

Preparer: Christopher S. Wendland, P.O. Box 596, Waterloo, Iowa 50704 (319) 234-5701
After recording, return to Community Planning & Development, 715 Mulberry Street, Waterloo, IA 50703.

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into as of _____, 2021, by and between Willie Outlaw ("Developer"), and the City of Waterloo, Iowa ("City").

RECITALS

- A. City is the owner of real property on Crescent Place identified as parcel nos. 8913-23-276-015 and 8913-23-276-014, legally described as set forth on Exhibit "A" attached hereto (the "Property"). Developer is the owner of real property at 330 Crescent Place, abutting the Property on the west side, and desires to acquire the Property to expand his residential area.
- B. City considers development within the City a benefit to the community and is willing for the overall good and welfare of the community to provide financial incentives so as to encourage that goal. City believes that placement of the Property on the tax rolls and providing for certain improvements to the Property is in the best interests of the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Sale of Property; Title.** Subject to the terms hereof, City shall convey the Property to Developer for the sum of \$1.00 (the "Purchase Price"). Conveyance shall be by quit claim deed, free and clear of all encumbrances arising by or through City except: (a) easements, servitudes, conditions and restrictions of record; (b) current and future real estate real property taxes and assessments subject to the agreements made herein; (c) general utility and right-of-way easements serving the Property; and (d) restrictions imposed by the City zoning ordinances and other applicable law. Developer may, at its own expense, obtain whatever form of title evidence it desires. If title is unmarketable or subject to matters not acceptable to Developer, and if City does not

remedy or remove such objectionable matters in timely fashion following written notice of such objections from Developer, Developer may terminate this Agreement without further obligation. City shall provide any title documents it has in its possession, including any abstracts, to assist in title review.

2. **Improvements by Developer.** Developer acknowledges that it has had a reasonable opportunity to inspect the Property and to conduct other due diligence related to the Project. Developer agrees to accept the Property in its "AS IS" condition, without any warranty from City, expressed or implied, as to the condition of the Property, its marketability, or its fitness for any particular purpose. Developer shall construct, at his sole option within timeline, to a finished state, including installation of driveway, removal of all construction debris, proper leveling or shaping of groundscape, and grassing and/or landscaping (construction and finishing as so described are referred to collectively as the "Improvements"). The Improvements shall be constructed in accordance with the terms of this Agreement, all applicable City, state, and federal building codes and shall comply with all applicable City ordinances and other applicable law. Developer shall submit building designs for City review and approval before the commencement of construction and shall not substantially deviate from such plans, specifications or designs. Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed. Developer will be responsible to clear trees and brush from the Property at its own cost to allow for construction of all Improvements. The Property, the Improvements, and all site preparation and development-related work to be undertaken and completed by Developer under this Agreement are collectively referred to as the "Project".

3. **Timeliness of Construction; Possibility of Reverter.** The parties agree that Developer's commitment to cause the Project to be undertaken and to construct the Improvements in a timely manner constitutes a material inducement for the City to extend the incentives provided for in this Agreement, and that without said commitment City would not have done so. Subject to Unavoidable Delays (defined below), Developer must obtain a building permit and begin construction of the Improvements within four (4) years and six (6) months after conveyance of the Property (the "Project Start Date") and must Substantially Complete construction of same within sixty (60) months after conveyance of the Property (the "Completion Deadline"). For purposes of this Agreement, "Substantially Complete" means the date on which the Improvements have been completed to the extent necessary for the City to issue a certificate of occupancy relating thereto and the City has verified that Project elements for which no permit was necessary have been substantially completed.

If Developer has not begun construction of the Improvements before the Project Start Date, City may terminate this Agreement as set forth in Section 10, and City shall have no further obligation hereunder with respect to such Project. If

construction has not begun by the Project Start Date but the development of the Project is still imminent, the City Council may, but shall not be required to, grant an extension of the Completion Deadline. If construction has commenced within the required period or any extended period and is stopped and/or delayed as a result of an act of God, war, civil disturbance, court order, labor dispute, fire, or other cause beyond the reasonable control of Developer (each of the foregoing is an "Unavoidable Delay"), then time lost as a result of Unavoidable Delays shall be added to extend the Completion Deadline by a number of days equal to the number of days lost as a result of Unavoidable Delays, and thereafter if construction is not completed within the allowed period of extension, City may terminate this Agreement as set forth in Section 10, title to the Property shall revert to the City, and City shall have no further obligation hereunder with respect to such Project, nor any duty to compensate Developer for any work or materials provided before the termination date or for the added value of any Improvements completed or partially completed. As promptly as possible, Developer shall notify City in writing of the occurrence of any Unavoidable Delay and shall again notify City in writing when the Unavoidable Delay has ended.

4. **Reverter of Title; Indemnity.** In the event of any reverter of title, Developer agrees that it shall, at its own expense, promptly execute all documents, including but not limited to a special warranty deed, or take such other actions as the City may reasonably request to effectuate said reverter and to deliver to City title to the Property that is free and clear of any lien, claim, charge, security interest, mortgage or encumbrance (collectively, "Liens") arising by or through Developer. Developer shall pay in full, so as to discharge or satisfy, all Liens on or against the Property. In connection with any reverter of title, Developer shall not be entitled to a refund of the Purchase Price. ***Appointment of Attorney in Fact:*** If Developer fails to deliver such documents, including but not limited to a special warranty deed, to City within thirty (30) days after written demand by City, then City shall be authorized to execute, on Developer's behalf and as its attorney-in-fact, the special warranty deed required by this Section, and for such limited purpose Developer does hereby constitute and appoint City as its attorney-in-fact.

Developer further agrees that it shall indemnify City and hold it harmless with respect to any demand, claim, cause of action, damage, cost, expense, liability or injury made, suffered, or incurred as a result of or in connection with the Project, or Developer's failure to carry on or complete same, or any Lien or Liens on or against the Property of any type or nature whatsoever that attaches to the Property by virtue of Developer's ownership of same. If City files suit to enforce the terms of this Agreement and prevails in such suit, then Developer shall be liable for all legal expenses, including but not limited to reasonable attorneys' fees, incurred by City. Developer's duties of indemnity pursuant to this Section shall survive the expiration, termination or cancellation of this Agreement for any reason.

4.1. **Purchase Option.** In lieu of reverter of title as described in Sections 3 and 4 above, Developer shall have the option to purchase the Property by delivering to City a written notice of option exercise within thirty (30) days after City's demand for a

deed pursuant to Section 4. The purchase price reflects reimbursement to City for its carrying costs for the Property, including but not limited to acquisition, demolition, insurance and maintenance, and shall be an amount equal to \$12,000 minus an annual credit to Developer for Property maintenance of \$1,000 for each year of this Agreement, not to exceed five (5) years. The transaction shall close within an additional thirty (30) days after Developer's delivery of notice of option exercise, and Developer shall pay the full purchase price to City in guaranteed funds at closing.

5. **Utilities.** Developer will be responsible for extending water, sewer, telephone, telecommunications, electricity, gas and other utility services from street right of way to any location on the Property and for payment of any associated connection fees.

6. **No Encumbrances; Limited Exception.** Until completion of the Improvements, Company agrees that it shall not create, incur, or suffer to exist any Liens on the Property, other than such mortgage or mortgages as may be reasonably necessary to finance Company's completion of the Improvements and of which Company notifies City before Company executes any such mortgage. Company may not mortgage the Property or any part thereof for any purpose except in connection with financing of the Improvements.

7. **No Assignment or Conveyance.** Developer agrees that it will not sell, convey, assign or otherwise transfer its interest in the Property or any part thereof prior to completion of the Project, whether in whole or in part, to any other person or entity without the prior written consent of City. Reasonable grounds for the City to withhold its consent shall include but are not limited to the inability of the proposed transferee to demonstrate to the City's satisfaction that it has the financial ability to observe all of the terms to be performed by Developer under this Agreement.

8. **Additional Covenants of Developer.** In addition to the other promises, covenants and agreements of Developer as provided elsewhere in this Agreement, Developer agrees as follows:

A. Until the Improvements have been Substantially Completed, Developer shall make such reports to City, in such detail and at such times as may be reasonably requested by City, as to the actual progress of Developer with respect to construction of the Improvements.

B. Developer will comply with all applicable land development laws and City and county ordinances, and all laws, rules and regulations relating to its businesses, other than laws, rules and regulations where the failure to comply with the same, or where the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, or condition, financial or otherwise, of Developer.

C. After the date of conveyance of the Property, Developer will keep lots mowed and remove snow from sidewalks to a standard no less than that required by City ordinances.

D. Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Improvements.

9. **Default.** The following shall be "Events of Default" under this Agreement, and the term "Event of Default" shall mean any one or more of the following events that continues beyond any applicable cure periods:

A. Failure by Developer to cause the Improvements to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement;

B. Transfer by Developer of any interest (either directly or indirectly) in the Improvements, the Property, or this Agreement, without the prior written consent of City;

C. Failure by any party hereto to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;

D. Developer (1) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy law or any similar state law; (2) makes an assignment for the benefit of its creditors; (3) admits in writing its inability to pay its debts generally as they become due; (4) is adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer, or part thereof, shall be appointed in any proceedings brought against Developer and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment; or (5) defaults under any mortgage applicable to the Property.

E. Any representation or warranty made by Developer in this Agreement, or made by Developer in any written statement or certificate furnished by Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

10. Remedies.

A. Default by Developer. Whenever any Event of Default in respect of Developer occurs and is continuing, the City may terminate this Agreement. Before exercising such remedy, City shall give 30 days' written notice to Developer of the Event of Default, provided that by the conclusion of such period the Event of Default shall not have been cured, or the Event of Default cannot reasonably be cured within 30 days and Developer shall not have provided assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible. Upon termination, City may exercise any and all remedies available at law, equity, contract or otherwise for recovery of any sums paid by City to Developer before the date of termination or to recover ownership of the Property as set forth in this Agreement.

B. Default by City. Whenever any Event of Default in respect of Developer occurs and is continuing, Developer may take such action against City to require it to specifically perform its obligations hereunder. Before exercising such remedy, Developer shall give 30 days' written notice to City of the Event of Default, provided that by the conclusion of such period the Event of Default shall not have been cured, or if the Event of Default cannot reasonably be cured within 30 days and City shall not have provided assurances reasonably satisfactory to the Developer that the Event of Default will be cured as soon as reasonably possible.

C. Remedies under this Agreement shall be cumulative and in addition to any other right or remedy given under this Agreement or existing at law or in equity or by statute. Waiver as to any particular default, or delay or omission in exercising any right or power accruing upon any default, shall not be construed as a waiver of any other or any subsequent default and shall not impair any such right or power.

11. Indemnification. Developer hereby releases City, its elected officials, officers, employees, and agents (collectively, the "indemnified parties") from, covenants and agrees that the indemnified parties shall not be liable for, and agrees to indemnify, defend and hold harmless the indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about the Project site or resulting from any defect in the Improvements. The indemnified parties shall not be liable for any damage or injury to the persons or property of Developer or its directors, officers, employees, contractors or agents, or any other person who may be about the Project site or the Improvements, due to any act of negligence or willful misconduct of any person, other than any act of negligence or willful misconduct on the part of any such indemnified party or its officers, employees or agents. The provisions of this Section shall survive the expiration or termination of this Agreement.

12. Materiality of Developer's Promises, Covenants, Representations, and Warranties. Each and every promise, covenant, representation, and warranty set

forth in this Agreement on the part of Developer to be performed is a material term of this Agreement, and each and every such promise, covenant, representation, and warranty constitutes a material inducement for City to enter this Agreement. Developer acknowledges that without such promises, covenants, representations, and warranties, City would not have entered this Agreement. Upon breach of any promise or covenant, or in the event of the incorrectness or falsity of any representation or warranty, City may, at its sole option and in addition to any other right or remedy available to it, terminate this Agreement and declare it null and void.

13. **Performance by City.** Developer acknowledges and agrees that all of the obligations of City under this Agreement shall be subject to, and performed by City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with City's lawful authority. All covenants, stipulations, promises, agreements and obligations of City contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any governing body member, officer, employee or agent of City in the individual capacity of such person.

14. **No Third-Party Beneficiaries.** No rights or privileges of any party hereto shall inure to the benefit of any contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, subcontractor, material supplier, or other person or entity shall be deemed to be a third-party beneficiary of any of the provisions of this Agreement.

15. **Notices.** Any notice under this Agreement shall be in writing and shall be delivered in person or by United States registered or certified mail, postage prepaid, and addressed:

(a) if to City, at 715 Mulberry Street, Waterloo, Iowa 50703, Attention: Mayor, with copies to the Community Planning and Development Director.

(b) if to Developer, at 330 Crescent Place, Waterloo, Iowa 50703.

Delivery of notice shall be deemed to occur (i) on the date of delivery when delivered in person, or (ii) three (3) business days following the date of deposit if mailed by United States registered or certified mail, postage prepaid. A party may change the address for giving notice by any method set forth in this Section.

16. **No Joint Venture.** Nothing in this Agreement shall, or shall be deemed or construed to, create or constitute any joint venture, partnership, agency, employment, or any other relationship between the City and Developer nor to create any liability for one party with respect to the liabilities or obligations of the other party or any other person.

17. **Amendment, Modification, and Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or by the duly

authorized representative of same, and specifying with particularity the extent and nature of the amendment, modification, or waiver. Any waiver by any party of any default by another party shall not affect or impair any rights arising from any subsequent default.

18. **Severability; Reformation.** Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any portion of this Agreement shall be deemed invalid or unenforceable, whether in whole or in part, the offending provision or part thereof shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect. If, for any reason, a court finds that any portion of this Agreement is invalid or unenforceable as written, but that by limiting such provision or portion thereof it would become valid and enforceable, then such provision or portion thereof shall be deemed to be written, and shall be construed and enforced, as so limited.

19. **Binding Effect.** This Agreement shall be binding and shall inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

21. **Entire Agreement.** This Agreement, together with the exhibits attached hereto, constitutes the entire agreement of the parties and supersedes all prior or contemporaneous negotiations, discussions, understandings, or agreements, whether oral or written, with respect to the subject matter hereof.

22. **Time of Essence.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Development Agreement by their duly authorized representatives as of the date first set forth above.

CITY OF WATERLOO, IOWA

By: _____
Quentin M. Hart, Mayor


Willie Outlaw

Attest: _____
Kelley Felchle, City Clerk

EXHIBIT "A"

Property Description

CALUMET SUBDIVISION LOT 5 BLK 3

and

CALUMET SUBDIVISION LOT 6 BLK 3 W 1/2 LOT 7 BLK 3

