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### **Acquisition of the Property.**

1. The Developer has agreed to pay to the City, upon a showing of marketable title to the Developer, and the City has agreed to sell to Developer, the Property for a Purchase Price of Five thousand dollars (\$5,000.00), payable as follows:
  - a. \$1,000 upon execution of the Agreement;
  - b. \$4,000 at the closing;
  - c. Developer shall also pay the City's closing costs, including, but not limited to abstracting and recording fees, up to \$2,500.
2. The closing shall occur no later than December 31, 2012.
3. The City, upon the showing of marketable title and payment by Developer to the City of the Purchase Price of \$5,000, shall convey the Property to the Developer via Quit Claim Deed.
4. The Developer expressly acknowledges that it is taking the Property from the City "AS, IS" and the Developer shall indemnify and hold the City harmless from any condition on the Property, except for any injury, loss or damage, claim or cause of action that has accrued against the City prior to the date of the conveyance of Property to Developer.

### **Demolition of the Building**

1. Within 90 days of the Closing, the Developer shall demolish and haul away the former Cookson Home building on the Property. In the event that weather or other temporary physical conditions prevent Developer from initiating or completing the demolition and hauling, Developer shall not be deemed in violation of this Agreement and shall be granted 90 additional days to complete such work.
2. In conducting its demolition, the Developer is required to strictly comply with all federal, state and local law, regulation or ordinance regarding the demolition of buildings.
3. The Developer shall indemnify and hold the City harmless from any and all claims regarding the Developer's demolition of the former Cookson Home, except for any injury, loss or damage, claim or cause of action that has accrued against the City prior to the date of the conveyance of Property to Developer.

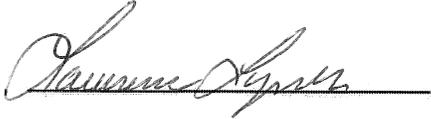
### **Development of the Property**

1. The Developer acknowledges that the Property is currently zoned R-2 and the Developer will not submit application to rezone the Property, other than to an R-1 designation.
2. Within 180 days of the execution of this Agreement, and after the Cookson Home has been demolished, the Developer shall submit a proposed plat to the City for its review in the normal course.
3. In platting the Property, the Developer shall dedicate to the City right-of-way for the extension of Second Street. Said dedication will occur upon approval of the Final Plat and recording of the Plat with the Cedar County Recorder.
4. Once the City Council has approved the Final Plat for the entire Property, the City shall issue and record a Certificate of Completion, in a similar form to Exhibit "B" attached hereto. All costs of recording the Certificate of Completion shall be paid by the Developer.
5. The Developer is responsible for the cost and installation of all public improvements as required by the West Branch Code of Ordinances.
6. The Developer or its assigns and successors, shall obtain a building permit within one year of the execution of the Agreement for the construction of an allowed residential use.

7. Developer shall not transfer the Property, or any part thereof, prior to obtaining a Certificate of Completion unless it becomes legally impossible for Developer to complete the work, or the completion of the development is precluded due to an occurrence that is beyond the control of the Developer.

Dated this 5 day of November, 2012.

DEVELOPER:  
**Lynch Excavating, Inc.**



CITY:  
**City of West Branch, Iowa**

  
Don Kessler, Mayor

ATTEST:

  
Matt Muckler, City Adm./Clerk

**COOKSON MEMORIAL HOME, INC.**

**Legal Description**

Commencing at a point 74 feet South of the Southwest corner of Block 31, West Branch, Cedar County, Iowa; thence South 148 feet and 5 inches; thence East 913 feet and 6 inches; thence north 238 feet and 5 inches; thence west 649 feet and six inches; thence south 90 feet; thence west 264 feet to the place of beginning, except the following:

1. The W 60' of a parcel of land described as Commencing at a point 74 feet south of the southwest corner of Block 31, Town of West Branch, Cedar County, Iowa; thence south 148 feet and 5 inches; thence east 913 feet and 6 inches; thence north 238 feet and 5 inches; thence west 649 feet and 6 inches; thence south 90 feet; thence west 264 feet to the place of beginning. The intent of this description is to cover all of the above described property lying westerly of a line 60 ft. normally distant easterly from and parallel to the centerline of County Trunk Road "D". Said parcel contains 0.09 acres, more or less, exclusive of the present established road along the west side thereof.

2. A parcel of land uniformly twenty-four (24) feet in width lying adjacent to and southerly of the south line of the sixteen (16) foot alley along the south side of Block Two (2) of the Sub-division of Lot B of the Town of West Branch, Cedar County, Iowa; bounded on the West by the West line of First Street and on the East by the East line of Second Street.

3. Begin Sixteen (16) feet North of the Southwest corner of Block Thirty-one (31) Cook's Division to Cameron, now West Branch, Cedar County, Iowa; thence East One Hundred Thirty-two (132) feet; thence South Two Hundred Thirty-eight (238) feet Five (5) inches; thence West to the tract deeded to the Iowa State Highway Commission by deed recorded in Book 85, page 232, Cedar County Records One Hundred Five (105) feet; thence North along said Iowa State Highway Commission tract One Hundred Forty-eight (148) feet Five (5) inches; thence West to the right of way to Downy Street or its extension, twenty-seven (27) feet; thence North Ninety (90) feet to the point of beginning, all in Section Eight (8) Township Seventy-nine (79) North, Range Four (4) West of the Fifth Principal Meridian.

4. Lot 1 of Lot C located in the Southwest Quarter of the Northwest Quarter of Section 8, Township 79 North, Range 4, West of the 5<sup>th</sup> Principal Meridian, West Branch, Cedar County, Iowa, as shown in Plat Book H on page 186.

5. Parcel H located in the Southwest Quarter of the Northwest Quarter of said Section 8 Township 79 North Range 4 West of the 5<sup>th</sup> Principal Meridian, West Branch, Cedar County, Iowa, as shown in Plat Book H on page 185.