MEMO

FROM: David S. Bruner DSB
TO: Mayor and City Council
DATE: September 22, 2021
RE: Rowland Sale – 224 N. Main Street

Background

On December 10, 2020, the City sold Rowland Real Estate, L.L.C. (Rowland) the old City hotel lots on contract for $1,000, subject to conditions. Rowland has paid the purchase price and has begun some preliminary dirt work on the lots. The primary conditions still outstanding as required by the real estate contract are:

d. Redevelopment of this property shall begin within 9 months of the date of this Real Estate Contract or date otherwise approved by the Seller and Buyer and must be completed within 18 months of the date of this real estate contract.

f. The Buyer agrees to construct a 4-plex with detached garages and agrees to add architectural details to the proposed unit including the addition of small dormers above the front entry doors and off set north and south units 3 feet in front of the middle units. Final design must be presented to and shall be approved by the City Manager prior to the start of construction.

Recently, Rowland's lender contacted the City to determine if Rowland could receive the Deed to the property, so the lender could then obtain the first mortgage lien on the property and begin financing Rowland's development of this lot.

It was then determined that signing a Property Development Agreement at the same time the Deed would be delivered to Rowland, would preserve the City's conditions for development originally set out in the real estate contract. In addition, the Deed to Rowland would contain the City's conditions and establish that ownership is subject thereto.

Also, the lender has agreed to include all of the City's conditions in its lending agreements.

The lender has further asked the City to subordinate the Property Development Agreement to their mortgage, to assure the lender would have a first mortgage lien on the property.

Recommendation

Council consideration of Property Development Agreement and Subordination of the Property Development Agreement to the lender and approve both Resolutions.

RESOLUTION NO. _____

RESOLUTION APPROVING PROPERTY DEVELOPMENT AGREEMENT

WHEREAS, the city has sold its interest in real estate legally described as:

> Lot 9 and the South 11 feet of the West 68 feet of Lot 10, Block 37, Second Addition to the City of Carroll, Carroll County, Iowa

by Real Estate Contract, dated December 10, 2020, and filed December 28, 2020, in Book 2020 at Page 4475; and

WHEREAS, the above-stated Contract conveyed the real estate to Rowland Real Estate L.L.C.; and

WHEREAS, for construction financing purposes, the City and Rowland Real Estate L.L.C. desire to enter into a Property Development Agreement, whereby the City would deliver a Deed to Rowland Real Estate L.L.C., while retaining its conditions as outlined in the above-stated Real Estate Contract, and

WHEREAS, the Council deems the proposed Property Development Agreement to be in the best interest of the City of Carroll, Iowa.

NOW, THEREFORE, BE IT RESOLVED that the above-stated real estate be conveyed by Deed to Rowland Real Estate L.L.C. for good and valuable consideration including the imposition of the same conditions as required by the above mentioned Real Estate Contract dated December 10, 2020, and the Mayor and City Clerk are authorized to execute the deed on behalf of the City, and the above mentioned Property Development Agreement (attached hereto) is approved and the Mayor and City Clerk are authorized to execute on behalf of the City.

Passed and Approved this 27th day of September, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By_____
Eric P. Jensen, Mayor

ATTEST:

By_____
Laura A. Schaefer, City Clerk

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PROPERTY DEVELOPMENT AGREEMENT

IT IS AGREED by the City of Carroll, (City) and Rowland Real Estate, L.L.C., (Rowland) as follows:

1. This Agreement is executed to facilitate Rowland's ability to finance the residential housing development to be built at 224 N. Main Street, Carroll, Iowa, and legally described as:

Lot 9 and the South 11 feet of the West 68 feet of Lot 10, Block 37, Second Addition to the City of Carroll, Carroll County, Iowa

The City's intent and requirements are to have this project developed, designed, constructed and completed in a good and workmanlike manner as a quality residential project in conformity with all building requirements and the project schedule.

2. The City and Rowland have executed a Real Estate Contract dated December 10, 2020 and filed for record December 28, 2020 as Instrument #2020-4475, with the Carroll County Recorder.

3. The above-stated Real Estate Contract is subject to and conditioned on the following:

a. All tree removal, landscaping, surveying or other work desired by the Buyer shall be the sole responsibility of the Buyer.

b. All unknown or unforeseen conditions shall be the sole responsibility of the Buyer.

c. The Buyer shall keep this property free of garbage, debris, junk, refuse, old building materials, abandoned, non-operational, or junk vehicles, appliances and household furnishings. The yard must be maintained continuously in a healthy and safe condition.

d. Redevelopment of this property shall begin within 9 months of the date of this Real Estate Contract or date otherwise approved by the Seller and Buyer and must be completed within 18 months of the date of this Real Estate Contract.

e. All proposed work and construction requiring permits in accordance with the codes adopted by the City of Carroll must be secured by a licensed registered contractor who is currently registered with the City of Carroll.

f. The Buyer agrees to construct a 4-plex with detached garages and agrees to add architectural details to the proposed unit including the addition of small dormers above the front entry doors and off set north and south units 3 feet in front of the middle units. Final design must be presented to and shall be approved by the City Manager prior to the start of construction.

4. It is the intent of the parties to facilitate financing of Rowland for the construction herein and also to retain the integrity and enforceability of the conditions placed upon Rowland in the above-stated Real Estate Contract.

5. Upon execution of this Agreement, the City shall transfer by Deed the above-described real estate to Rowland, which transfer shall be subject to the conditions set forth in paragraph 3 herein. In addition to this Agreement, the Deed will set out the above-mentioned conditions on the face of the Deed.

6. If Rowland fails to meet each and every condition stated herein and on the Deed, and after a 30-day notice to cure, it agrees to transfer ownership back to the City, upon the City's demand, with all costs of transferring to be assumed and paid for in full by Rowland.

7. Unless sooner terminated, the terms of this Agreement shall continue until July 31, 2022. If so satisfied by July 31, 2022, the City shall deliver in writing proof of full satisfaction of this Agreement, as it may be requested by Rowland.

8. The exercise of one or more rights and remedies under this Agreement by the City shall not preclude the exercise of any other right or remedy at law, or in equity.

9. Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by Force Majeure.

10. Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required under this Agreement shall be in writing and delivered to the other party at the address below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered U.S. Mail, signature required and postage prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (email) provided that the transmission is completed no later than 4:00 p.m., CDT on a business day and the original also sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To City:	City of Carroll Attn: Mike Pogge-Weaver 627 N. Adams Street Carroll, IA 51401
To Rowland:	Andy Rowland 15920 Hickman Road, Suite 400 P.O. Box 422 Clive, IA 50325

11. Rowland may not assign or delegate any of its rights, obligations or responsibilities hereunder without the prior written consent of the City, which consent may be withheld in its sole and absolute discretion. Any purported assignments or delegation in violation of this Agreement shall be null and void. No assignment or delegation shall relieve Rowland of any of its obligations or responsibilities hereunder.

12. This Agreement, together with the Real Estate Contract and Deed, constitute the sole and entire agreement of the parties and supersedes all prior agreements and representations, both written and oral.

13. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

14. Rowland shall instruct Peoples Bank in Jefferson, Iowa, to include all the terms contained herein in its financial agreements, including the mortgage, taken on the above-mentioned real estate.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

Dated: ~~August~~ September 1, 2021.

CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

By: _____
Laura A. Schaefer, Clerk

ROWLAND REAL ESTATE, L.L.C.

By: _____
Andrew E. Rowland, Manager

STATE OF IOWA, COUNTY OF CARROLL
This record was acknowledged before me on August _____, 2021, by Eric P. Jensen and Laura A. Schaefer, Mayor and City Clerk of the City of Carroll, Iowa

_____
Signature of Notary Public

STATE OF IOWA, COUNTY OF Greene
This record was acknowledged before me on ~~August~~ September 1st, 2021, by Andrew E. Roland, Manager of Rowland Real Estate, L.L.C.

NICOLE UEBEL
Commission Number 762761
My Commission Exp. April 26, 2022

_____
Signature of Notary Public

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Prepared and return to: David S. Bruner, 225 E 7th, Carroll, IA 51401 712-792-3480
Taxes to: Rowland Real Estate LLC, 15920 Hickman Road, Suite 400, PO BXO 422, Clive, IA 50325

DEED

For the consideration of One Dollar ($1.00) and other valuable consideration, **City of Carroll, Iowa**, does hereby Deed and transfer to **Rowland Real Estate L.L.C.**, all our right, title, interest, estate, claim and demand in the following described real estate in Carroll County, Iowa:

Lot 9 and the South 11 feet of the West 68 feet of Lot 10, Block 37, Second Addition to the City of Carroll, Carroll County, Iowa

Subject to the property development agreement signed by both the grantor and grantee herein, including the following conditions.

a. All tree removal, landscaping, surveying or other work desired by the Buyer shall be the sole responsibility of the Buyer.

b. All unknown or unforeseen conditions shall be the sole responsibility of the Buyer.

c. The Buyer shall keep this property free of garbage, debris, junk, refuse, old building materials, abandoned, non-operational, or junk vehicles, appliances and household furnishings. The yard must be maintained continuously in a healthy and safe condition.

d. Redevelopment of this property shall begin within 9 months of the date of this Real Estate Contract or date otherwise approved by the Seller and Buyer and must be completed within 18 months of the date of this Real Estate Contract.

e. All proposed work and construction requiring permits in accordance with the codes adopted by the City of Carroll must be secured by a licensed registered contractor who is currently registered with the City of Carroll.

f. The Buyer agrees to construct a 4-plex with detached garages and agrees to add architectural details to the proposed unit including the addition of small dormers above the front entry doors and off set north and south units 3 feet in front of the middle units. Final design must be presented to and shall be approved by the City Manager prior to the start of construction.

NO DECLARATION OF VALUE OR REAL ESTATE TRANSFER TAX REQUIRED PURSUANT TO SECTION 428.A.2(6) IOWA CODE (2021).

Dated: September 27, 2021

CITY OF CARROLL, IOWA

By_____
Eric P. Jensen, Mayor

ATTEST

By_____
Laura A. Schaefer, City Clerk

STATE OF IOWA, CARROLL COUNTY, ss

On this 27TH day of September, 2021, before me a Notary Public in and for the State of Iowa, personally appeared Eric P. Jensen and Laura A. Schaefer, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll; and that the instrument was signed on behalf of the City, by authority of its City Council, and that Eric P. Jensen and Laura A. Schaefer acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____
Notary Public

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RESOLUTION NO. _____

RESOLUTION APPROVING SUBORDINATION OF PROPERTY DEVELOPMENT AGREEMENT

WHEREAS, the city has sold its interest in real estate legally described as:

> Lot 9 and the South 11 feet of the West 68 feet of Lot 10, Block 37, Second Addition to the City of Carroll, Carroll County, Iowa

by Real Estate Contract, dated December 10, 2020, and filed December 28, 2020, in Book 2020 at Page 4475; and

WHEREAS, the above-stated Contract conveyed the real estate to Rowland Real Estate L.L.C.; and

WHEREAS, for construction financing purposes, the City and Rowland Real Estate L.L.C. have entered into a Property Development Agreement, whereby the City will deliver a Deed to Rowland Real Estate L.L.C., while retaining its conditions as outlined in the above-stated Real Estate Contract; and

WHEREAS, Peoples Bank, Waukee, Iowa, the lender for this project, desires the City to subordinate the Property Development Agreement to its mortgage on the above property; and

WHEREAS, the Council deems the proposed subordination to be in the best interest of the City of Carroll, Iowa

NOW, THEREFORE, BE IT RESOLVED that the Subordination of the Property Development Agreement be approved and the Mayor and City Clerk are authorized to execute the Subordination of Property Development Agreement on behalf of the City.

Passed and Approved this 27th day of September, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By_____
Eric P. Jensen, Mayor

ATTEST:

By_____
Laura A. Schaefer, City Clerk

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Prepared by: Teri R. Rumley, Peoples Bank, 1185 SE University Ave., Waukee, IA 50263 515-327-7725
Return to: Peoples Bank, 1185 SE University Ave., Waukee, IA 50263

SUBORDINATION OF Property Development Agreement

WHEREAS, **City of Carroll** is the owner and holder of a **Property Development Agreement, see attached Exhibit A,** dated September 1, 2021, herein referred to as "Existing **Agreement**" on the following described Property:

> Lot 9 and the South 11 feet of the West 68 feet of Lot 10, Block 37, Second Addition to the City of Carroll, Carroll County, Iowa

Property Address: 224 N Main Street, Carroll, Iowa

WHEREAS, **Rowland Real Estate L.L.C.,** as owner of said property desires to Finance the first lien on said property.

WHEREAS, **City of Carroll,** is willing to subordinate the "Existing **Agreement**" to the lien of Peoples Bank Mortgage dated _____ in the amount of $_____ "New Mortgage",

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged **City of Carroll** hereby subordinates its "Existing **Agreement**" to the lien of the "New Mortgage", so that the "New Mortgage" will be prior in all respects and with regard to all funds advanced thereunder to the "Existing **Agreement**".

IN WITNESS WHEREOF, the said City of Carroll has executed this Subordination this 27th day of September, 2021.

CITY OF CARROLL, IOWA

By_____
Eric P. Jensen, Mayor

ATTEST:

By_____
Laura A. Schaefer, City Clerk

STATE OF IOWA, CARROLL COUNTY, ss

On this 27TH day of September, 2021, before me a Notary Public in and for the State of Iowa, personally appeared Eric P. Jensen and Laura A. Schaefer, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll; and that the instrument was signed on behalf of the City, by authority of its City Council, and that Eric P. Jensen and Laura A. Schaefer acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____
Notary Public

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