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MELISSA BAHNSEN, RECORDER
CEDAR COUNTY IOWA

Prepared by: Kevin D. Olson, West Branch City Attorney, PO Box 5640, Coralville, Iowa 52241 (319)351-2277
Return to: City of West Branch, Iowa, 110 N. Poplar Street, West Branch, Iowa 52358.

RESOLUTION 2022-66

RESOLUTION APPROVING A DEVELOPER'S AGREEMENT WITH REBATE PAYMENTS AND APPROVING DISPOSAL OF REAL PROPERTY TO BBCO, LLC.

WHEREAS, BBCO, LLC (the "Developer") has agreed to construct improvements on the Property described on Property owned by the City, legally described as: That part of the SW ¼ of Section 5, Township 79 North, Range 4 West of the 5th P.M., as shown on that certain Retracement Plat of Survey recorded in Book K at Page 110, Plat Records of Cedar County, Iowa (the "Development Property") and also adjacent properties that are being purchased by the Developer; and

WHEREAS, on May 16, 2022, the City Council did state its intent to dispose of the Development Property to the Developer should no other proposals be submitted for the Development Property; and

WHEREAS, the City Clerk did not receive any additional proposals to develop the Development Property; and

WHEREAS, the City has agreed to grant tax increment payments and abatement of real property taxes to the Developer as an incentive to construct the Project; and

WHEREAS, to that end, the City Attorney has drafted a Developer's Agreement which states that the Developer is eligible for 75% of available tax increment revenues created by the Project over a 10-year period after an initial period of abatement for ten (10) years; and

WHEREAS, it is now necessary to approve said Developer's Agreement and approve the disposal of the Development Property to the Developer in strict compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of West Branch, Iowa, that this Council hereby finds:

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1. That the use of tax increment rebate payments pursuant to Chapters 15A and 403 of the Code of Iowa will generate new opportunities for the state and local economies.

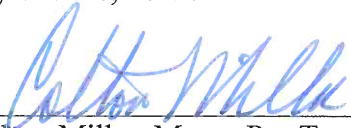
2. That the funds dispensed pursuant to this Agreement will generate appropriate public gains and benefits that are warranted in comparison to the funds dispensed.

3. That no other proposals were receive to develop the Development Property and that disposal of the Development Property to the Developer is in the best interests of the City and in compliance with the goals of the West Branch Urban Renewal Plan to redevelop blighted properties within the City of West Branch.

BE IT FUTHER RESOLVED, that the aforementioned Agreement be and the same is hereby approved. Further, the Mayor and City Clerk are hereby directed to execute this Agreement on behalf of the City.

BE IT FURTHER RESOVLED, that the Mayor and City Clerk are directed to execute a warranty deed or series of warranty deeds to dispose of the Development Property to the Developer in compliance with the Development Agreement and to also, with the advice of the City Attorney, execute any and all additional documentation necessary to effectuate the terms of this transaction.

Passed and approved this 20th day of June, 2022.



Colton Miller, Mayor Pro Tem

ATTEST:



Leslie Brick, City Clerk

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AGREEMENT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT FOR PRIVATE REDEVELOPMENT (the "Agreement") entered into this 20th day of June, 2022, by and between the CITY OF WEST BRANCH, Iowa, an Iowa municipal corporation (hereinafter the "City"), whose address is 110 N. Poplar Street, West Branch, Iowa 52358; and BBCO, LLC, an Iowa corporation, whose address is 32 Hummingbird Lane, Iowa City, Iowa 52240 (hereinafter the "Developer").

WITNESSETH:

WHEREAS, in furtherance of the objective of the Urban Renewal Act, the City has undertaken a program to promote the remediation of slum and blighted conditions and economic development in the West Branch Urban Renewal Area; and

WHEREAS, the City is the owner of the property legally described in that certain Retracement Plat of Survey recorded in Book K, page 110, Plat Records of Cedar County, Iowa (the "Development Property"); and

WHEREAS, the Developer is willing to redevelop the Phase I Property and the Developer Property for and in accordance with the uses specified in the Urban Renewal Plan and in accordance with this Agreement; and

WHEREAS, the City believes that the redevelopment of the Development Property and by the Developer pursuant to this Agreement is in the vital and best interests of the City and in accord with the public purposes and provisions of the Urban Renewal Act.

IN CONSIDERATION OF THE MUTUAL REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS SET FORTH IN THIS BELOW, THE CITY AND DEVELOPER AGREE AS FOLLOWS:

ARTICLE I. DEFINITIONS.

In addition to the other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

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Additional Properties mean those properties that the Developer will acquire outlined in Article IV of this Agreement.

Agreement means this Agreement and all appendices hereto, as the same may be from time to time, modified, amended or supplemented.

Developer means BBCO, LLC, an Iowa limited liability company.

City means the City of West Branch, Iowa.

City Council means the City Council of the City of West Branch, Iowa.

Closing means the closing of the purchase of the Development Property.

Closing Date means the time and date set forth in Article V (or such date and time agreed among the parties).

Code of Ordinances means the Code of Ordinances of the City of West Branch, Iowa (2021), as amended.

Development Project means the construction of the Minimum Improvements on the Development Property and the Developer Property.

Development Property means the property owned by the City.

Environmental Assessment means the environmental assessments supplied to the Developer by the City and any additional environmental assessments performed by Developer prior to the Closing Date.

Environmental Laws means any federal, state or local laws, ordinances, codes, regulations, policies and orders that are intended to protect the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list of define, air, water, groundwater, or solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants, or which are intended to provide for the safety of employees, workers and other persons, including the public. Environmental laws include, but are not limited to, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sections 9601, et seq), as amended; the Resources Conservation and Recovery Act (42 U.S.C. Sections 6901, et seq), as amended, and the Clean Water Act (33 U.S.C. Sections 1251 et seq).

Force Majeure means war, terrorism, epidemic, fire, casualty, explosion, flood, earthquake, tornado or other act of God.

Hazardous Materials means any toxic or hazardous substance, material or waste, or any pollutant or contaminant, or infectious or radioactive substance or material defined in or regulated under any of the Environmental Laws.

Merchantable title means that the Phase I Property to be conveyed to Developer shall be in compliance with the title standards of the Iowa State Bar Association and applicable Iowa law.

Minimum Improvements means a mixed-use development with a minimum number of 64 residential units and provide commercial space of a size and location to be mutually agreed by the parties upon submission of Phase 4 of the Development on the ground floor of the building constructed along W. Main Street, all in strict compliance with the PUD Site Plan approved by the City Council.

Unavoidable Delays means delays outside of the control of the party claiming its occurrence, which are the direct results of war, terrorism, epidemic, explosion, fire, strikes or other labor troubles, flood, earthquake, tornado or other acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties, or acts of any Federal, State or local governmental unit (other than the City) which directly results in delays. In addition, interest rates above 6% and/or residential interest rates above 8% is also considered an Unavoidable Delay for purposes of this Agreement.

Urban Renewal Act means Chapter 403 of the Code of Iowa, as amended.

Urban Renewal Area means the West Branch Urban Renewal Area for which tax increments are collected in order to further the goals and objectives of the Urban Renewal Plan.

Urban Renewal Plan means the West Branch Urban Renewal Plan, as amended.

ARTICLE II – PURCHASE PRICE; ADJUSTMENTS AND PRORATIONS

Section 2.1 Purchase Price. The total purchase price (the “Purchase Price”) for the purchase of the Development Property shall be one dollar (\$1.00), subject to the Developer obligations outlined below.

Section 2.2 Adjustments and Prorations. The following matters and items shall be apportioned between the parties at Closing, or where applicable, credited to a particular party:

- (a) Taxes. All ad valorem taxes due and payable for the Phase I Property from the date hereof through the date of closing, shall be paid by City at the Closing. Any ad valorem taxes that have accrued through the date of Closing, but are not yet due and payable, shall be credited to the Developer.
- (b) Transfer Tax. City shall pay any transfer tax, if any, payable with respect to Closing.
- (c) Recording fees. The Developer shall pay all expenses for recording the Deed and the Memorandum of Agreement for Private Redevelopment.
- (d) Abstracting. The City shall pay all costs associated with continuing the abstract(s) of title to show merchantable title to the Development Property.

ARTICLE III. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE DEVELOPER.

Section 3.1 Conditions Precedent to Obligations of Developer. Without limiting any other agreements or undertakings by the City or any conditions to the Developer under this Agreement, the obligations of the Developer under this Agreement are expressly conditioned upon the fulfillment by and as of the time of Closing of each of the following conditions listed below:

- 1) The City Council shall have held all necessary public hearings and passed appropriate resolutions to convey the Development Property to the Developer in strict compliance with Urban Renewal Act.
- 2) City shall submit to the Developer, at least 5 days prior the Closing Date, an abstract(s) continued through the date of this Agreement. Said abstract(s) shall show merchantable title to the Development Property in the City. All costs associated with additional actions necessary to deliver marketable title to the Developer shall be borne by the City.
- 3) The Developer shall submit proof that it has obtained adequate financing (including appraisals necessary) to purchase the Developer Property and construct the Minimum Improvements required herein.
- 4) All subdivision and rezoning requirements necessary for the Developer's construction of the Minimum Improvements have been approved by the City.
- 5) Within ten (10) days of the closing on the Herring Property by the Developer, the City shall submit the sum of \$150,000 to the Developer.

ARTICLE IV. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE CITY.

Section 4.1 Conditions Precedent to Obligations of the City. Without limiting any other agreements or undertakings by the Developer or any conditions to the City under this Agreement, the obligations of the City under this Agreement are expressly conditioned upon the fulfillment by and as of the time of Closing of each of the following conditions listed below:

(a) Subdivision/Condominium. The Developer shall cause the subdivision of the Development Property into subdivided lots or into a condominium regime pursuant to Chapter 499B of the Code of Iowa. City shall cooperate with Developer to execute any and all documentation necessary to cause the recording of the subdivision.

(b) PUD Site Plan. The City Council with consultation from the Planning and Zoning Commission shall have approved the PUD Site Plan for the Development Property and the Additional Properties.

The following guidelines for the PUD are hereby established:

- i) The percentage of masonry on the buildings shall not be required to be more than 25% on the front of the buildings.
- ii) There will be no requirement for permeable pavers or bioretention cells, however, stormwater detention shall be provided by Developer.
- iii) There shall be no glass requirement for building materials.
- iv) Vinyl siding may be used on residential buildings.
- v) On the mixed-use building in Phase 4, vinyl siding may be used on the building faces that front the parking areas.
- vi) The Herring Property will be allowed to construct two 12-unit buildings
- vii) The two center buildings located in Phase 3 shall be allowed to be 12 units each.
- viii) Parking requirements for residential units shall be one parking stall per bedroom and the commercial parking requirements shall be met by using the on-street parking to be constructed by Developer on 4th Street and Main Street

(c) Acquisition of the Additional Properties. The Developer shall have acquired the following properties to be used in the redevelopment of the Development Property (by the dates listed below), however, the Optional Parcel is not included in this Condition Precedent, meaning the Project can proceed without the Optional Parcel:

- (i) Cedar County Parcel Nos. 13-05-361-017
13-05-361-006
13-05-361-015

Acquired by June 1, 2023
(collectively the "Herring Property");

- (ii) Cedar County Parcel No. 13-05-361-010

Acquired by January 1, 2023
(the "D Three Property");

AND

- (iii) Cedar County Parcel No. 13-05-361-011

Acquired by September 1, 2022
(the "Bennett Property")

- (iv) OPTIONAL PARCEL:

Cedar County Parcel No. 13-05-361-013
13-05-361-014

(collectively the "Optional Parcel")

- (e) Early Access to Development Property. Prior to the conveyance of any portion of the Development Property to Developer, the Developer, upon execution of a temporary construction easement, and at Developer's sole risk and expense, may enter onto the Development Property for preliminary infrastructure work prior to the closing dates for the Additional Properties.

ARTICLE V. CLOSING DATE

Section 5.1 Closing Date and Place.

The Closing for the Development Property shall take place at no later than 10:00 a.m. at City Hall, City of West Branch, on or before, or September 1, 2022, or upon approval of the

PUD Site Plan for the Development Property and Additional Properties, whichever occurs sooner.

The Closing shall occur after all of the requirements of Articles III and IV have been satisfied by Developer and City.

ARTICLE VI. ITEMS TO BE DELIVERED AT THE CLOSING.

Section 6.1 Delivery by the City. At or prior to the Closing, City shall execute, acknowledge and verify where appropriate and deliver to Developer original counterparts of each of the instruments and documents listed below with signatures of the Mayor and City Clerk of the City:

- (a) All Resolutions of the City Council necessary to convey the Development Property to the Developer in strict compliance with the Urban Renewal Act.
- (b) Original counterparts of each of the instruments and documents required to be executed under this Agreement.
- (c) Fully executed Warranty Deed conveying Development Property to the Developer, subject to the right of reversion to the City in the event that the Developer does not meet the terms of this Development Agreement.

Section 6.2 Delivery by the Developer. At or prior to the Closing, the Developer shall execute, acknowledge and verify where appropriate and deliver to City the following:

- (a) Original counterparts of each of the instruments and documents required to be executed under this Agreement.
- (b) Payment of the Purchase Price to the City.
- (c) The Developer is not in default of this Agreement.

ARTICLE VII. CONSTRUCTION OF MINIMUM IMPROVEMENTS

After the Closing and conveyance of the Development Property to Developer, Developer shall:

Section 7.1 Construction of the Minimum Improvements. The Developer shall cause the Construction Plans for the Development Project to be submitted to West Branch City Hall for review. The Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed in the Construction Plans.

Section 7.2 Completion of Construction. Subject to Force Majeure and Unavoidable Delays, the Developer shall complete the construction of the Minimum Improvements, in Phases, according to the following schedule:

The phasing plan for this Project is depicted on Exhibit "A" attached hereto.
The schedule for completion is as follows:

- | | |
|------------|---|
| A. Phase 1 | Substantially completed by December 31, 2025 |
| B. Phase 2 | Substantially completed by December 31, 2028 |
| C. Phase 3 | Substantially completed by December 31, 2029 |
| D. Phase 4 | To Be Determined based upon whether the Optional Parcel is included in this Phase |

or by such other date and the parties mutually agree to in writing, subject to Force Majeure and Unavoidable Delays.

Section 7.3 Certificate of Completion. After the Developer has issued an Occupancy Permit for the Minimum Improvements for the Development Project, the City shall record, at its sole expense, a release of the City's reversionary interest in the Development Property for each Phase of the Development Project.

ARTICLE VIII. TAX INCREMENT FINANCING ASSISTANCE.

Section 8.1 Tax Increment Financing Assistance. The Developer has requested tax increment financing assistance to assist in defraying the costs of construction of the Minimum Improvements and acquisition of the Phase I Property and Developer Property. Pursuant to Chapters 15A and 403 of the Code of Iowa, the City has agreed to pay the Developer, tax increment financing subject to the following:

(a) Developer's Covenants.

1. The Developer agrees to make timely payment of all property taxes as they come due throughout the term of this Agreement, which means the payment is made to the Cedar County Treasurer on or before the due date for said installment tax payment.
2. The Developer agrees to operate the Development Project in accordance with the terms of the Urban Renewal Plan.

(b) City's Obligations.

- 1.
2. During the term years of the Agreement, the City agrees to make economic development tax increment payments (the "Payments") to the Developer in each fiscal year during the Term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided that the Developer is in compliance with the covenants set forth in this Agreement, the City shall make Semi-annual Payments in the amount of seventy-five percent (75%) of the total incremental tax revenues received by the City from this Project will be made on June 1 and December 1 following the first submission of the Developer's evidence that property taxes have first been paid with respect to the Development Property, and continuing until the total aggregate amount of the Abatement Taxes Saved and the Payments equals \$4,500,000.00 (the "Total Aggregate Assistance"). In the event that the Optional Parcel is included in Phase 4 of the Development and any part of the building on the Optional Parcel is demolished, the City will grant an additional

\$500,000 in Total Aggregate Assistance to the Developer (bringing the total to \$5,000,000.00)

3. The Payments shall not constitute general obligations of the City, but shall be made solely and only from incremental property taxes received by the City from the Cedar County Treasurer which are attributable to the Development Property (the "Tax Increment Revenues").

4. Each of the Payments shall be subject to the annual appropriation by the City Council. Prior to December 1 of each year during the term of this Agreement, the City Council of the City shall consider the question of obligating the appropriation to the funding of the Payments in each Fiscal Year, in the amount of 75% of the Tax Increment Revenues received by the City for the Development Property.

5. The Payments contemplated to be made under this Agreement shall not constitute a mandatory charge or a requirement in any fiscal year beyond the then current fiscal year for which the City Council has approved an appropriation, and the City shall have no continuing obligation to appropriate funds for future Payments, whether from Tax Increment Revenues or any other source, and no provision of this Agreement shall be construed or interpreted as creating a general obligation of the City for any future fiscal year or a debt within the meaning of any Constitutional or statutory debt limitation.

6. The City's obligation to make Payments under this Agreement shall be subject to non-appropriation by the City Council. In the event that the City Council does not budget for and appropriate funds for any fiscal year in an amount sufficient to make the Payments due under this Agreement (a "non-appropriation"), the City shall not be liable to the Developer for any remaining Payments under this Agreement or for any costs, damages (including consequential damages) or expenses incurred by the Developer as a result of the exercise of the City's right to non-appropriation.

(c) Brownfields/Workforce Housing Tax Credits.

The Developer intends, and the City will issue the appropriate resolutions to support, the Developer's application for Brownfields Tax Credits through the Iowa Economic Development Authority. In the event that the Developer receives said Brownfields and/or Workforce Housing Tax Credits, the Total Aggregate Assistance that the Developer is contemplated to receive from the City will be reduced by 50% of the amount that the Developer receives by selling said Brownfields and/or Workforce Housing Tax Credits. After selling said tax credits, the Developer shall submit evidence of the amount of monies received from said sale in a form acceptable to the City and that amount, will be reduced from the Total Aggregate Assistance remaining to be paid to the Developer.

At the end of each calendar year during the term of this Agreement, the City shall send a letter to the Developer stating the amount of Total Aggregate Assistance that has been credited/paid to the Developer and the total amount of Total Aggregate Assistance remaining to be credited/paid to the Developer.

ARTICLE IX. DEVELOPER'S REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In addition to the representations, warranties and agreements set forth elsewhere in this Agreement, Developer represents and warrants that each of the following facts and conditions shall exist as of the Closing Date:

Section 9.1 Organization.

Developer is an Iowa limited liability company validly existing under the laws of the State of Iowa and has the power and authority to own its own properties and to transact business in which it is engaged and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and this Agreement constitutes a valid and binding obligation of Developer.

Section 9.2 Authority.

Developer has the right, power, legal capacity and authority to enter into and perform its obligations under the Agreement and no approvals or consents of any persons other than Developer are required in connection with this Agreement.

Section 9.3 "AS-IS"

The Developer is taking possession of the Development Property in a "AS-IS," condition, subject to the City's Environmental Warranties in Section 10.3.

Section 9.4 Representations and Warranties of Developer.

All of the representations and warranties of Developer are true and correct in all material respects and do not contain untrue statements of a material fact or omit any material fact necessary to insure such documents, items and information are not misleading, and shall survive the Closing hereof for a period of one (1) year after the final release of the city's reversionary interest in the Development Property.

ARTICLE X. CITY'S REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties set forth elsewhere in the Agreement, City represents and warrants that the following facts and conditions exist on the date of the execution by City and shall exist as of the Closing Date.

Section 10.1 Organization

City is a municipal corporation validly existing under the laws of the State of Iowa and has the power and authority to own its properties and to transact business in which it is engaged and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and this Agreement constitutes a valid and binding obligation of City.

Section 10.2 Authority.

City has the right, power and legal capacity and authority to enter into and perform its obligations under this Agreement and no approvals or consents of any persons other than City is required in connection with this Agreement.

Section 10.3 Environmental Warranties of City.

In addition to the representations, warranties and agreements set forth in this Article XI, City represents and warrants that the following facts and conditions shall exist as of the Closing Date:

- (a) City shall not have received any written notice from any governmental authority of any noncompliance with any Environmental Laws as it pertains to the Development Property.
- (b) City has not received any notice or notices of any pending or threatened administrative actions or suits relating to a violation or alleged violation of any Environmental Laws as it pertains to the Development Property.
- (c) City has not disposed of any Hazardous Materials on the Development Property which could result in any liability for Developer as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act or any Iowa counterpart or analog statute.

(d) City has no actual knowledge of any Hazardous Materials on the Development Property, except to the extent permitted by applicable Environmental Laws.

Section 10.4. Representations and Warranties of City.

All of the representations and warranties of Developer are true and correct in all material respects and do not contain untrue statements of a material fact or omit any material fact necessary to insure such documents, items and information are not misleading, and shall survive the Closing hereof for a period of one (1) year after Closing.

ARTICLE XI. INDEMNITIES

Section 11.1 Continuation of Representations and Warranties.

The representations, warranties, indemnities and covenants of the Developer and City in this Agreement shall survive the Closing for a period of two (2) years after the Closing.

Section 11.2 Continuation of Other Obligations.

The provisions of this Agreement which impose obligations on the Developer and City shall continue after Closing, until either all of the obligations hereunder are met in full, or the final disposition of any action to enforce the obligations, whichever occurs first.

Section 11.3 Indemnities by City.

City shall indemnify, defend and hold the Developer harmless from any liabilities, costs, damages, claims, suits, judgments or expenses (including reasonable attorneys' fees and costs) arising out of any breach of any representation or warranty of City, or any other obligation of the City imposed by this Agreement before or after the Closing. Immediately upon receipt of notice of a claim or service of a lawsuit making claim against the Developer, Developer shall tender claim to City. City shall accept or reject any such tender within five (5) business days. In the event that the tender is not accepted, City agrees to pay Developer, upon demand, for any loss, expense, court costs, attorneys' fees and costs and damages Developer may sustain by reason of City's breach of indemnities.

Section 11.4 Indemnities by Developer.

Developer shall indemnify, defend, and hold the City harmless from any liabilities, costs, damages, claims, suits, judgments or expenses (including reasonable attorneys' fees and costs) (i) arising out of or connected to use of occupancy of the Development Property prior to Closing, or (ii) arising out of a breach of any representation or warranty of Developer, or any obligation of Developer imposed upon by this Agreement before or after the Closing. Immediately upon receipt of notice of a claim or service of a lawsuit making a claim against City, City shall tender the claim to Developer. Developer shall accept or reject that tender within five (5) business days. In the event that said tender is not accepted, Developer agrees to pay City, upon demand, for any loss, expense, court costs, attorneys' fees costs and damages City may sustain by reason of Developer's breach of this indemnity.

ARTICLE XII. REMEDIES ON DEFAULT.

Section 12.1 Breach by City.

In the event City shall fail to fully or timely perform any of its obligations hereunder, or any misrepresentation or warranty of City shall be false or misleading, Developer shall give written notice to City for such failure. If City fails to cure such failure within ten (10) days from such notice, the Developer may seek (i) specific performance of this Agreement; or (ii) seek recovery of actual damages for breach of this Agreement.

Section 12.2 Breach by Developer.

In the event that the Developer breaches any of Developer's obligations under this Agreement, then City shall give written notice of such breach to Developer. If Developer does not cure said breach within ten (10) days, then the City may declare the Developer in default of this Agreement by notice to Developer, and may seek any and all remedies available to it, including, but not limited to, the reversioning of title to the Development Property, plus the acquisition of the Developer Property at no cost.

Section 12.3 Venue.

The parties hereby agree that the venue for any litigation in this matter shall be the Iowa District Court for Cedar County, Iowa, or the Federal District Court in Scott County, Iowa.

ARTICLE XIII. NOTICES

Section 13.1 Whenever any party hereto shall desire to give or serve upon the other party any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal service, overnight delivery by a recognized express company with acknowledgement of receipt by addressee or by first class United States Mail, postage prepaid, return receipt requested, addressed and transmitted as follows:

TO DEVELOPER:

BBCO, LLC
c/o 32 Hummingbird Lane.
Iowa City, Iowa 52240

TO CITY:

City of West Branch, Iowa
110 N. Poplar Street
West Branch, Iowa 52358

ATTN: City Administrator

Any notice hand delivered in the foregoing manner shall be effective upon actual receipt. Any notice sent by overnight courier in the foregoing manner shall be effective the first business day following receipt deposit with the overnight courier. Any notice mailed in the foregoing manner shall be effective the first business day following deposit in the United States Mail.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

Section 14.1 Captions.

The Section and Article titles or captions in this Agreement, the Table of Contents and the Schedule of Exhibits are for convenience only and shall not be deemed part of this Agreement.

Section 14.2 Entire Agreement.

This Agreement, including all Exhibits, contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings, if any, with respect to the subject matter of this Agreement. The parties do not intend to confer any benefit on any person, firm or corporation other than the parties to this Agreement.

Section 14.3 Amendments.

This Agreement may not be altered or amended, and no right under this Agreement may be waived, except by written instrument executed by the parties to this Agreement, except as otherwise provided in this Agreement.

Section 14.4 Pronouns.

All pronouns and any variations of pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require.

Section 14.5 Fees and expenses.

City shall pay all costs for abstracting, title searches and surveys, if any. Subject to the preceding sentence, each party shall pay its own expenses in connection with the transactions contemplated in this Agreement.

Section 14.6 Counterparts.

This Agreement may be executed in counterparts, each of which (or any combination which, when signed by all of the parties) shall be deemed an original, but all of which when taken together shall constitute one Agreement.

Section 14.7 Exhibits/Exhibits Subsequently Added.

All Exhibits referred to in and attached to this Agreement upon execution are incorporated in and form a part of this Agreement as if fully set forth herein. As to any Exhibits not attached to or made a part of this Agreement at the time of execution, the parties agree to proceed with reasonable promptness to complete and review such Exhibits, and upon approval of the form and substance of such Exhibits by Seller and Developer, which shall be evidenced in writing or by initialing the approved forms of Exhibits of each party, the approved Exhibits shall become a part of this Agreement and shall have the same effect as if they had been attached at the time this Agreement is executed.

Section 14.8 Governing Law.

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Iowa.

Section 14.9 Time is of the Essence.

Time is of the essence in this Agreement.

Section 14.10 Survival at Closing.

All agreements, covenants, warranties, representations and indemnities in this Agreement shall survive the Closing, and it shall not be a condition precedent to any indemnity set forth herein that the indemnified party shall have made any payment on account of any claim, loss, damage, obligation, liability, deficiency, penalty, costs or expense indemnified against herein.

Section 14.11 Additional Acts.

Except as otherwise provided herein, in addition to the acts and things recited herein and contemplated to be performed, executed and/or delivered by Developer exhto City, Developer and City hereby agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing, any and all such further acts as Developer and City may reasonably require to consummate the transactions contemplated herein.

Section 14.12 Attorneys' Fees.

Should either party employ an attorney or attorneys to enforce any of this provisions herein or of any instrument or document given or delivered at the Closing, or to protect its interest in any matter arising under this Agreement or any instrument or document given or

delivered at the Closing, or to recover damages for breach of this Agreement or any instrument or document given or delivered at Closing to seek specific performance of this Agreement, the non-prevailing party in any action pursued in court or any tribunal agrees to pay the prevailing party all reasonable costs, damages and expenses, including attorney's fees and court costs expended or incurred in connection herewith.

Section 14.13 Conflict of Interest.

The Developer agrees that, to the best of its knowledge and belief, no member, officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City; and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of this Project, at any time during or after such person's tenure.

Section 14.14 Non-discrimination.

In carrying out the construction and operation of the Minimum Improvements, the Developer shall not discriminate against any individuals on the basis or race, creed, color, sex, national origin, disability, sexual orientation or gender identity.

Section 14.15. Waiver

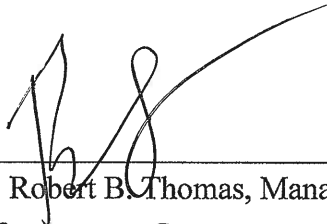
Either party hereto may specifically waive any breach of this Agreement by the other party, but no such waiver shall constitute a waiver or similar or other breaches. A waiving party may at any time, upon notice given to the breaching party, direct future compliance with the waived terms or terms of this Agreement, in which event the breaching party shall comply as directed from such time forward.

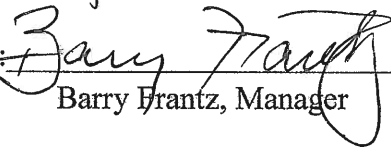
Section 14.16. Assignment.

With consent of the City Council, this Agreement can be assigned to another Developer and/or financial institution for collateral.

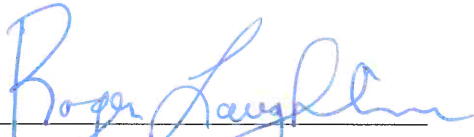
SIGNATURE PAGE OF DEVELOPER:

BBCO, LLC


By: 
Robert B. Thomas, Manager

By: 
Barry Frantz, Manager

SIGNATURE PAGE OF
CITY OF WEST BRANCH, IOWA

By: 
Roger Laughlin, Mayor

ATTEST:


Leslie Brick, City Clerk