City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Honorable Mayor and City Council Members

FROM: Mike Pogge-Weaver, City Manager MPW

DATE: September 10, 2020

SUBJECT: Resolution fixing date for a public hearing on the proposal to enter into a Development Agreement with BTC, Inc.

A request was received from BTC, Inc. (dba Western Iowa Networks) to provide an incentive in the form of a Tax Increment Financing (TIF) rebate for them to complete storm water improvements adjacent to their new building at the NE corner of Market St and Kittyhawk Ave. Attached is a copy of the draft Development Agreement that enables the proposed TIF rebate.

The Development Agreement outlines the terms and conditions of the incentive. The incentive will rebate the actural cost of the project up to $200,000. It is proposed that BTC, Inc. be rebated their cost with TIF proceeds over three years starting in December 2023, which is the first year they will pay taxes on the full value of the new building.

The City worked with Nathan Overberg, attorney with Ahlers & Cooney, P.C., to create the draft Development Agreement.

It is requested that the City Council consider setting a public hearing on the proposed adoption of the Development Agreement for the October 12, 2020 Council meeting at 5:15 PM.

RECOMMENDATION: Council consideration and approval of the attached resolution fixing date for a public hearing on the proposal to enter into a Development Agreement with BTC, Inc.

ITEM TO INCLUDE ON AGENDA

CITY OF CARROLL, IOWA
September 14, 2020
5:15 P.M.

Westfield Urban Renewal Plan

- Resolution fixing date for a public hearing on the proposal to enter into a Development Agreement with BTC, Inc.

IMPORTANT INFORMATION

1. The above agenda items should be included, along with any other agenda items, in the meeting agenda. The agenda should be posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If no such office exists, the notice must be posted at the building in which the meeting is to be held.

2. If you do not now have a bulletin board designated as above mentioned, designate one and establish a uniform policy of posting your notices of meeting and tentative agenda.

3. Notice and tentative agenda must be posted at least 24 hours prior to the commencement of the meeting.

NOTICE MUST BE GIVEN PURSUANT TO CHAPTER 21,
CODE OF IOWA, AND THE LOCAL RULES OF THE CITY.

September 14, 2020

The City Council of the City of Carroll in the State of Iowa, met in _____ session, at 5:15 P.M., on the above date. There were present Mayor _____, in the chair, and the following named Council Members:

_____

Absent: _____

Vacant: _____

* * * * * * * *

Council Member _____ then introduced the following proposed Resolution entitled "RESOLUTION FIXING DATE FOR A PUBLIC HEARING ON THE PROPOSAL TO ENTER INTO A DEVELOPMENT AGREEMENT WITH BTC, INC., AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF", and moved that the same be adopted. Council Member _____ seconded the motion to adopt. The roll was called, and the vote was:

AYES: _____

_____

NAYS: _____

Whereupon, the Mayor declared the Resolution duly adopted as follows:

RESOLUTION NO. _____

RESOLUTION FIXING DATE FOR A PUBLIC HEARING ON THE PROPOSAL TO ENTER INTO A DEVELOPMENT AGREEMENT WITH BTC, INC., AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF

WHEREAS, by Resolution adopted in 2007, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Westfield Urban Renewal Plan (the "Urban Renewal Plan" or "Plan") for the Westfield Urban Renewal Area (the "Urban Renewal Area" or "Area") described therein, which Plan is on file in the office of the Recorder of Carroll County; and

WHEREAS, the Plan is proposed to be amended by an Amendment No. 1, planned for the Council's consideration on October 12, 2020; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City has received a proposal from BTC, Inc. (the "Developer"), in the form of a proposed Development Agreement (the "Agreement") by and between the City and the Developer, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements and Public Improvements (as those terms are defined in the Agreement) on certain real property located within the Urban Renewal Area as defined and legally described in the Agreement (the "Development Property"), the Minimum Improvements consisting of the construction of a 37,427 square foot building to be used for retail and a technical support office, and a garage for vehicle and equipment storage, and the Public Improvements to include storm sewer improvements to be completed by Developer and dedicated to the City, as outlined in the proposed Agreement; and

WHEREAS, the Agreement further proposes that the City will make up to six (6) consecutive semi-annual payments of Economic Development Grants to Developer, each in the amount of 1/6 of the Public Improvements Costs (as defined in the Agreement) but not to exceed $33,333; the maximum cumulative total for all Grants not to exceed the lesser of (i) the amount of the Public Improvements Costs, or (ii) $200,000, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, one of the obligations of the Developer relates to employment retention and/or creation; and

WHEREAS, Chapters 15A and 403, Code of Iowa, (the "Urban Renewal Law") authorize cities to make grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapter, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and,

further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403, Code of Iowa, taking into account the factors set forth therein; and

WHEREAS, neither the Urban Renewal Law nor any other Code provision sets forth any procedural action required to be taken before said economic development activities can occur under the Agreement, and pursuant to Section 364.6,Code of Iowa, it is deemed sufficient if the action hereinafter described be taken and the City Clerk publish notice of the proposal and of the time and place of the meeting at which the Council proposes to take action thereon and to receive oral and/or written objections from any resident or property owner of said City to such action.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF CARROLL IN THE STATE OF IOWA:

Section 1. That this Council meet at 5:15 P.M. on October 12, 2020, for the purpose of taking action on the matter of the proposal to enter into a Development Agreement with BTC, Inc.

Section 2. That the City Clerk is hereby directed to cause at least one publication to be made of a notice of said meeting, in a legal newspaper, printed wholly in the English language, published at least once weekly, and having general circulation in said City, said publication to be not less than four (4) clear days nor more than twenty (20) days before the date of said public meeting.

Section 3. The notice of the proposed action shall be in substantially the following form:

(One publication required)

NOTICE OF PUBLIC HEARING OF THE CITY COUNCIL OF THE CITY OF CARROLL IN THE STATE OF IOWA, ON THE MATTER OF THE PROPOSAL TO ENTER INTO A DEVELOPMENT AGREEMENT WITH BTC, INC., AND THE HEARING THEREON

PUBLIC NOTICE is hereby given that the Council of the City of Carroll in the State of Iowa, will hold a public hearing on October 12, 2020, at 5:15 P.M., at which meeting the Council proposes to take action on the proposal to enter into a Development Agreement (the "Agreement") with BTC, Inc. (the "Developer").

Due to the current COVID-19 situation that makes it "impossible and impractical" to meet in one location the Carroll City Hall will remain closed to the public for the October 12, 2020 City Council meeting. However, the meeting will be made available telephonically. The public will be able to hear and participate in the Council meeting by calling: 1 (877) 568-4106 and when prompted, enter the following Access Code: 636 298 469 #. Individuals may start calling in at 5:00 P.M. for the meeting. Individuals may also join the meeting from a computer, tablet or smartphone by going to https://global.gotomeeting.com/join/636298469.

Please check the posted agenda in advance of the October 12, 2020 meeting for any updates to the manner in which the public may access the meeting. Please contact the City Clerk's office at (712) 792-1000 or LSchaefer@cityofcarroll.com if you have questions about the format of the meeting, or to request a copy of the Agreement.

The Agreement would obligate the Developer to construct certain Minimum Improvements and Public Improvements (as those terms are defined in the Agreement) on certain real property located within the Westfield Urban Renewal Area as defined and legally described in the Agreement, the Minimum Improvements consisting of the construction of a 37,427 square foot building to be used for retail and a technical support office, and a garage for vehicle and equipment storage, and the Public Improvements to include storm sewer improvements to be completed by Developer and dedicated to the City, under the terms and following satisfaction of the conditions set forth in the Agreement. One of the obligations of Developer relates to employment retention and/or creation.

The Agreement would further obligate the City to make up to six (6) consecutive semi-annual payments of Economic Development Grants to Developer, each in the amount of 1/6 of the Public Improvements Costs (as defined in the Agreement), not to exceed $33,333. The maximum cumulative total for all Grants is not to exceed the lesser of (i) the amount of the Public Improvements Costs, or (ii) $200,000, under the terms and following satisfaction of the conditions set forth in the Agreement.

A copy of the Agreement is on file for public inspection during regular business hours in the office of the City Clerk, City Hall, City of Carroll, Iowa.

At the above meeting the Council shall receive oral or written objections from any resident or property owner of said City, to the proposal to enter into the Agreement with the Developer. After all objections have been received and considered, the Council will at this meeting or at any adjournment thereof, take additional action on the proposal or will abandon the proposal to authorize said Agreement.

This notice is given by order of the City Council of the City of Carroll in the State of Iowa, as provided by Section 364.6, Code of Iowa.

Dated this _____ day of _____, 2020.

_____
City Clerk, City of Carroll in the State of Iowa

(End of Notice)

PASSED AND APPROVED this 14th day of September, 2020.

_____
Mayor

ATTEST:

_____
City Clerk

CERTIFICATE

STATE OF IOWA)
) SS
COUNTY OF CARROLL)

I, the undersigned City Clerk of the City of Carroll, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the records of the City showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no Council vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this _____ day of _____, 2020.

_____
City Clerk, City of Carroll, State of Iowa

(SEAL)

01764942-1\10275-075

AGREEMENT FOR PRIVATE DEVELOPMENT

By and between

CITY OF CARROLL, IOWA

AND

BTC, INC.

_____ _____, 2020

Draft Version (9/2/20)

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2020, by and between the CITY OF CARROLL, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2019, as amended ("Urban Renewal Act"), and BTC, INC., an Iowa for profit company having offices for the transaction of business at 112 East Main Street, Breda, IA 51436 ("Developer"). The City and Developer are Parties to this Agreement.

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Westfield Urban Renewal Area (the "Urban Renewal Area"), which is described in the Urban Renewal Plan approved for such area and adopted in 2007, and subsequently amended by Amendment No. 1 in 2020; and

WHEREAS, a copy of the foregoing Urban Renewal Plan has been recorded among the land records in the office of the Recorder of Carroll County, Iowa; and

WHEREAS, Developer owns or will own certain real property located in the foregoing Urban Renewal Area as more particularly described in Exhibit A attached hereto and made a part hereof ("Development Property"); and

WHEREAS, Developer shall build Minimum Improvements on the Development Property; and

WHEREAS, Developer shall build certain Public Improvements which benefit, among other things, the Development Property; and which, upon acceptance by the City, shall be dedicated to the City; and

WHEREAS, Developer shall operate the Minimum Improvements as set forth herein; and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment of this Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to 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:

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

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibits C-1 or C-2 and hereby made a part of this Agreement.

City means the City of Carroll, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2019, as amended.

Commencement Date means the date of this Agreement.

Construction Plans means the plans, specifications, drawings, and related documents reflecting the construction work to be performed by the Developer on the Development Property; the Construction Plans shall be as detailed as the plans, specifications, drawings, and related documents which are submitted to the building inspector of the City as required by applicable City codes.

Developer means BTC, Inc., an Iowa for profit company, and its permitted successors and assigns.

Development Property means that portion of the Westfield Urban Renewal Area described in Exhibit A.

Economic Development Grants means the payments to be made by the City to Developer under Article VII of this Agreement.

Event of Default means any of the events described in Section 10.1 of this Agreement that have continued beyond applicable notice and cure periods.

Full-Time Equivalent Employment Unit means the employment of one natural person for 2,000 hours per year, assuming eight hours per day for a five-day, forty-hour work week for fifty weeks per year, including paid holidays, vacations, and other paid leave.

Indemnified Parties means the City and the governing body members, officers, agents, servants and employees thereof.

Minimum Improvements means the construction of improvements more particularly described in Exhibits B-1 and B-2 attached to this Agreement.

Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Ordinance means an Ordinance of the City, under which the taxes levied on taxable property in Urban Renewal Area shall be divided and a portion paid into the Westfield Urban Renewal Tax Increment Revenue Fund under the provisions of Iowa Code section 403.19.

Project means the construction of the Minimum Improvements and the Public Improvements on the Development Property as described in this Agreement.

Public Improvement Costs means the costs and expenses related to the design and construction of the Public Improvements, and landscaping, grading, drainage, engineering, plans, and specifications related to those improvements, as more particularly described herein.

Public Improvements means the construction of improvements to be completed by the Developer and dedicated to the City, as more particularly described in Exhibits B-1 and B-2 attached to this Agreement.

Tax Increments means the property tax revenues divided and made available to the City for deposit in the Westfield Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Termination Date means the date of termination of this Agreement, as established in Section 11.8 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions, or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts, or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, pandemics, or the acts of any federal, State, or local governmental unit (other than the City, with respect to a City-claimed delay).

Urban Renewal Area means the area known as the Westfield Urban Renewal Area.

Urban Renewal Plan means the Urban Renewal Plan, as amended, approved with respect to the Westfield Urban Renewal Area, described in the preambles hereof.

Westfield Urban Renewal Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund will be created in order to pay the principal of and interest on loans, monies advanced to or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Chapters 15A, 403, or 384 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. The Developer is an Iowa for profit company, duly organized and validly existing under the laws of the State of Iowa and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution, and delivery by the City, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws relating to or affecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions, or provisions of the governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely

affect the business (present or prospective), financial position, or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State, or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

f. Developer shall cooperate with the City in resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with operation of the Minimum Improvements.

g. Developer shall cause the Minimum Improvements and Public Improvements to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

h. Reserved.

i. Developer shall dedicate the Public Improvements in the Development Property to the City upon acceptance by the City, at no cost to the City.

j. Developer shall obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and shall 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 Minimum Improvements or Public Improvements, as applicable, may be lawfully constructed.

k. The construction of the Minimum Improvements will require a total investment of not less than $8,200,000.

l. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed by May 1, 2021.

m. The construction of the Public Improvements will require a total investment of approximately $200,000.

n. Developer expects that, barring Unavoidable Delays, the Public Improvements will be completed by May 1, 2021.

o. Developer has firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to

successfully complete the Minimum Improvements and Public Improvements in accordance with the Construction Plans contemplated in this Agreement.

p. Developer would not undertake its obligations under this Agreement without the payment of the Economic Development Grants being made to Developer by the City pursuant to this Agreement.

ARTICLE III. CONSTRUCTION OF MINIMUM IMPROVEMENTS AND PUBLIC IMPROVEMENTS

Section 3.1. Construction of Minimum Improvements and Public Improvements. Developer agrees that it will cause the Minimum Improvements and the Public Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to the City in accordance with Section 3.2 below. Developer agrees that the scope and scale of the Minimum Improvements and the Public Improvements to be constructed shall not be significantly less than the scope and scale as detailed and outlined in the Construction Plans, the construction of which is anticipated to require a total investment of not less than $8,200,000 for Minimum Improvements and approximately $200,000 for Public Improvements.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be developed for the Minimum Improvements and the Public Improvements, which shall be subject to approval by the City as provided in this Section 3.2, and which approval shall not be unreasonably withheld, conditioned, or delayed. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable federal, State, and local laws and regulations. The City shall approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the terms and conditions of the Urban Renewal Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements; (iv) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements and the Public Improvements; and (v) no Event of Default under the terms of this Agreement has occurred and is continuing beyond applicable notice and cure periods; provided, however, that any such approval of the Construction Plans pursuant to this Section 3.2 shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning, or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the City for the Development Property and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Construction Plans for the Minimum Improvements, if such site plans are approved by the building official.

Approval of the Construction Plans by the City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State, and local laws, ordinances and regulations.

Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements or Public Improvements as constructed.

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements and the Public Improvements to be undertaken and completed: (i) by no later than May 1, 2021, with respect to the Public Improvements and no later than May 1, 2021, with respect to the Minimum Improvements; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements and Public Improvements shall be in conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official.

Developer agrees that they shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements and the Public Improvements to inspect such construction and the progress thereof, subject to Developer's rules and regulations for the construction site.

Section 3.4. Certificates of Completion.

a. Within fifteen (15) business days after written request by Developer and after issuance of an occupancy permit for the Minimum Improvements, the City shall furnish Developer with a Certificate of Completion for the Minimum Improvements in recordable form, in substantially the form set forth in Exhibit C-1 attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

b. Within fifteen (15) business days after written request by Developer, the City shall furnish Developer with a Certificate of Completion for the Public Improvements in recordable form, in substantially the form set forth in Exhibit C-2 attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Public Improvements.

c. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.4, the City shall, within such fifteen (15) business day period, instead provide a written statement indicating in what respects Developer has failed to complete the Minimum Improvements or Public Improvements, as applicable, in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain such Certificate of Completion.

d. The Certificates of Completion may be recorded in the Carroll County Recorder's Office at Developer's sole expense.

Section 3.5. Dedication of Public Improvements. Upon notice of completion of the Public Improvements, the City shall inspect the Public Improvements and determine whether they have been completed in accordance with this Agreement. If the City finds that the Public Improvements have been duly completed in compliance with this Agreement and all City ordinances, policies, and procedures, the bonds required by Section 3.7 have been provided, and the City approves the Public Improvements, the Developer shall dedicate the Public Improvements to the City and the City shall accept said dedication, at no cost to the City. If the City determines that the Public Improvements are not acceptable, it shall notify the Developer in the same manner as refusal to provide a Certificate of Completion as described in Section 3.4(c).

Section 3.6. No Special Legal Entitlements to Public Improvements.

a. Developer recognizes and agrees that upon dedication to the City the Public Improvements shall be owned and maintained by the City and that nothing in this Agreement grants Developer any special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance, or use of the Public Improvements.

b. The Parties agree that the City and other Indemnified Parties are not responsible for and will have no liability to Developer associated with the specifications, design, plans, quality of construction, or sufficiency of the Public Improvements for any particular purpose.

Section 3.7. Bonding Requirements. Developer shall obtain, or require each of its general contractors to obtain, one or more bonds that guarantee the faithful performance of this Agreement for, in the aggregate, the anticipated full value of the completed Public Improvements and that further guarantee the prompt payment of all materials and labor. The performance bond(s) for a given Project of the Public Improvements shall remain in effect until construction of such Public Improvements is completed, at which time a four-year maintenance bond shall be substituted for each performance bond. The bonds shall clearly specify the Developer and City as joint obligees.

Section 3.8. Real Property Taxes. Developer or its successors, shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property acquired and owned or leased by them. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer shall be responsible for all assessments and taxes.

Developer and its successors, agree that prior to the Termination Date:

a. They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings.

b. They will not seek any tax exemption, rebate, deferral, other abatement or any kind of incentive either presently or prospectively authorized under any State, federal or local law with respect to taxation of real property contained on the Development Property between the date of execution of this Agreement and the Termination Date.

ARTICLE IV. INSURANCE

Section 4.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and Public Improvements (and, from time to time at the request of the City, furnish the City with proof of coverage or payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk–Completed Value Basis," in an amount equal to the full replacement cost of the Minimum Improvements, 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, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least $1,000,000 for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the project and arising out of any act, error, or omission of Developer, or either entity's directors, officers, shareholders, contractors, and subcontractors or anyone else for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to Developer and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of coverage or the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limitation the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than $50,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement

value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by Developer and approved by the City.

ii. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount for each occurrence and for each year of $1,000,000.

iii. Such other insurance, including workers' compensation insurance respecting all employees of Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article IV to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, as applicable, which are authorized under the laws of the State to assume the risks covered thereby. Developer will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article IV, each policy shall contain a provision that the insurer shall not cancel it without giving written notice to Developer and the City at least thirty (30) days (ten (10) days in the case of non-payment of premium) before the cancellation becomes effective. Within ten (10) days of being notified of any modification to the policy by the insurer that would cause a party's coverage to be less than the minimum requirements as set forth in this Agreement, the Developer will provide written notice to the City of the modification. Within fifteen (15) days after the expiration of any policy, Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article IV, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

d. Developer agrees to notify the City immediately in the case of damage exceeding $25,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer, and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer will apply the Net Proceeds of any insurance relating to such damage received to the payment or reimbursement of the costs thereof.

e. Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE V. FURTHER COVENANTS OF DEVELOPER

Section 5.1. Maintenance of Development Property. Developer will maintain, preserve, and keep the Development Property, including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 5.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to their business and affairs relating to this Project, and will provide reasonable protection against loss or damage to such books of record and account.

Section 5.3. Compliance with Laws/Non-Discrimination. Developer will comply with all State, federal, and local laws, rules, and regulations relating to the Minimum Improvements, Public Improvements, and Development Property. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any applicant, employee or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 5.4. Available Information. Upon request, Developer shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

Section 5.5. Employment. No later than 90 days from issuance of a certificate of occupancy for the Minimum Improvements, Developer shall employ at least 20 Full-Time Equivalent Employment Units at the Development Property, which number shall increase to 23 Full-Time Equivalent Employment Units at the Development Property as of July 1, 2022, and thereafter Developer shall retain a Monthly Average of at least 23 Full-Time Equivalent Employment Units until the Termination Date of this Agreement. Developer's Annual Certification, due by no later than the 15th day of after issuance of a certificate of occupancy for the Minimum Improvements, shall show that a Monthly Average of at least the number of Full-Time Equivalent Employment Units set forth above has been maintained over the preceding twelve (12) month period.

"Monthly Average" means the average number of Full-Time Equivalent Employment Units employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months (prorated for the first certification), as shown in Developer's Annual Certification in Section 5.6. Developer shall not receive any Economic Development Grants if the Monthly Average of Full-Time Equivalent Employment Units employed by Developer does not meet the

requirements of this Section 5.5. Developer shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

Section 5.6. Annual Certification. To assist the City in monitoring this Agreement and the performance of Developer hereunder, a duly authorized officer of Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; (ii) the date of the first full assessment of the Minimum Improvements; (iii) certification of the number of Full-Time Equivalent Employment Units employed at the Development Property as of October 1 and as of the first day of each of the preceding eleven (11) months (prorated for the first certification); and (iv) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such statement, proof and certificate shall be provided not later than the 15th day of the 15th full month after issuance of a certificate of occupancy for the Minimum Improvements, and each October 15th thereafter until October 15, 2025. Developer shall provide supporting information for the Annual Certifications upon request of the City. See Exhibit E for form required for Developer's Annual Certification.

If Developer has failed to provide an annual certification by the 15th day of the 15th month after issuance of a certificate of occupancy for the Minimum Improvements, or by October 15 in a particular year, the same shall be considered an Event of Default, for which the City will send written notice to Developer for cure.

Section 5.7. Term of Operation. Developer shall maintain its operations on the Development Property, including the employment of employees as described in Section 5.5, until the Termination Date of this Agreement.

Section 5.8. Developer's Certification of Public Improvement Costs. Developer shall certify to the City (the "Developer Certification") the amount of all Public Improvement Costs submitted for reimbursement as Economic Development Grants to be paid to the Developer and shall certify that such amounts are true and correct. *See* Exhibit F for the form of Developer Certification. Such Developer Certification shall be provided not later than October 15 of each year in which Developer incurs Public Improvement Costs as provided in Section 7.1(a)(iv) of this Agreement. Along with its Developer Certification, Developer shall attach documentation showing substantiation of Public Improvement Costs as provided in Section 7.1(a)(iv) of this Agreement. Developer shall provide additional supporting information for its Developer Certification upon request of the City.

Section 5.9. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum

Improvements and Public Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements and Public Improvements shall be completed generally within the time limits set forth herein; (b) the Minimum Improvements and Public Improvements shall be constructed and completed in substantial accordance with the Construction Plans; (c) the Minimum Improvements and Public Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements and Public Improvements shall be paid when due.

ARTICLE VI. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 6.1. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer under this Agreement represents and agrees that, prior to the Termination Date, Developer will maintain its existence and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign their interest in the this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company, or individual assumes in writing all of the then-outstanding obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

Section 6.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer or its successors or assigns, agree that (except with respect to the dedication of any right of way to the City) the Minimum Improvements and Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE VII. ECONOMIC DEVELOPMENT GRANTS

Section 7.1. Economic Development Grants.

a. Payment of Economic Development Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to the Developer being and remaining in compliance with this Agreement at the time of each payment, to make up to six (6) consecutive semi-annual payments of Economic Development Grants to the Developer under the following terms and conditions.

i. Schedule of Grants. Assuming completion of the Minimum Improvements by May 1, 2021, full assessment of the Minimum Improvements on January 1, 2022, timely certification of the Public Improvement costs by Developer, and debt certification to the Carroll

County Auditor by the City prior to December 1, 2022, the Economic Development Grants shall commence on December 1, 2023, and end on June 1, 2026, under the following schedule:

December 1, 2023	1/6 of the Public Improvement Costs (not to exceed $33,333)
June 1, 2024	1/6 of the Public Improvement Costs (not to exceed $33,333)
December 1, 2024	1/6 of the Public Improvement Costs (not to exceed $33,333)
June 1, 2025	1/6 of the Public Improvement Costs (not to exceed $33,333)
December 1, 2025	1/6 of the Public Improvement Costs (not to exceed $33,333)
June 1, 2026	1/6 of the Public Improvement Costs (not to exceed $33,333)

ii. Maximum Amount of Grants. Notwithstanding the foregoing, in no event shall the aggregate amount of the Economic Development Grants exceed the lesser of: (a) $200,000, or (b) the aggregate amount of the Public Improvement Costs submitted to and approved by the City as a part of Developer's completion of the Public Improvements.

iii. Limitations. Developer acknowledges that payment shall come solely and only from incremental taxes received by the City under Iowa Code Section 403.19 from levies upon the taxable property described in the Ordinance. The City makes no assurance that the Developer will receive Economic Development Grants which equal the Maximum stated in Section 7.1(a)(ii).

iv. Certification of Public Improvement Costs. The obligation of the City to make any Economic Development Grants to the Developer shall be subject to and conditioned upon, among other things, the timely filing by the Developer of the Developer Certification required under Section 5.8 hereof and the City's approval thereof. Developer must submit accurate and sufficient documentation of the Public Improvement Costs to the City as part of its Developer Certification.

Section 7.2. Conditions Precedent. Notwithstanding the provisions of Section 7.1 above, the obligation of the City to make an Economic Development Grant in any year shall be subject to and conditioned upon the following:

(a) compliance with the terms of this Agreement by Developer at the time of payment; and

(b) Developer's construction of the Minimum Improvements and Public Improvements consistent with this Agreement; and

(c) Developer's timely filing of the certifications set forth in Section 5.6, including the Developer Annual Certification; and

(d) Developer's timely filing of the Developer Certification as set forth in Sections 5.8 and 7.1(a)(iv).

Under no circumstances shall the failure by Developer to qualify for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination

Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully complies with the provisions hereof and the Developer becomes entitled thereto, up to the maximum aggregate amounts set forth in Section 7.1(a)(ii).

After the Minimum Improvements are first fully assessed and if in compliance with this Agreement, if the Developer's Annual Certification is timely filed under Section 5.6 and the Developer Certification is timely filed under Section 5.8, the City shall certify to Carroll County, Iowa (the "County") prior to December 1 of that year its request for Tax Increments to be collected by the County and paid to the City as taxes are paid during the following fiscal year and to thereafter be disbursed to Developer as set forth in this Agreement. (Example: assuming completion by May 1, 2021, and first full assessment on January 1, 2022, if Developer timely certifies the costs of the Public Improvements, Developer certifies in October 2022, and the City certifies to the County by December 1, 2022, the first Economic Development Grant would be paid to Developer on December 1, 2023). Compliance with the terms and conditions of this Agreement is a condition precedent to receiving any Economic Development Grant.

Section 7.3. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts of incremental property tax revenues that are received by the City from Carroll County that are deposited and held in the Westfield Urban Renewal Tax Increment Revenue Fund of the City. The City hereby covenants and agrees to maintain the Ordinance in force during the term hereof and to use Tax Increments collected and allocated to the Westfield Urban Renewal Tax Increment Revenue Fund of the City to pay the Economic Development Grants, as and to the extent set forth in this Article. The Economic Development Grants shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds. Any commercial and industrial property tax replacement monies that may be received under Chapter 441.21A of the Code shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under Chapter 426C of the Code relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council of the City (the "City Council"). The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof.

If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

c. Notwithstanding the provisions of Section 7.1 hereof, the City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment, or receives an opinion from its legal counsel to the effect that the use of Tax Increments resulting from the Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 7.1, is not authorized or is not an otherwise appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa court having jurisdiction over the subject matter hereof. Upon receipt of any such legal opinion or non-appropriation, the City shall promptly forward notice of the same to Developer. If the non-appropriation or circumstances or legal constraints giving rise to the decision continue for a period during which two (2) semi-annual Economic Development Grants would otherwise have been paid to Developer under the terms of Section 7.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

Section 7.4. Use of Other Tax Increments. The City shall be free to use any and all Tax Increments above and beyond the percentages to be given to Developer under this Agreement, or any available Tax Increments resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increments may lawfully be used pursuant to the provisions of the Urban Renewal Act (including an allocation of all or any portion thereof to the reduction of any eligible City costs), and the City shall have no obligations to Developer with respect to the use thereof.

ARTICLE VIII. RESERVED

ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Developer releases the City and the Indemnified Parties from, covenant and agree that the Indemnified Parties shall not be liable for, and agree 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 or resulting from any defect in the Minimum Improvements, Public Improvements (until such time as they are conveyed to the City), or Development Property.

b. Except to the extent arising from any willful misrepresentation, gross negligence, or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand, or other proceeding brought by Developer against the City to enforce its rights under this

Agreement); (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements and, until accepted by the City, the Public Improvements; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer, or its officers, agents, servants, or employees or any other person who may be about the Public Improvements, Minimum Improvements, or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

d. The provisions of this Article IX shall survive the termination of this Agreement.

ARTICLE X. REMEDIES

Section 10.1. Events of Default Defined. 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, any one or more of the following events during the Term of this Agreement:

a. Failure by Developer to cause the construction of the Minimum Improvements and Public Improvements to be completed pursuant to the terms and conditions of this Agreement;

b. Failure by Developer to substantially observe or perform any covenant, condition, obligation, or agreement on their part to be observed or performed under this Agreement;

c. Transfer of Developer's interest in the Development Property, Minimum Improvements, or this Agreement in violation of the provisions of this Agreement;

d. Failure by Developer to pay ad valorem taxes on the Development Property or Minimum Improvements;

e. Failure by Developer to employ employees on the Development Property as required herein;

f. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;

g. Developer shall:

i. file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

ii. make an assignment for the benefit of its creditors; or

iii. admit in writing its inability to pay its debts generally as they become due; or

iv. be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as bankrupt or either entity's 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 the Minimum Improvements, 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;

h. Any representation or warranty made by Developer in this Agreement or 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; or

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by the City to Developer and the holder of any Mortgage (but only to the extent the City has been informed in writing of the existence of a Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

a. The City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure the default and continue its performance under this Agreement;

b. The City may terminate this Agreement;

c. The City may withhold the Certificates of Completion;

d. The City may take any action, including legal, equitable, or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement; or

e. The City will have no obligation to make payment of Economic Development Grants to Developer subsequent to the Event of Default and shall be entitled to recover from Developer, and Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer under Article VII hereof, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amounts from Developer.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 10.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer herein contained, and the City prevails in an action to enforce this Agreement, Developer agrees that the defaulting party shall, upon demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE XI. MISCELLANEOUS

Section 11.1. Conflict of Interest. Developer warrants that, to their best knowledge and belief after due inquiry, no officer or employee of the City, or their 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, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party 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 or delivered personally to BTC, Inc.112 East Main Street, Breda, Iowa 51436, Attn: Jeff Roiland, CEO;

b. In the case of the City, is addressed to or delivered personally to the City at 627 North Adams Street, Carroll, Iowa 51401, Attn: Laura Schaefer, City Clerk;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 11.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 11.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2026, unless terminated earlier under the provisions of this Agreement.

Section 11.9. Memorandum of Agreement. The Parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

Section 11.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in their names and behalf by its authorized representative, all on or as of the day first above written.

[Signatures start on the next page]

(SEAL)

CITY OF CARROLL, IOWA

By: _____
Eric Jensen, Mayor

ATTEST:

By: _____
Laura Schaefer, City Clerk

STATE OF IOWA)
) SS
COUNTY OF CARROLL)

On this _____ day of _____, 2020, before me a Notary Public in and for said State, personally appeared Eric Jensen and Laura Schaefer, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

BTC, INC.,
an Iowa for profit company

By: _____
Jeff Roiland, CEO

STATE OF ____)
) SS
COUNTY OF _____)

On this _____ day of _____, 2020, before me the undersigned, a Notary Public in and for said State, personally appeared Jeff Roiland, to me personally known, who, being by me duly sworn, did say that he is the CEO of BTC, Inc. and that said instrument was signed on behalf of said company; and that the said CEO as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

EXHIBIT A

DEVELOPMENT PROPERTY

The Development Property is described as follows:

Lot 2, Block 1, Westfield Second Addition, Carroll, Iowa

Parcel No. 06-14-376-003

EXHIBIT B-1

MINIMUM IMPROVEMENTS AND PUBLIC IMPROVEMENTS

Minimum Improvements shall mean the construction of a 37,427 square foot building to be used for retail and technical support office, and a garage for vehicle and equipment storage, together with all related site improvements.

The construction of the Minimum Improvements is expected to be completed by May 1, 2021. Construction costs for the Minimum Improvements are anticipated to be no less than approximately $8,200,000.

Public Improvements shall mean the construction and installation by Developer of underground storm water improvements along Market Drive. The construction of the storm water improvements will be completed by May 1, 2021, which improvements shall be dedicated to the City upon completion.

Construction costs for the Public Improvements are anticipated to be approximately $200,000.

See Exhibit B-2 for a depiction of the anticipated improvements to the Development Property.

EXHIBIT B-2

EXHIBIT B-2 (cont.)

EXHIBIT C-1
CERTIFICATE OF COMPLETION
MINIMUM IMPROVEMENTS

WHEREAS, the City of Carroll, Iowa (the "City") and BTC, Inc. (the "Developer") did on or about the _____ day of _____, 2020, make, execute, and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby the Developer agreed, in accordance with the terms of the Agreement, to develop and operate certain real property located within the City and as more particularly described as follows:

Lot 2, Block 1, Westfield Second Addition, Carroll, Iowa

Parcel No. 06-14-376-003

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Carroll County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

[Signatures Start on Next Page]

(SEAL)

CITY OF CARROLL, IOWA

By: _____
Eric Jensen, Mayor

ATTEST:

By: _____
Laura Schaefer, City Clerk

STATE OF IOWA)
) SS
COUNTY OF CARROLL)

On this _____ day of _____, 20__, before me a Notary Public in and for said State, personally appeared Eric Jensen and Laura Schaefer, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Certificate of Completion for Minimum Improvements]

EXHIBIT C-2
CERTIFICATE OF COMPLETION
PUBLIC IMPROVEMENTS

WHEREAS, the City of Carroll, Iowa (the "City") and BTC, Inc. (the "Developer") did on or about the _____ day of _____, 2020, make, execute, and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby the Developer agreed, in accordance with the terms of the Agreement, to develop certain real property located within the City and as more particularly described as follows:

Lot 2, Block 1, Westfield Second Addition, Carroll, Iowa

Parcel No. 06-14-376-003

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to construct certain Public Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Public Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Public Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever Carroll County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Public Improvements set forth in the Agreement.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

[Signatures Start on Next Page]

(SEAL)

CITY OF CARROLL, IOWA

By: _____
Eric Jensen, Mayor

ATTEST:

By: _____
Laura Schaefer, City Clerk

STATE OF IOWA)
) SS
COUNTY OF CARROLL)

On this _____ day of _____, 20__, before me a Notary Public in and for said State, personally appeared Eric Jensen and Laura Schaefer, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Certificate of Completion for Public Improvements]

Prepared by: Nathan J. Overberg, Ahlers & Cooney, 100 Court Ave. #600, Des Moines, IA 50309, 515-243-7611
Return to: City Clerk, City of Carroll, 627 North Adams Street, Carroll, IA 51401

EXHIBIT D

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Carroll, Iowa (the "City") and BTC, Inc. (the "Developer") did on or about the _____ day of _____, 2020, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Westfield Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within the Westfield Urban Renewal Area, more particularly described as follows:

Lot 2, Block 1, Westfield Second Addition, Carroll, Iowa

Parcel No. 06-14-376-003

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2020 and terminates on December 31, 2026, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City, and Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said

Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, Carroll, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement for Private Development on the _____ day of _____, 2020.

(SEAL)

CITY OF CARROLL, IOWA

By: _____
Eric Jensen, Mayor

ATTEST:

By: _____
Laura Schaefer, City Clerk

STATE OF IOWA)
) SS
COUNTY OF CARROLL)

On this _____ day of _____, 2020, before me a Notary Public in and for said State, personally appeared Eric Jensen and Laura Schaefer, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement for City of Carroll]

BTC, INC.,
an Iowa for profit company

By: _____
Jeff Roiland, CEO

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 2020, before me the undersigned, a Notary Public in and for said State, personally appeared Jeff Roiland, to me personally known, who, being by me duly sworn, did say that he is the CEO of BTC, Inc. and that said instrument was signed on behalf of said company; and that the said CEO as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement for Developer]

EXHIBIT E

DEVELOPER ANNUAL CERTIFICATION

(due by October 15th as required under terms of Development Agreement)

BTC, Inc. (the "Developer") certifies the following:

During the time period covered by this Developer Annual Certification, Developer is and was in compliance with Section 5.6 of the Agreement as follows:

(i) all ad valorem taxes on the Development Property in the Westfield Urban Renewal Area have been paid for the prior fiscal year (and for the current year, if due) and attached to this Developer Annual Certification are proof of payment of said taxes;

(ii) the Minimum Improvements were first fully assessed on January 1, 20___, at a full assessment value of $_____, and are currently assessed at $_____;

(iii) the number of Full-Time Equivalent Employment Units employed at the Minimum Improvements as of October 1, 20___ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__: _____	April 1, 20__: _____
September 1, 20__: _____	March 1, 20__: _____
August 1, 20__: _____	February 1, 20___: _____
July 1, 20__: _____	January 1, 20__: _____
June 1, 20__: _____	December 1, 20__: _____
May 1, 20__: _____	November 1, 20__: _____

(iv) the undersigned officer of Developer have re-examined the terms and provisions of this Agreement and that at the date of such certification, and during the preceding twelve (12) months, certify that Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certification, or if the signers are aware of any such Event of Default, said officers have disclosed the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

BTC, INC.

By: _____

EXHIBIT F

DEVELOPER CERTIFICATION OF PUBLIC IMPROVEMENT COSTS

BTC, Inc. (the "Developer") certifies that the expenses shown on the table below were/are the actual expenses incurred by the Developer for the Public Improvements that are the subject of an Agreement for Private Development entered into the _____ day of _____, 2020 between the City of Carroll, Iowa and the Developer (the "Agreement").

Certified Costs of Public Improvements							
Project Cost Category	**Engineering, Plans, Specifications**	**Construction Costs**	**Legal Costs**	**Drainage, Landscaping, Grading**	**Cost for acquisition of land within the ROW**	**Interest during construction and for not more than six months thereafter**	**Miscellaneous**
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Total Cost per category							

If you need additional space please attach another table.

Attach actual receipts and invoices

[Remainder of this page intentionally left blank. Signature page to follow.]

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

BTC, INC.,
an Iowa for profit company

By: _____
Jeff Roiland, CEO

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 2020, before me the undersigned, a Notary Public in and for said State, personally appeared Jeff Roiland, to me personally known, who, being by me duly sworn, did say that he is the CEO of BTC, Inc. and that said instrument was signed on behalf of said company; and that the said CEO as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Developer Certification of Costs]

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