



**Study Session Agenda
City of Council Bluffs, Iowa
September 9, 2019, 3:45 PM
Council Chambers, 2nd Floor, City Hall
209 Pearl Street**

STUDY SESSION AGENDA

A. Review Agenda



**Council Agenda, City of Council Bluffs, Iowa
Regular Meeting September 9, 2019, 7:00 PM
Council Chambers, 2nd Floor, City Hall
209 Pearl Street**

AGENDA

REVISED: 09/06/2019 at 11:45 am to add additional Noise Variance Request

1. PLEDGE OF ALLEGIANCE

2. CALL TO ORDER

3. CONSENT AGENDA

- A. Approval of Agenda & tape recordings of these proceedings to be incorporated into the official minutes.
- B. Reading, correction and approval of the August 26, 2019 City Council Meeting Minutes.
- C. Resolution 19-208
Resolution of intent to dispose and set of Public Hearing for September 23, 2019 at 7:00 p.m. for an interest in city property by entering into a five year billboard lease agreement with the Lamar Companies.
- D. Resolution 19-209
Resolution of intent to approve the terms of a purchase agreement for the sale of lot 1 of the river road subdivision and to set a Public Hearing for September 23, 2019 at 7:00 p.m.
- E. Notice of Right of Redemption
- F. Offer to Buy
- G. Claims

4. PUBLIC HEARINGS

- A. Ordinance 6397
Ordinance to amend the zoning map as adopted by reference in Section 15.02.070, by rezoning property legally described as being all of Blks 7 & 8, Bryan & Clark's Subdivision & the vacated S. 33rd St right-of-way in between said blocks; & all of Blk 6, Ferry's Addition, along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multifamily Residential District to MCR/Mixed Commercial Residential District, as defined in Chapter 15.12.
Location: Between 1st Ave and 2nd Ave from S 32nd St to S 34th St.

B. Ordinances 6398, 6399 & 6400

Ordinances to amend several sections of Title 15 "Zoning" by enacting Chapter 15.12 "MCR/Mixed Commercial Residential District;" by amending Chapter 15.27 "Zoning Districts" to add "MCR/Mixed Commercial Residential District" as a new commercial district; and by amending Chapter 15.33 "Signs" to establish sign standards for the MCR/Mixed Commercial Residential District.

C. Resolution 19-210

Resolution authorizing the Mayor and City Clerk to execute a quit claims deed to the State of Iowa in connection with Council Bluffs Interstate Systems Improvements

D. Resolution 19-211

Resolution to vacate and dispose of Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent. Location: Formerly addressed as 1827 3rd Avenue. OTB-19-023

E. Resolution 19-212

Resolution to vacate and dispose of property described as Lot 2, River Road Subdivision. Location: North of 2849 River Road. OTB-19-024

5. ORDINANCES ON 2ND READING

A. Ordinance 6401

An Ordinance to amend Title 5, Public Safety and Morals of the 2015 Municipal Code of Council Bluffs, Iowa, by amending Section 8.85.026 "Providing Alcohol to Minor".

6. RESOLUTIONS

A. Resolution 19-213

Resolution authorizing the mayor to execute and accept the deed of dedication for right-a-way purposes from the Edward L. and Frances M. Morris Trust.

B. Resolution 19-214

Resolution certifying the FY2019 Water, Sewer, and Refuse collection lien schedule for nonpayment to the County Treasurer to be assessed against the owner's property.

C. Resolution 19-215

Resolution authorizing the Mayor to execute an agreement with Snyder & Associates for engineering services in connection with the 6th Avenue Pump Station Trash Rack Rehab. Project PW20-14

7. APPLICATIONS FOR PERMITS AND CANCELLATIONS

A. Liquor Licenses

1. Brewski's Beverage, 726 Creek Top
2. The Dock Bar & Grill, 401 Veterans Memorial Hwy (Special Event)
3. Family Dollar Store #24414, 2801 W Broadway (New Application)
4. Golden Q Billiards and Sports Lounge, 807 S 21st Street
5. Jonesy's Taco House, 1117 16 Avenue
6. Lincoln's Pub, 157 W Broadway

B. Noise Variance Request

8. OTHER BUSINESS

9. CITIZENS REQUEST TO BE HEARD

10. ADJOURNMENT

DISCLAIMER:

If you plan on attending this meeting and require assistance please notify the City Clerk's office at (712) 890-5261, by 5:00 p.m., three days prior to the meeting.



City Council Meeting Minutes August 26, 2019

CALL TO ORDER

Mayor Walsh called the meeting to order on Monday August 26, 2019 at 7:00 p.m.

Council Members present: Melissa Head, Roger Sandau, Nate Watson, Sharon White and Mike Wolf.

Staff Present: Richard Wade and Allison Head.

CONSENT AGENDA

Approval of Agenda & tape recordings of these proceedings to be incorporated into the official minutes.

Reading, correction and approval of the August 12, 2019 City Council Meeting Minutes.

Ordinance 6397

Ordinance to amend the zoning map as adopted by reference in Section 15.02.070, and setting a Public Hearing for September 9, 2019 at 7:00 p.m., by rezoning property legally described as being all of Blocks 7 and 8, Bryan and Clark's Subdivision and the vacated South 33rd Street right-of-way in between said blocks; and all of Block 6, Ferry's Addition, along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multifamily Residential District to MCR/Mixed Commercial Residential District, as defined in Chapter 15.12. Location: Between 1st Avenue and 2nd Avenue from South 32nd Street to South 34th Street.

Ordinances 6398, 6399 & 6400

Ordinances to amend several sections of Title 15 "Zoning" and setting a Public Hearing for September 9, 2019 at 7:00 p.m. by enacting Chapter 15.12 "MCR/Mixed Commercial Residential District;" by amending Chapter 15.27 "Zoning Districts" to add "MCR/Mixed Commercial Residential District" as a new commercial district; and by amending Chapter 15.33 "Signs" to establish sign standards for the MCR/Mixed Commercial Residential District.

Resolution 19-192

Resolution accepting the work of Sibbensen Excavating as complete and authorizing the release of retainage after 30 days if no claims are filed in connection with the Mosquito Creek West Bank Floodplain Improvements. Project # PW18-16C

Resolution 19-193

Resolution accepting the work of Carley Construction, LLC as complete and authorizing the release of retainage after 30 days if no claims are filed in connection with the Mid-America Center Parking Lots Rehab, Phase 1. Project # BM19-01

Resolution 19-194

Resolution accepting the work of Hawkins Construction Company as complete and authorizing release of retainage after 30 days if no claims are filed in connection with the West Broadway Reconstruction, Segment 2. Project # PW18-20

Resolution 19-195

Resolution of intent to dispose of and setting a Public Hearing for September 9, 2019 at 7:00 p.m. for City property described as Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent. Location: formerly 1827 3rd Avenue. OTB-19-023

Resolution 19-196

Resolution of intent to dispose of and setting a Public Hearing for September 9, 2019 at 7:00 p.m. for City property described as Lot 2, River Road Subdivision. Location: north of 2849 River Road. OTB-19-024

Resolution 19-197

Resolution setting a public hearing for September 9, 2019 at 7:00 p.m., for granting Real Property by Quitclaim Deed to the State of Iowa in connection with Council Bluffs Interstate System Improvements.

June FY19 Financial Reports, Claims & Offer to Buy

Sharon White and Nate Watson moved and seconded approval of Consent Agenda. Unanimous, 5-0 vote.

PUBLIC HEARINGS

Resolution 19-198

Resolution approving the plans and specifications for the Mid-America Center Parking Lots Rehab, Phase 2. Project #BM20-01

Melissa Head and Nate Watson moved and seconded approval of Resolution 19-198. Unanimous, 5-0 vote.

Resolution 19-199

Resolution to vacate and dispose of City property described as Lots 3 and 4, Block 5, Van Brunt and Rice's Addition. Location: Formerly addressed as 2007 6th Avenue. OTB-19-014

Public Hearing for both Resolutions 19-199 & 19-200, same property.
Heard from Susan Kemp, 8205 Reed Street, Omaha

Melissa Head and Sharon White moved and seconded approval of Resolution 19-199. Unanimous, 5-0 vote.

Resolution 19-200

Resolution to vacate and dispose of City property described as Lots 3 and 4, Block 5, Van Brunt and Rice's Addition. Location: Formerly addressed as 2007 6th Avenue. OTB-19-015

No Action taken on Resolution 19-200. Resolution fails.

Resolution 19-201

Resolution to vacate and dispose of City property described as Lots 11 and 12, Block 8, Pierce's Subdivision. Location: formerly addressed as 1828 7th Avenue. OTB-19-022

Heard from Rob Klepfer, 1063 Longview Loop and Leslie Coleman, no address given.

Nate Watson and Sharon White moved and seconded approval of Resolution 19-201. Unanimous, 5-0 vote.

Resolution 19-202

Resolution to dispose of City property generally described as Lot 10 and the west half of the vacated alley adjacent, and the northerly portions of Lots 13-14 and the east half of vacated alley adjacent, all in Block 86, Railroad Addition. Location: East of 2819 S. 13th Street, and South and East of 2823 S. 13th Street. OTB-19-016

Roger Sandau and Sharon White moved and seconded approval of Resolution 19-202. Unanimous, 5-0 vote.

Resolution 19-203

Resolution granting Final Plat approval of a two-lot minor subdivision to be known as River Road Subdivision. Location: Lying north of 2849 River Road.

Sharon White and Mike Wolf moved and seconded approval of Resolution 19-203. Unanimous, 5-0 vote.

ORDINANCES ON 1ST READING

Ordinance 6401

An Ordinance to amend Title 5, Public Safety and Morals of the 2015 Municipal Code of Council Bluffs, Iowa, by amending Section 8.85.026 "Providing Alcohol to Minor".

Roger Sandau and Sharon White moved and seconded approval of First Consideration of Ordinance 6401. Second Consideration to be held September 9, 2019 at 7:00 p.m. Unanimous, 5-0 vote.

RESOLUTIONS

Resolution 19-204

Resolution authorizing the Mayor to make an application for a Certified Local Government (CLG) Grant to fund a portion of the 2021 Preserve Iowa Summit to be held in Council Bluffs.

Mike Wolf and Melissa Head moved and seconded approval of Resolution 19-204. Unanimous, 5-0 vote.

Resolution 19-205

Resolution authorizing the Mayor to execute IDOT Agreement No. 4-19-HBP-SWAP-10 for a Federal-aid Swap City Highway Bridge Program project for the North Broadway Bridge over Indian Creek, IDOT Project No. BHM-SWAP-1642(683)–SA-78.

Roger Sandau and Melissa Head moved and seconded approval of Resolution 19-205. Unanimous, 5-0 vote.

Resolution 19-206

Resolution for approval of the request for proposals for the redevelopment of approximately 8.5 acres of land between 32nd and 34th Streets from West Broadway to 2nd Avenue.

Sharon White and Mike Wolf moved and seconded approval of Resolution 19-206. Unanimous, 5-0 vote.

Resolution 19-207

Approval of the minimum development requirements, competitive criteria and procedures for disposition of certain property located within the West Broadway Urban Renewal Area and soliciting proposals in accordance with the request for proposals.

Sharon White and Melissa Head moved and seconded approval of Resolution 19-207. Unanimous, 5-0 vote.

APPLICATIONS FOR PERMITS AND CANCELLATIONS

Liquor Licenses

1. Bluffs Lodge No. 531 B.P.O. Elks, 380 McKenzie Avenue
2. Bucksnot Grill and Sports Bar, 25 Scott Street
3. Casey's General Store #3203, 1928 Sherwood Drive
4. CB Quick Stop, 3500 Avenue A
5. Hy-Vee C-Store #1, 21 South 25th Street
6. Horseshoe Casino, 2701 23rd Avenue
7. Lakeside Ampride, 4040 S Expressway
8. LPL's, 1707 Harry Langdon Blvd
9. Sam's Club #6472, 3221 Manawa Centre Drive
10. Super Quik Stop, 2800 Twin City Drive (new license application)
11. Thunderbowl & McCoy's on the Bluff, 1900 Madison Avenue

Melissa Head and Roger Sandau moved and seconded approval of Application for Permits & Cancellations, 7A, 1-11, Liquor Licenses. Unanimous, 5-0 vote.

ADJOURNMENT

Mayor Walsh adjourned the meeting at 7:14 p.m.

The tape recording of this proceeding, though not transcribed, is part of the record of each respective action of the City Council. The tape recording of this proceeding is incorporated into these official minutes of this Council meeting as if they were transcribed herein.

Matthew J. Walsh, Mayor

Attest: Jodi Quakenbush, City Clerk

Council Communication

Department: Legal
Case/Project No.:
Submitted by: Legal Department

Resolution 19-208
ITEM 3.C.

Council Action: 9/9/2019

Description

Resolution of intent to dispose and set of Public Hearing for September 23, 2019 at 7:00 p.m. for an interest in city property by entering into a five year billboard lease agreement with the Lamar Companies.

Background/Discussion

This billboard is located on city property commonly referred to as the DEB parcel.

We are also in the process of trying to dispose of this parcel in fee so although this has a five year term it may be terminated by giving 90 days notice at any time.

The attorney for the party we are working with to acquire the property has reviewed the lease and has no objection.

Recommendation

Approval of this Resolution.

ATTACHMENTS:

Description	Type	Upload Date
Lease	Agreement	8/29/2019
Notice for Public Hearing	Other	8/29/2019
Resolution 19-208	Resolution	9/4/2019

Lamar Co # 244

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

James R. McIlwain

James R. McIlwain

X____ New
Renewal
Lease #6078

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 20____, by and between:

11

CITY OF COUNCIL BLUFFS

(hereinafter referred to as "Lessor") and THE LAMAR COMPANIES (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County/Parish of Pottawattamie, State of Iowa, more particularly described as: **The space occupied by and necessary for the sign structure located on Lessor's property known as Pt of NW ¼ SEC 4-74-44 lying East of River Road except 23rd Ave. & Interstate R.O.W. a/k/a 2300 River Road Council Bluffs, IA.**

1. This Lease shall be for a term of **Five (5) years** commencing on **August 1, 2019**, unless sooner terminated as hereinafter provided.
2. LESSEE shall pay to LESSOR an annual rental of **Eleven Thousand Five Hundred (\$11,500.00) Dollars**, payable in advance in equal installments, with the first installment due on **August 1, 2019**. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.
3. LESSOR agrees not to erect or allow any other off-premise advertising structure(s), other than LESSEE'S, on property owned or controlled by LESSOR within one thousand (1000) feet of LESSEE'S sign. LESSOR further agrees not to erect or allow any other obstruction of highway view or any vegetation that may obstruct the highway view of LESSEE'S sign. LESSEE is hereby authorized to remove any such other advertising structure, obstruction or vegetation at LESSEE'S option.
4. LESSEE may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in LESSEE'S opinion the location becomes economically or otherwise undesirable. If LESSEE is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, LESSEE may elect to terminate this lease. In the event of termination of this Lease prior to expiration, LESSOR will return to LESSEE any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the LESSEE or its predecessor shall remain the property of LESSEE and may be removed by LESSEE at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. At the termination of this lease, LESSEE agrees to restore the surface of the premises to its original condition. The LESSEE shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of LESSEE'S sign, at the sole discretion of LESSEE. All such permits and any nonconforming rights pertaining to the premises shall be the property of LESSEE.
6. LESSOR represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant LESSEE free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. LESSOR is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. LESSOR acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of LESSEE.

7. In the event of any change of ownership of the property herein leased, LESSOR agrees to notify LESSEE promptly of the name, address, and phone number of the new owner, and LESSOR further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that LESSEE assigns this lease, assignee will be fully obligated under this Lease and LESSEE will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both LESSEE and LESSOR.
8. In the event of condemnation of the subject premises or any part thereof by proper authorities, or relocation of the highway, the LESSOR grants to the LESSEE the right to relocate its sign on LESSOR'S remaining property adjoining the condemned property or the relocated highway. Any condemnation award for LESSEE'S property shall accrue to LESSEE.
9. LESSEE agrees to indemnify LESSOR from all claims of injury and damages to LESSOR or third parties caused by the installation, operation, maintenance, or dismantling of LESSEE'S sign during the term of this lease. LESSEE further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. LESSOR agrees to indemnify LESSEE from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of LESSOR herein.
11. Prior to LESSEE removing its sign, and for five (5) years after such removal, LESSOR grants LESSEE a first right of refusal to match any bona fide agreement of LESSOR with a third party for the purpose of permitting off-premise outdoor advertising on any portion of the leased premises. LESSEE has seven (7) days after LESSOR provides to LESSEE a copy of such agreement executed by such third party to match the terms of such agreement.
12. If required by LESSEE, LESSOR will execute and acknowledge a memorandum of lease suitable for recordation
13. With the execution of this Lease, the prior Lease dated January 31, 2014 is terminated. This Lease will be the entire agreement between LESSOR and LESSEE and supersedes any other prior agreement.
14. This Lease is NOT BINDING UNTIL ACCEPTED by the General Manager of a Lamar Advertising Company.

THE LAMAR COMPANIES, LESSEE:

LESSOR: CITY OF COUNCIL BLUFFS

BY: _____

BY: _____

PRINTED NAME & TITLE

VICE-PRESIDENT/GENERAL MANAGER

BY: _____

SIGNATURE

DATE: / /

DATE: / /

LESSOR'S TELEPHONE NUMBER

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:
Lamar Outdoor Advertising
Attn: Real Estate
4849 "G" St.
Omaha, NE 68117

Address of LESSOR:

Witnesses (LESSEE)

Witnesses (LESSOR)

Lamar Co # 244

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808



James R. McIlwain

X _____ New

Renewal
Lease #6078

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 20____, by and between:

CITY OF COUNCIL BLUFFS

(hereinafter referred to as "Lessor") and THE LAMAR COMPANIES (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County/Parish of Pottawattamie, State of Iowa, more particularly described as: **The space occupied by and necessary for the sign structure located on Lessor's property known as Pt of NW ¼ SEC 4-74-44 lying East of River Road except 23rd Ave. & Interstate R.O.W. a/k/a 2300 River Road Council Bluffs, IA.**

1. This Lease shall be for a term of **Five (5) years** commencing on **August 1, 2019**, unless sooner terminated as hereinafter provided.
2. LESSEE shall pay to LESSOR an annual rental of **Eleven Thousand Five Hundred (\$11,500.00) Dollars**, payable in advance in equal installments, with the first installment due on August 1, 2019. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.
3. LESSOR agrees not to erect or allow any other off-premise advertising structure(s), other than LESSEE'S, on property owned or controlled by LESSOR within one thousand (1000) feet of LESSEE'S sign. LESSOR further agrees not to erect or allow any other obstruction of highway view or any vegetation that may obstruct the highway view of LESSEE'S sign. LESSEE is hereby authorized to remove any such other advertising structure, obstruction or vegetation at LESSEE'S option.
4. LESSEE may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in LESSEE'S opinion the location becomes economically or otherwise undesirable. If LESSEE is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, LESSEE may elect to terminate this lease. In the event of termination of this Lease prior to expiration, LESSOR will return to LESSEE any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the LESSEE or its predecessor shall remain the property of LESSEE and may be removed by LESSEE at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. At the termination of this lease, LESSEE agrees to restore the surface of the premises to its original condition. The LESSEE shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of LESSEE'S sign, at the sole discretion of LESSEE. All such permits and any nonconforming rights pertaining to the premises shall be the property of LESSEE.
6. LESSOR represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant LESSEE free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. LESSOR is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. LESSOR acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of LESSEE.

7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.
8. In the event of condemnation of the subject premises or any part thereof by proper authorities, or relocation of the highway, the **LESSOR** grants to the **LESSEE** the right to relocate its sign on **LESSOR'S** remaining property adjoining the condemned property or the relocated highway. Any condemnation award for **LESSEE'S** property shall accrue to **LESSEE**.
9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE'S** sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
11. Prior to **LESSEE** removing its sign, and for five (5) years after such removal, **LESSOR** grants **LESSEE** a first right of refusal to match any bona fide agreement of **LESSOR** with a third party for the purpose of permitting off-premise outdoor advertising on any portion of the leased premises. **LESSEE** has seven (7) days after **LESSOR** provides to **LESSEE** a copy of such agreement executed by such third party to match the terms of such agreement.
12. If required by **LESSEE**, **LESSOR** will execute and acknowledge a memorandum of lease suitable for recordation
13. With the execution of this Lease, the prior Lease dated January 31, 2014 is terminated. This Lease will be the entire agreement between **LESSOR** and **LESSEE** and supersedes any other prior agreement.
14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company.

THE LAMAR COMPANIES, LESSEE:

LESSOR: CITY OF COUNCIL BLUFFS

BY: _____

BY: _____

PRINTED NAME & TITLE

VICE-PRESIDENT/GENERAL MANAGER

BY: _____

SIGNATURE

DATE: / /

DATE: / /

LESSOR'S TELEPHONE NUMBER

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

Lamar Outdoor Advertising
Attn: Real Estate
4849 "G" St.
Omaha, NE 68117

Address of LESSOR:

Witnesses (**LESSEE**)

Witnesses (**LESSOR**)

THE



COMPANIES

Lamar Co # 244

Rider # 1 to Lease #6078 dated the ____ day of _____, 2019, by and between The City of Council Bluffs, as Lessor and The Lamar Companies, as Lessee.

Any provisions to the contrary in this lease notwithstanding, Lessor and Lessee agree that Lessor may terminate this Lease upon Ninety (90) days written notice and the return of any unearned rentals.

Should Lessor exercise its right to terminate the Lease, Lessee shall remove all structures, materials, and equipment from the premises and repair the surface of the ground by the end of the tenancy.

LESSOR

DATE

LESSEE

DATE

**NOTICE OF PUBLIC HEARING
ON INTENT TO DISPOSE OF CITY PROPERTY**

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a public hearing on the request dispose of property by executing a five-year lease agreement with The Lamar Companies.

You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m., on the 23rd day of September 2019, in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

Jodi Quakenbush

City Clerk

RESOLUTION NO. 19-208

**A RESOLUTION OF INTENT TO DISPOSE OF AN INTEREST IN CITY PROPERTY
BY ENTERING INTO A FIVE YEAR BILLBOARD LEASE AGREEMENT WITH THE
LAMAR COMPANIES AND TO SET A PUBLIC HEARING.**

WHEREAS, the City will dispose of an interest in said property described as: The space occupied by and necessary for the sign structure located on the property known as Pt of NW ¼ SEC 4-74-44 lying East of River Road except 23rd Avenue & Interstate R.O.W. a/k/a 2300 River Road, Council Bluffs, Iowa; and

WHEREAS, the City will dispose of its interest by entering into a five-year billboard lease agreement with the Lamar Companies; and

WHEREAS, it is in the best interest of the City of Council Bluffs to execute the lease agreement.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That this matter is set a public hearing on the 23rd day of September, 2019 at 7 o'clock p.m.

ADOPTED
AND
APPROVED

September , 2018.

MATTHEW J. WALSH

Mayor

Attest:

JODI QUAKENBUSH

City Clerk

Council Communication

Department: Legal
Case/Project No.:
Submitted by: Legal Department

Resolution 19-209
ITEM 3.D.

Council Action: 9/9/2019

Description

Resolution of intent to approve the terms of a purchase agreement for the sale of lot 1 of the river road subdivision and to set a Public Hearing for September 23, 2019 at 7:00 p.m.

Background/Discussion

This resolution is for the sale of the balance of the DEB parcel. We are selling 9 acres to Warren, this parcel is a little over 39 acres. The DEB parcel was given to the city by its owners in lieu of them contributing to the maintenance of the Industrial levee.

Recommendation

Approval of this Resolution.

ATTACHMENTS:

Description	Type	Upload Date
River Road Subdivision Legal	Legal Description	8/29/2019
Notice for Public Hearing	Other	8/29/2019
Opus Purchase Agreement	Other	9/3/2019
Opus Purchase Agreement Redline	Other	9/3/2019
Resolution 19-209	Resolution	9/4/2019



hgm
ASSOCIATES INC.
ENGINEERING ARCHITECTURE SURVEYING
COUNCIL BLUFFS, IOWA

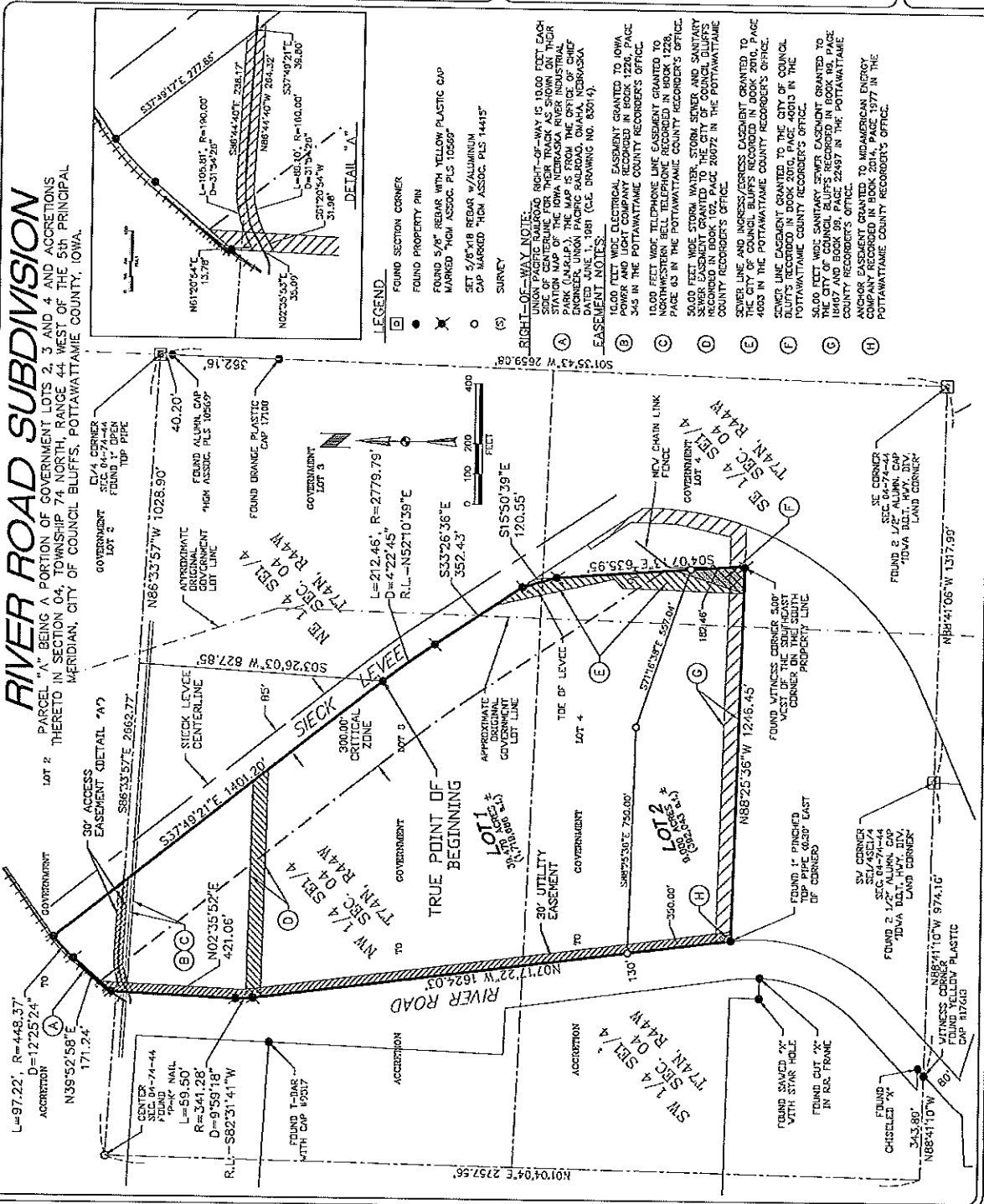
DATE	10/1/19
BY	W. J. H. / J. H. H.
CHECKED BY	W. J. H. / J. H. H.
SCALE	AS SHOWN
PROJECT	RIVER ROAD SUBDIVISION
LOT	LOT 2

RIVER ROAD SUBDIVISION
209 PEARL STREET, COUNCIL BLUFFS, IOWA 51503
60% LOTS 2, 3 AND 4 AND ACCRETIONS THEREON 04-74-14

150719
2 OF 2

RIVER ROAD SUBDIVISION

PARCEL "A" BEING A PORTION OF GOVERNMENT LOTS 2, 3 AND 4 AND ACCRETIONS THEREON IN SECTION 04, TOWNSHIP 74 NORTH, RANGE 44 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.



LEGEND

- FOUND SECTION CORNER
- FOUND PROPERTY PIN
- FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP MARKED "HON ASSOC. PLS 10569"
- SET 5/8" X 18 REBAR W/ ALUMINUM CAP MARKED "HON ASSOC. PLS 14415"
- SURVEY

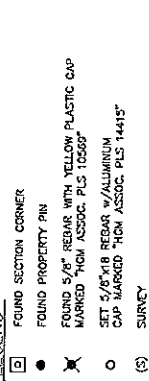
RIGHT-OF-WAY NOTE

UNION PACIFIC RAILROAD RIGHT-OF-WAY IS 10.00 FEET EACH SIDE OF CENTERLINE FOR THEIR TRACK AS SHOWN ON THEIR STATION MAP OF THE IOWA NERRASKA RIVER INDUSTRIAL DISTRICT, DATED JUNE 1, 1981 (S.E. DRAWING NO. 83014).

EASEMENT NOTES

- (A) 10.00 FEET WIDE ELECTRICAL EASEMENT GRANTED TO IOWA POWER AND LIGHT COMPANY RECORDED IN BOOK 1226, PAGE 345 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (B) 10.00 FEET WIDE TELEPHONE LINE EASEMENT GRANTED TO NORTHWESTERN BELL TELEPHONE COMPANY RECORDED IN BOOK 1228, PAGE 65 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (C) 50.00 FEET WIDE STORM WATER, STORM SEWER AND SANITARY EASEMENT GRANTED TO THE CITY OF COUNCIL BLUFFS RECORDED IN BOOK 1228, PAGE 65 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (D) SEWER LINE AND MANHOLE ACCESS EASEMENT GRANTED TO THE CITY OF COUNCIL BLUFFS RECORDED IN BOOK 1228, PAGE 65 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (E) SEWER LINE EASEMENT GRANTED TO THE CITY OF COUNCIL BLUFFS RECORDED IN BOOK 2016, PAGE 40013 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (F) 50.00 FEET WIDE SANITARY SEWER EASEMENT GRANTED TO THE CITY OF COUNCIL BLUFFS RECORDED IN BOOK 189, PAGE 1867 AND BOOK 98, PAGE 22487 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (G) 50.00 FEET WIDE SANITARY SEWER EASEMENT GRANTED TO THE CITY OF COUNCIL BLUFFS RECORDED IN BOOK 189, PAGE 1867 AND BOOK 98, PAGE 22487 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.
- (H) 50.00 FEET WIDE SANITARY SEWER EASEMENT GRANTED TO THE CITY OF COUNCIL BLUFFS RECORDED IN BOOK 189, PAGE 1867 AND BOOK 98, PAGE 22487 IN THE POTTAWATTAMIE COUNTY RECORDER'S OFFICE.

DETAIL "A"



**NOTICE OF PUBLIC HEARING
ON INTENT TO DISPOSE OF CITY PROPERTY**

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a public hearing on the request dispose of property, Lot 1 of the River Road Subdivision in Council Bluffs, Pottawattamie County, Iowa by executing a purchase agreement with Opus Development Company, L.L.C.

You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m., on the 23rd day of September 2019, in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

Jodi Quakenbush

City Clerk

PURCHASE AGREEMENT

This Purchase Agreement is made as of _____, 2019 (“**Effective Date**”), by and between the City of Council Bluffs, Iowa, a municipal corporation (“**Seller**”), and Opus Development Company, L.L.C., a Delaware limited liability company (“**Buyer**”).

Buyer desires to purchase certain property owned by Seller, and Seller desires to sell such property to Buyer pursuant to the terms and conditions set forth in this Agreement.

Accordingly, Seller and Buyer agree as follows:

Article 1. DEFINITIONS. The following terms shall have the meanings set forth below:

- 1.1 Abstract. As defined in Section 5.1.1.
- 1.2 Agreement. This Agreement, including the following exhibits attached hereto and hereby made a part hereof:

<u>Exhibit A:</u>	Legal Description of the Land
<u>Exhibit B:</u>	Form of Memorandum
<u>Exhibit C:</u>	Leases
<u>Exhibit D:</u>	Levee Maintenance Documents
- 1.3 Airplane Club Lease. As defined in Exhibit C.
- 1.4 Billboard Lease. As defined in Exhibit C.
- 1.5 Broker. The Lund Company d/b/a Cushman & Wakefield.
- 1.6 Closing. As defined in Article 2.
- 1.7 Closing Date. As defined in Article 10.
- 1.8 Closing Notice. As defined in Article 10.
- 1.9 Commitment. The title insurance commitment with respect to the Property or a Development Parcel, as applicable, described in Section 5.1.1.
- 1.10 Development Parcel. All or a portion of the Property identified in the Closing Notice.
- 1.11 Earnest Money. As defined in Section 3.2.1.
- 1.12 Executory Period. The period between the Effective Date and a Closing.
- 1.13 Farm Lease. As defined in Exhibit C.
- 1.14 Hazardous Material. Any substance, chemical, waste or material that is or becomes regulated under applicable law because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, including asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products and any substance, chemical, waste or material regulated by any Hazardous Material Law.

- 1.15 Hazardous Material Laws. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, as such acts may be amended from time to time, and any other Federal, state, county, municipal, local or other law, statute, code, ordinance, rule or regulation which relates to or deals with human health or the environment in the jurisdiction in which the Property is located.
- 1.16 Improvements. All buildings, structures, fixtures and improvements located on the Land, if any.
- 1.17 Inspection Period. As defined in Section 4.1.
- 1.18 Land. The real property located in the City of Council Bluffs, Pottawattamie County, Iowa, legally described on Exhibit A attached hereto, together with all easements, appurtenances and hereditaments thereto.
- 1.19 Leases. As defined in Section 7.1.3
- 1.20 Levee Maintenance Documents. Those agreements identified on Exhibit D attached hereto.
- 1.21 Permitted Exceptions. The easements, restrictions, reservations and other matters affecting title to the Property as may be determined to be Permitted Exceptions pursuant to Article 5.
- 1.22 Property. The Land and the Improvements, collectively, excluding any Development Parcels sold pursuant to this Agreement.
- 1.23 Purchase Price. The purchase price for a Development Parcel described in Section 3.1.
- 1.24 Records. All records of Seller relating to the Property, including (a) all records regarding real estate taxes and assessments, (b) all reports and studies (including soil, engineering, geotechnical and environmental reports or tests, including all drafts and letters and other documents which order, describe or limit the scope of such tests, reports or studies), (c) all service contracts, leases, licenses and permits related to the Property, and (d) all originals and copies of surveys regarding the Property.
- 1.25 Survey. The survey of the Property or a Development Parcel, as applicable, described in Section 5.1.2.
- 1.26 Title Company. First American Title Insurance Company having an address at 121 South 8th Street, Suite 1250, Minneapolis, MN 55402, Attention: Dani Haag.
- 1.27 Title Evidence. The Commitment, Survey, and UCC Searches.
- 1.28 UCC Searches. The UCC searches described in Section 5.1.3.

Article 2. Purchase and Sale; Memorandum; Exclusivity.

- 2.1 Purchase and Sale. Seller hereby agrees to sell to Buyer, upon and subject to the terms and conditions hereinafter set forth, the Property. The purchase and sale of the Property or Development Parcels shall take place at one or multiple closings (each, a “**Closing**”) but not more than four (4) Closings, provided that any Closings shall take place on or before the third anniversary of the Effective Date. If Buyer purchases a Development Parcel that is less than all of the Property, the balance of the Property shall remain subject to this Agreement and Buyer’s right to purchase such Property and the remaining Property shall be at least ten (10) acres, have access to a public road, and have the ability to have direct access to current or future sanitary sewer, electric, and gas utility lines.

- 2.2 Memorandum. A memorandum of this Agreement (the “**Memorandum**”), the form of which is attached hereto as **Exhibit B**, shall be signed by both parties upon the execution of this Agreement and shall be recorded at Buyer’s cost in the real estate records in and for Pottawattamie County, Iowa.
- 2.3 Exclusivity. Seller shall not, during the Executory Period or before the termination of this Agreement, (a) promote the sale of the Property to, or solicit offers to purchase the Property from, other parties or (b) discuss or negotiate with other parties regarding the sale of the Property.

Article 3. Purchase Price.

- 3.1 Amount. Buyer shall pay to Seller as and for the purchase price for a Development Parcel an amount equal to \$0.50 per land square foot. The land square footage of a Development Parcel shall be determined by the Survey.
- 3.2 Manner of Payment. The Purchase Price for a Development Parcel shall be payable as follows:
- 3.2.1 (a) For the first Development Parcel that Buyer may purchase pursuant to this Agreement, Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) as earnest money (“**Initial Earnest Money**”), to be deposited by Buyer in escrow with Title Company within three business (3) days after the Effective Date and held and disbursed pursuant to the terms of this Agreement.
- (b) For any Development Parcel after the Closing of the first Development Parcel, Reset Earnest Money (defined below) to be deposited by Buyer in escrow with Title Company pursuant to Section 4.3 below and held and disbursed pursuant to the terms of this Agreement.
- 3.2.2 The Additional Earnest Money, if any (together with Initial Earnest Money or any Reset Earnest Money, as applicable, to the extent deposited with and then being held by the Title Company, the “**Earnest Money**”), deposited by Buyer in escrow with Title Company pursuant to Section 4.2 below and held and disbursed pursuant to the terms of this Agreement. For purposes of clarity only, “Earnest Money” does not include any Initial Earnest Money, Reset Earnest Money or Additional Earnest Money that has been credited to a Purchase Price at a previous Closing.
- 3.2.3 The balance of the Purchase Price in cash or by certified or cashier’s check or wire transfer of immediately available funds on the applicable Closing Date.

Article 4. Inspection.

- 4.1 Inspection Period. Buyer shall have a period of three hundred sixty-five (365) days following the Effective Date (the “**Initial Inspection Period**,” together with, if any, the Additional Inspection Period(s), the “**Inspection Period**”), during which Buyer may inspect the physical and environmental condition of the Property (or portion thereof), the availability of all permits and approvals, the location and availability of utilities and access, existing soil conditions, the impact of governmental requirements and the feasibility of developing the Property (or portion thereof) as proposed by Buyer. Buyer and its affiliates and their respective employees, agents and independent contractors shall have access to the Property at reasonable times and after reasonable notice to Seller. Buyer shall restore any damage to the Property caused by such inspection and shall indemnify and hold Seller harmless from all liabilities incurred by Seller and arising out of any such entry, except that (a) Buyer shall not have any obligation in respect of any Hazardous Materials existing about the Property, and (b) Buyer shall not have any obligation for any loss, cost or damage arising out of Seller’s negligence or willful misconduct. The foregoing indemnity shall survive termination of this Agreement. Upon expiration of the then current Inspection Period, the Earnest Money will become non-refundable, except as otherwise set forth in this Agreement. The Earnest Money shall be credited to the Purchase Price at the next occurring Closing. If Buyer elects to terminate the Purchase Agreement during an Inspection Period, the Earnest Money shall be refunded to Buyer.

- 4.2 Additional Inspection Periods. Buyer may extend the then-current Inspection Period for up to two (2) consecutive periods of one hundred eighty (180) days each (each an “**Additional Inspection Period**”). Each Additional Inspection Period may be extended only by (a) Buyer’s deposit with the Title Company of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (“**Additional Earnest Money**”) and (b) Buyer’s delivery to Seller of a notice extending the Inspection Period, each of which shall be delivered before the expiration of the then-current Inspection Period. Upon expiration of the then-current Inspection Period, the Earnest Money will become non-refundable, except as otherwise set forth in this Agreement. All Earnest Money shall be credited to the Purchase Price at the next occurring Closing.
- 4.3 Reset of Inspection Period. Seller acknowledges and agrees that Buyer may purchase portions of the Property at one or more Closings. At each Closing for a Development Parcel that is at least ten (10) acres, the “Initial Inspection Period” shall automatically be amended to mean the period commencing on the Effective Date and expiring three hundred sixty-five (365) days after such Closing, and Buyer shall have the right to exercise two (2) consecutive Additional Inspection Periods as set forth in Section 4.2 above. The Buyer shall deposit Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (“**Reset Earnest Money**”) with the Title Company within three (3) business days after any reset of Inspection Period. The Reset Earnest Money shall be refundable during the then-current Inspection Period.
- 4.4 Delivery Requirements. To the extent not previously delivered by Seller to Buyer, Seller shall deliver to Buyer within five (5) business days after the Effective Date true and complete copies of each of the Records.

Article 5. Title Examination.

5.1 Title Evidence.

- 5.1.1 Within five (5) business days after the Effective Date, Seller shall deliver the updated abstract for the Property to the Title Company (“**Abstract**”). Buyer shall obtain a commitment to insure title to the Property issued by Title Company. The Commitment shall (a) be an ALTA Commitment (6-17-06) for an ALTA Owner’s Policy (6-17-06) in an amount to be determined with provision to increase the policy amount to cover the cost of improvements to be constructed by Buyer, (b) show Seller as owner of the Property, (c) commit to delete all of the so-called “standard exceptions” to coverage and (d) include copies of all documents, instruments and matters shown as exceptions or referenced therein.
- 5.1.2 Buyer shall obtain a current survey of the Property, prepared and certified by a registered land surveyor, reasonably satisfactory to Buyer, who is licensed in the State of Iowa. The survey shall (a) conform to the “2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys” as adopted in 2016 by the American Land Title Association and the National Society of Professional Surveyors, Inc. (the “**ALTA/NSPS Requirements**”), including optional items 1, 2, 3, 4, 6(b), 7(a), 8, 9, 11, 13, 14, 16, 17, 19 (if applicable), and 20 (\$1,000,000) of Table A thereto, and (b) contain a certification to Buyer, Title Company and any other party designated by Buyer in the applicable form as specified by the ALTA/NSPS Requirements.
- 5.1.3 Buyer shall obtain a report of UCC searches of the Uniform Commercial Code records of the secretary of state, county recorder and any other applicable filing location in the jurisdiction in which the Property is located under the Uniform Commercial Code as adopted therein.

The Title Evidence shall be deemed received by Buyer for purposes of this Section 5.1 only when a Commitment, Survey, and UCC Searches conforming to the foregoing requirements have been received by Buyer.

- 5.2 Buyer’s Objections and Requirements. Buyer shall be allowed fifteen (15) business days after receipt of the last of the Title Evidence for examination thereof and making any objections to the form and/or content of

the same. Any objections not made within said period shall be deemed to be waived by Buyer and shall be Permitted Exceptions. Buyer's objections may include additional requirements with regard to the Title Evidence based upon its initial review of the same, including requiring (a) satisfaction of Title Company's requirement as set forth in the Commitment, (b) deletion of all the so-called "standard exceptions" to coverage, (c) affirmative insurance of any easements appurtenant to the Property, (d) reasonable affirmative title insurance endorsements (including comprehensive, zoning, access, subdivision, contiguity and survey accuracy) with respect to the Property if available in the jurisdiction in which the Property is located, and (e) revisions to the Title Evidence as to any matters reasonably warranting additional investigation, affirmative insurance and/or certification. Buyer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time, including but not limited to any revisions to the Title Evidence to limit such Title Evidence to a Development Parcel.

5.3 Correction of Title. Seller shall be allowed fifteen (15) days after the making of Buyer's objections to cure the same and shall diligently proceed and use its best efforts to do so. Pending such cure, the Closing for a Development Parcel shall be postponed to the extent necessary to accommodate such time period; provided however, Seller shall not be allowed any additional time beyond the originally scheduled Closing Date for such Development Parcel to discharge or satisfy any mortgage, judgment or other monetary lien. If such cure is not completed within said fifteen (15) day period, Buyer shall have the option to do any of the following:

5.3.1 Terminate this Agreement and receive a refund of the Earnest Money;

5.3.2 Cure the defect and deduct the cost of curing from the Purchase Price for such Development Parcel at Closing; or

5.3.4 Waive one or more of its objections and proceed to Closing for such Development Parcel.

Article 6. Conditions Precedent.

6.1 Conditions in Favor of Buyer. The obligations of Buyer under this Agreement are contingent upon each of the following:

6.1.1 During the Inspection Period, Buyer shall have determined that it is satisfied with the matters and conditions disclosed by the reports, investigations and tests received or performed by Buyer pursuant to Section 4.1, with its review and analysis of the Title Evidence and the Records, with its governmental approvals needed for its contemplated development, with the lease termination agreement(s) between Seller and any tenant(s) on the Property and with any other condition related to Buyer's contemplated development.

6.1.2 On the Closing Date of a Development Parcel, the Property shall be subdivided such that such Development Parcel has a separate legal description and is a separate tax parcel, subject only to conditions acceptable to Buyer in its sole and absolute discretion.

6.1.3 On the Closing Date of a Development Parcel, Title Company shall be irrevocably committed to issue to Buyer an owner's policy of title insurance pursuant to the Commitment with respect to such Development Parcel and any appurtenant easements designated by Buyer pursuant to Section 5.2 subject only to the Permitted Exceptions and otherwise in a form approved by Buyer pursuant to Sections 5.2 and 5.3.

6.1.4 On the Closing Date of a Development Parcel, each of the representations and warranties of Seller in Section 7.1 shall be true and correct as if the same were made on such Closing Date.

- 6.1.5 On the Closing Date of a Development Parcel, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement as and when required under this Agreement with respect to such Development Parcel.

If any conditions in this Section 6.1 have not been satisfied on or before the applicable date set forth in this Section 6.1 with respect to each condition, then Buyer may terminate this Agreement with respect to such Development Parcel by notice to Seller on or before the applicable date, subject, however, to Article 14, or revoke the Closing Notice for the applicable Development Parcel (which notice for such Development Parcel or a different Development Parcel may be delivered at a later time), if delivered, such that the rights and obligations of the parties revert back to those that existed before the delivery of the Closing Notice. To the extent that any of the conditions in this Section 6.1 require the satisfaction of Buyer, such satisfaction shall be determined by Buyer in its sole and absolute discretion. The conditions in this Section 6.1 are specifically stated and for the sole benefit of Buyer. Buyer in its discretion may unilaterally waive (conditionally or absolutely) the fulfillment of any one or more of the conditions, or any part thereof, by notice to Seller. Seller shall not take or authorize, directly or indirectly, any action that modifies or changes the circumstances upon which the conditions set forth in this Section 6.1 were deemed satisfied or waived by Buyer without Buyer's consent.

- 6.2 Conditions in Favor of Seller. The obligations of Seller under this Agreement are contingent upon each of the following:

- 6.2.1 On the Closing Date with respect to a Development Parcel, each of the representations and warranties of Buyer in Section 7.2 shall be true and correct as if the same were made on such Closing Date.
- 6.2.2 On the Closing Date with respect to a Development Parcel, Buyer shall have performed all of the obligations required to be performed by Buyer under this Agreement as and when required under this Agreement with respect to such Development Parcel.

If any of the conditions in this Section 6.2 have not been satisfied on or before the applicable date set forth in this Section 6.2 with respect to each condition, then Seller may terminate this Agreement by notice to Buyer on or before the applicable date, subject however to Article 14. The conditions in this Section 6.2 are specifically stated and for the sole benefit of Seller. Seller in its discretion may unilaterally waive any one or more of the conditions, or any part thereof, by notice to Buyer.

- 6.3 Cooperation. The parties shall cooperate with each other to all reasonable extents in the parties' attempts to satisfy the conditions set forth in Sections 6.1 and 6.2, respectively, including executing such documents as may be reasonably requested by the other in connection therewith (such as environmental worksheets and other documents as may be reasonably requested by the other in connection therewith). Additionally, Seller shall, at the request of Buyer, cooperate and work together with Buyer (including, without limitation, joining in the execution of the materials described in clause (a) below) in connection with: (a) applications, agreements, amendments, approvals and annexation agreements relating to, among other things, zoning, site plan, planned development, subdivision, protective covenants, TIF financing, utility and other development matters to permit the development of the Property (or portion thereof) in accordance with Buyer's proposed development plans, and (b) any requirements of local, state or federal governments, or any agency thereof, any public utility, or the proposed development relating to the proposed development of the Property (or portion thereof), including but not limited to granting reasonably-sized utility, water, sanitary sewer, storm sewer, roadway, drainage, access and other easements in favor of Buyer in form and substance reasonably acceptable to Seller and Buyer. Seller agrees to timely and properly perform and pay all requirements of the covenants, duties and obligations of the owner or developer as are set forth in any development, annexation or other applicable agreement made by and between Seller or any of its predecessors in interest (as developer or owner, as the case may be) and the City of Council Bluffs or Pottawattamie County, Iowa, or other applicable authority or otherwise affecting the Property. Seller agrees to indemnify, defend and hold harmless Buyer and the Property from any and all claims, costs, losses,

damages or expenses (including but not limited to reasonable attorneys' fees) arising out of or alleged to have arisen out of Seller's failure to perform any of said obligations, covenants or duties. The provisions of this Section 6.3 shall survive the Closing of each Development Parcel. Notwithstanding the foregoing, any action by Seller under this Section 6.3 shall be subject to any administrative and legislative approval processes applicable to Seller and to such action.

Article 7. Representations and Warranties.

7.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

- 7.1.1 Seller has not entered into any contracts for the sale of or option to purchase any of the Property other than this Agreement. Seller has received no notice of and has no knowledge of any rights of first refusal or first offer, options to purchase any of the Property or any other rights or agreements which may delay or prevent this transaction.
- 7.1.2 There has been no labor or materials of any kind furnished to or for the benefit of the Property for which payment in full has not been made.
- 7.1.3 No person or entity is entitled to possession of any of the Property, other than Seller and Seller's tenants under the Leases identified on Exhibit C attached hereto (the "**Leases**"). The Leases are in full force and effect and neither Seller nor the tenants under their respective Leases are or have been in default under the terms of their respective Leases. Except for amendments and renewals identified on Exhibit C attached hereto, there are no amendments or other agreements affecting the Leases. The Farm Lease shall terminate no later than March 1, 2020, and the tenant under the Farm Lease shall not have possession of the Property after March 1, 2020. The Airplane Club Lease and the Billboard Lease shall terminate no later than the Closing Date for the Development Parcel that is affected by such Lease, and the tenants under such Leases shall not have possession of the Property after such Closing Date. At Buyer's direction to do so, Seller will terminate any or all of the Leases before the Closing Date.
- 7.1.4 The Property has not been classified under any designation under applicable law to obtain a special low ad valorem tax rate or receive either an abatement or deferment of ad valorem taxes which, in such case, will result in any "green acres", catch-up or other deferred ad valorem taxes in order to recover the amounts previously abated or deferred.
- 7.1.5 Seller has received no notice of and has no knowledge of any pending or proposed special assessments affecting the Property or any proposed or pending public improvements which may give rise to any special assessments affecting the Property.
- 7.1.6 Seller has received no notice of and has no knowledge of any pending or threatened condemnation or transfer in lieu thereof affecting any of the Property, nor has Seller agreed or committed to dedicate any of the Property.
- 7.1.7 Seller has received no notice of and has no knowledge of any pending or threatened action which would impair access to and from all adjoining streets, roads and highways.
- 7.1.8 Seller has received no notice and has no knowledge of any actual or threatened curtailment, cancellation or suspension of any utility (including telephone and communications, electricity, gas, sanitary sewer, storm sewer and water (fire and domestic)).
- 7.1.9 Seller has received no notice of and has no knowledge that any of the Property or its use or uses are in violation of applicable law or any applicable private restriction applicable to the Property.

- 7.1.10 Seller has received no notice of and has no knowledge of any action, litigation, investigation or proceeding of any kind pending or threatened against Seller or any of the Property, and Seller knows of no facts which could give rise to any such action, litigation, investigation or proceeding.
- 7.1.11 Seller has not generated, manufactured, buried, spilled, leaked, discharged, emitted, stored, disposed of, used or released any Hazardous Materials about the Property, and has permitted no other party to do any of the same. Seller at all times has operated its business at the Property in compliance with Hazardous Material Laws and has kept in full force and effect all licenses, permits, and other authorizations required pursuant to any Hazardous Material Law for the lawful and efficient operation of Seller's business at the Property. Seller has received no notice of and has no knowledge (a) that any Hazardous Material are or have ever been generated, manufactured, buried, spilled, leaked, discharged, emitted, stored, disposed of, used or released about the Property, or (b) of any, requests, notices, investigations, demands, administrative proceedings, hearings, litigation or other action proposed, threatened or pending relating to any of the Property and alleging non-compliance with or liability under any Hazardous Material Law, or (c) that any above-ground or underground storage tanks or other containment facilities of any kind containing any Hazardous Materials are or have ever been located about the Property.
- 7.1.12 There are no leases or possessory rights in favor of any party, service or maintenance contracts, equipment leases or other contracts regarding any of the Property, except for the Leases which shall terminate by the dates prescribed in Section 7.1.3.
- 7.1.13 Seller has delivered or, within the time frame provided in Section 4.4, shall deliver to Buyer true, correct and complete copies of the Records in Seller's custody and control. Seller does not warrant and shall not be responsible for the accuracy or completeness of any Record not prepared by Seller or an affiliate of Seller or their conclusions or recommendations unless Seller or any affiliate has knowledge that the same are inaccurate, incomplete or misleading in any material respect.
- 7.1.14 Seller has the full power, capacity and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. This Agreement has been duly executed and delivered by Seller and is a valid and binding obligation of Seller enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto do not and will not conflict with or result in any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and/or any of the Property is bound or subject.
- 7.1.15 Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.
- 7.1.16 Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.
- 7.1.17 The Property is subject to certain levee maintenance fees arising from certain documents identified on **Exhibit D** attached hereto. There are no other agreements related to levee maintenance that affect the Property. The share of such fees allocated to the Property shall not exceed 13.1819%, and the share of such fees allocated to a Development Parcel shall be its proportionate share of the Property by acreage. Seller shall provide such evidence or documentation, including any recordable documents, reasonably acceptable to Buyer to confirm such allocation.

The foregoing representations and warranties are express representations and warranties which Buyer shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Buyer. Consummation of this Agreement by Buyer with knowledge of any such breach shall not constitute a waiver or release by Buyer of any claims arising out of or in connection with such breach. The foregoing representations and warranties (including as remade pursuant to Section 10.2.4) shall survive the Closings or the earlier termination of this Agreement.

7.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

- 7.2.1 Buyer has been duly formed and is in good standing under the laws of the State of Delaware and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto. This Agreement has been duly executed and delivered by Buyer and is a valid and binding obligation of Buyer enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto have each been duly authorized by all necessary corporate action on the part of Buyer and that such execution, delivery and performance does and will not conflict with or result in a violation of Buyer's bylaws or any judgment, order or decree of any court or arbiter to which Buyer is a party, or any agreement to which Buyer and/or any of the Property is bound or subject.
- 7.2.2 Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are express representations and warranties which Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. Consummation of this Agreement by Seller with knowledge of any such breach shall not constitute a waiver or release by Buyer of any claims arising out of or in connection with such breach. The foregoing representations and warranties shall survive the Closings or the earlier termination of this Agreement.

Article 8. Condition of Property at Closing. Seller shall deliver the applicable Development Parcel to Buyer at the Closing for such Development Parcel in a condition consistent with the representation and warranties in Section 7.1, and in any event in the same or better condition than which it existed on the date Buyer delivers its Closing Notice for the applicable Development Parcel.

Article 9. Operation Pending Closing. During the Executory Period, Seller shall (a) not lease, convey or otherwise transfer any of the Property, except for the Leases, (b) not execute any contracts, leases, amendments to the Leases or other agreements regarding any of the Property that are not terminable on thirty (30) days' advance notice, (c) not undertake any improvements or alterations of the Property without the consent of Buyer, and (d) promptly deliver to Buyer a copy of any notice, consent, waiver, request or other communication Seller receives from any public or private entity with respect to any of the Property. Upon receipt of Buyer's direction to terminate one or more of the Leases, Seller shall terminate such Leases such that they are terminated at or before the Closing. Seller shall be responsible for all costs related to the termination of the Leases.

Article 10. Closing.

- 10.1 Closing Date. The Closing for a Development Parcel shall occur on the date identified in a written notice ("**Closing Notice**") delivered by Buyer to Seller and Title Company at least three (3) business days in advance of the desired closing date, which date shall be a commonly-accepted business day (the "**Closing**

Date”). Each such Closing Notice shall also specify (a) the applicable Development Parcel to be purchased, and (b) the Purchase Price for such Development Parcel. Such Closing shall take place at the offices of Title Company or at such other place, date and time as Seller and Buyer may agree.

10.2 Seller’s Closing Documents. At each Closing, Seller shall execute, acknowledge (where appropriate), and deliver to Buyer the following, each dated as of the Closing Date and in form and substance reasonably satisfactory to Buyer:

10.2.1 A general warranty deed conveying to Buyer the applicable Development Parcel, subject only to Permitted Exceptions.

10.2.2 An Iowa declaration of value statement in a form required by the Iowa Department of Revenue.

10.2.3 An Iowa groundwater hazard statement in a form required by the Iowa Department of Natural Resources.

10.2.4 A certificate certifying that the representations and warranties contained in Section 7.1 of this Agreement with respect to the applicable Development Parcel are true and correct as of the Closing Date.

10.2.5 An affidavit of Seller regarding liens, judgments, residence, tax liens, bankruptcies, parties in possession, survey and mechanics’ or materialmens’ liens and other matters affecting title to the applicable Development Parcel and/or as may be reasonably required by Title Company to delete the so-called “standard exceptions” from the title insurance policy described in Section 6.1.3.

10.2.6 A transferor’s certification stating that Seller is not a “foreign person”, “foreign partnership”, “foreign trust” or “foreign estate” as those terms are defined in Section 1445 of the Internal Revenue Code, and containing such additional information as may be required thereunder.

10.2.7 Any appropriate required Federal Income Tax reporting form.

10.2.8 All documents and instruments which (a) Buyer or Title Company may reasonably determine are necessary to transfer the applicable Development Parcel to Buyer subject only to the Permitted Exceptions, (b) Buyer or Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement with respect to such Development Parcel, (c) Title Company may require as a condition to issuing the title insurance policy described in Section 6.1.3 with respect to such Development Parcel, or (d) may be required of Seller under applicable law, including any revenue or tax certificates or statements, or any affidavits, certifications or statements relating to the environmental condition of any of such Development Parcel, the presence (or absence) of wells about such Development Parcel, the presence (or absence) of storage tanks about such Development Parcel, or the extent of compliance of any of such Development Parcel with applicable law.

10.2.9 A settlement statement with respect to such Development Parcel consistent with this Agreement.

10.3 Seller’s Additional Closing Deliveries. At Closing, Seller shall cause to be delivered to Buyer all originals of the Records with respect to the applicable Development Parcel in Seller’s custody and control, to the extent not previously delivered to Buyer pursuant to Section 4.2.

10.4 Buyer’s Closing Deliveries. At Closing, Buyer shall cause to be delivered to Seller:

- 10.4.1 The portion of the Purchase Price with respect to the applicable Development Parcel payable pursuant to Sections 3.2 as adjusted pursuant to Section 10.6 in cash or by wire transfer of immediately available funds. The Earnest Money with respect to such Development Parcel shall be applied to and credited against the Purchase Price for such Development Parcel and shall be disbursed to Seller by Title Company at the Closing for such Development Parcel.
- 10.4.2 All documents and instruments, each executed and acknowledged (where appropriate) by Buyer, which (a) Seller or Title Company may reasonably determine are necessary to evidence the authority of Buyer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant to this Agreement with respect to the applicable Development Parcel, or (b) may be required of Buyer under applicable law, including any purchaser's affidavits or revenue or tax certificates or statements.
- 10.4.3 A settlement statement with respect to the applicable Development Parcel consistent with this Agreement executed by Buyer.
- 10.5 Closing Escrow. Buyer and/or Seller at their option may deposit the respective Closing deliveries described in Sections 10.2, 10.3 and 10.4 with Title Company with appropriate instructions for recording and disbursement consistent with this Agreement.
- 10.6 Closing Adjustments. The following adjustments shall be made at Closing:
- 10.6.1 Seller shall be responsible for and pay the real estate taxes for fiscal years prior to the year of Closing with respect to the applicable Development Parcel. Real estate taxes for fiscal year of Closing with respect to such Development Parcel shall be prorated between Seller and Buyer based on the Closing Date. If the Closing shall occur before the tax rate or assessed value for such fiscal period is determined, the apportionment of taxes shall be upon the basis of the last known taxes payable, but if such taxes are based upon a partial or different assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current tax levy's assessed value, legislative tax rollbacks and real estate tax exemption that will be applicable as shown on the Pottawattamie County Assessor's records on the Closing Date with respect to the applicable Development Parcel. Seller shall pay in full all "green acres", catch-up or other deferred taxes applicable to any of such Development Parcel as of the Closing Date with respect to such Development Parcel.
- 10.6.2 Rents, sewer, water, utilities and similar costs and expenses applicable to the applicable Development Parcel due and payable in the year of Closing shall be prorated between Seller and Buyer on a daily basis as of the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable subsequent thereto.
- 10.6.3 Seller shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to the applicable Development Parcel as of the Closing Date for such Development Parcel.
- 10.6.4 Seller shall pay all transfer tax, if any, regarding the deed for the applicable Development Parcel to be delivered by Seller to Buyer.
- 10.6.5 Seller shall pay the cost of recording all documents for the applicable Development Parcel other than the deed to be delivered by Seller to Buyer, necessary to place record title to such Development Parcel in Seller in the condition required pursuant to Sections 5.2 and 6.1.3. Buyer will pay the cost of recording all other documents for the applicable Development Parcel other than the deed to be delivered by Seller to Buyer.

- 10.6.6 Seller will pay all service charges for and costs to update the Abstract and all fees charged by Title Company for any escrow regarding Buyer's objections to title pursuant to Sections 5.2 and 5.3. Buyer shall pay all costs to prepare the Commitment (other than the cost to update the Abstract), Survey and UCC Searches and all premiums required for the owner's title insurance policy described in Section 6.1.3 with respect to the applicable Development Parcel and for any mortgagee's title insurance policy regarding any mortgage with respect to the applicable Development Parcel given by Buyer in connection with this transaction.
- 10.6.7 Seller and Buyer shall each pay one half (1/2) of any Closing fee payable to Title Company with respect to this transaction.
- 10.6.8 Except as provided in Article 14, Seller and Buyer shall each pay its own attorneys' fees incurred in connection with this transaction.
- 10.6.9 All other adjustments with respect to the applicable Development Parcel shall be made in accordance with the custom and practice of the local market in which the Property is located.

If any of the amounts allocated under this Section 10.6 cannot be calculated with complete precision at Closing because the amount or amounts of one or more items included in such calculation are not then known, then such calculation shall be made on the basis of the reasonable estimates of Seller and Buyer, subject to prompt adjustment (by additional payment or refund, as necessary) when the amount of any such item or items become known. Except as otherwise specifically provided in this Agreement, all apportionments under this Section 10.6 shall be made final at Closing with respect to the applicable Development Parcel and there shall be no post-Closing adjustments or other allocations.

- 10.7 Possession. Seller shall deliver exclusive legal and actual possession of the applicable Development Parcel to Buyer on the Closing Date for such Development Parcel subject only to the Permitted Exceptions.

Article 11. Indemnities.

- 11.1 Seller's Indemnities. Seller hereby agrees to indemnify and hold Buyer harmless from and against all liabilities incurred by Buyer by reason of any of the following:
 - 11.1.1 The breach of any of the representations and warranties set forth in Section 7.1 (including as remade from time to time pursuant to Section 10.2.4) or any other provision of this Agreement or any instrument delivered pursuant hereto.
 - 11.1.2 The operation and condition of the applicable Development Parcel on or prior to such Development Parcel's Closing.
- 11.2 Buyer's Indemnities. Buyer hereby agrees to indemnify and hold Seller harmless from and against all liabilities incurred by Seller by reason of any of the following:
 - 11.2.1 The breach of any of the representations and warranties set forth in Section 7.2 or any other provision of this Agreement or any instrument delivered pursuant hereto.
 - 11.2.2 The operation of the applicable Development Parcel following such Development Parcel's Closing.
- 11.3 Survival. The terms of this Article 11 shall survive termination of this Agreement, provided however the indemnities related to Sections 11.1.1 and 11.2.1 shall survive the Closings or earlier termination of this Agreement.

Article 12. Condemnation. If prior to Closing eminent domain proceedings are commenced against any or all of the Property, Seller shall immediately give notice thereof to Buyer, and Buyer at its option (to be exercised within thirty (30) days after Seller's notice) may either (a) terminate this Agreement and receive a refund of the Earnest Money, or (b) proceed to Closing with respect to the applicable Development Parcel and receive at such Closing either a credit against the Purchase Price with respect to such Development Parcel in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing with respect to an applicable Development Parcel, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Buyer.

Article 13. Brokers. Buyer and Seller each hereby represent that, except for the Broker, there are no other brokers involved or that have a right to proceeds in this transaction. Seller shall pay one-quarter (1/4) of any commissions to the Broker and Buyer shall pay three-quarters (3/4) of any commissions to the Broker. The commission to the Broker shall not exceed four percent (4%) of the Purchase Price for a Development Parcel. Seller hereby agrees to indemnify and hold Buyer harmless from all loss, cost, liability, damage or expense (including reasonable attorneys' fees at both trial and appellate levels) incurred by Buyer as a result of any claim arising out of the acts of Seller (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with such party (except that Buyer shall have no obligations hereunder with respect to any claim by the Broker). The representations, warranties and indemnity obligations contained in this section shall survive the Closings or the earlier termination of this Agreement.

Article 14. Default. If either party shall default in any of their respective obligations under this Agreement, the other party, by notice to such defaulting party specifying the nature of the default and the date on which this Agreement shall terminate (which date shall be not less than thirty (30) days after the giving of such notice), may terminate this Agreement, and upon such date, unless the default so specified shall have been cured, this Agreement shall terminate. In the case of any default by Buyer, Seller's sole and exclusive remedy shall be termination of this Agreement as provided above and, upon any such termination, the Earnest Money shall be forfeited to Seller as agreed and final liquidated damages. In the case of any default by Seller, upon termination of this Agreement, the Earnest Money shall be returned to Buyer. Buyer also shall have the right to specifically enforce this Agreement or seek damages from Seller, provided that any action therefor is commenced within six (6) months after such right arises. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

Article 15. Termination; Confirmation. Except as expressly provided in this Agreement to the contrary, if this Agreement is terminated with respect to the Property pursuant to the terms hereof, the Earnest Money shall be returned to Buyer and upon such return the respective rights of Seller and Buyer arising out of this Agreement with respect to the Property shall immediately cease. In such event, Buyer agrees to execute, acknowledge, and deliver to Seller within ten (10) days after written request, a termination of this Agreement with respect to the Property in recordable form in order to remove the cloud of this Agreement from the Property, but failure to give such termination shall not affect the termination of this Agreement with respect to the Property.

Article 16. Assignability. Buyer may assign its rights under this Agreement with respect to the Property or an applicable Development Parcel without the consent of Seller and without affecting its rights under this Agreement with respect to any other portion of the Property or Development Parcels, provided that Buyer assigns to an affiliate of Buyer or to a third party with which Buyer or an affiliate of Buyer has contracted to provide construction or development services. Buyer may assign its rights under this Agreement with respect to the Property or a Development Parcel to any other third party with the consent of Seller, which consent shall not be unreasonably withheld, without affecting its rights under this Agreement with respect to any other portion of the Property or Development Parcels.

Article 17. Confidentiality. Seller and Buyer agree to retain the confidentiality of the identity of the other and of the terms of this Agreement, and not to disclose the same to any third party other than their respective affiliates, consultants, lawyers, accountants, potential partners and investors and lenders, and to governmental authorities in

connection with Buyer's proposed development of the Property or Development Parcels other than to the extent required by applicable law. Notwithstanding the foregoing, this Agreement shall be subject to Chapter 22 of the Iowa Code.

Article 18. Notices. Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's address as follows:

If to Seller: City of Council Bluffs, Iowa
Attn: Hon. Matt Walsh, Mayor
209 Pearl Street
Council Bluffs, IA 51503

with copy to:

City of Council Bluffs, Iowa
Attn: Richard Wade, City Attorney
209 Pearl Street
Council Bluffs, IA 51503

If to Buyer: Opus Development Company, L.L.C.
Attn.: Jason Conway
10350 Bren Road West
Minnetonka, MN 55343

with copies to:

Opus Development Company, L.L.C.
Attn: Legal Department
10350 Bren Road West
Minnetonka, MN 55343

and

Faegre Baker Daniels LLP
Attn: Lica Tomizuka
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

or to such party at such other address as such party, by ten (10) days' prior written notice given as herein provided, shall designate. Any notice given in any other manner shall be effective only upon receipt by the addressee.

Article 19. Miscellaneous.

19.1 Entire Agreement; Modification. This Agreement embodies the entire agreement and understanding between Seller and Buyer, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in a writing executed by both Seller and Buyer. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.

- 19.2 Survival; No Merger. The terms of this Agreement shall survive and be enforceable after every Closing and shall not be merged therein.
- 19.3 Governing Law. This Agreement shall be construed under and governed by the laws of the State of Iowa.
- 19.4 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.
- 19.5 Time of the Essence; Calculation of Time Periods; Expiration. Time is of the essence under this Agreement. In computing any period of time described in this Agreement, if the last day of the designated period is a Saturday, Sunday, or legal holiday, the period shall run until the next day which is not a Saturday, Sunday, or legal holiday.
- 19.6 Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Buyer merely because of their respective efforts in preparing it.
- 19.7 Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, and the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to", (ii) "terms" shall mean "terms, provisions, duties, covenants, conditions, representations, warranties and indemnities", (iii) "any of the Property" shall mean "the Property or any part thereof or interest therein or the applicable Development Parcel or any part thereof or interest therein" as the context may require, (iv) "rights" shall mean "rights, duties and obligations", (v) "liabilities" shall mean "liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys' fees", (vi) "incurred by" shall mean "imposed upon or suffered or incurred or paid by or asserted against", (vii) "applicable law" shall mean "all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations", (viii) "about the Property" shall mean "in, on, under or about the Property or the applicable Development Parcel" as the context may require, (ix) "operation" shall mean "use, non-use, possession, occupancy, condition, operation, maintenance or management", and (x) "this transaction" shall mean "the purchases, sales and related transactions contemplated by this Agreement."
- 19.8 Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of Seller and Buyer.
- 19.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Agreement may be transmitted by fax or by electronic mail in portable document format ("pdf") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. At the request of either party, any electronic or facsimile document is to be re-executed in original form by the parties who executed the electronic or facsimile document.

[Signature Pages Follow]

**SIGNATURE PAGE
FOR
PURCHASE AGREEMENT**

Seller has caused this Agreement to be executed and delivered as of the date first above written.

SELLER:

SELLER

City of Council Bluffs, Iowa,
a municipal corporation

By: _____
Name: _____
Its: _____

**SIGNATURE PAGE
FOR
PURCHASE AGREEMENT**

Buyer has caused this Agreement to be executed and delivered as of the date first above written.

BUYER:

OPUS DEVELOPMENT COMPANY, L.L.C.

Date: _____

By: _____

Name: _____

Its: _____

JOINDER OF TITLE COMPANY

The undersigned hereby agrees to act as Title Company under the foregoing Purchase Agreement and to hold and disburse the Earnest Money in accordance with the terms thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

Date: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Lot 1 in River Road Subdivision, an Official Plat in the City of Council Bluffs, Pottawattamie County, Iowa

EXHIBIT B

FORM OF MEMORANDUM

Prepared by and return to: Matt Hardin, Faegre Baker Daniels LLP, 801 Grand Ave., Fl. 33, Des Moines, IA 50309, 515-447-4730

MEMORANDUM OF PURCHASE RIGHT

THIS MEMORANDUM OF PURCHASE RIGHT (this “**Memorandum**”) is made as of _____, 2019, by and between the City of Council Bluffs, Iowa, a municipal corporation (“**Seller**”), and Opus Development Company, L.L.C., a Delaware limited liability company (“**Buyer**”).

RECITALS

A. Seller and Buyer are parties to that certain Purchase Agreement dated on or around the date hereof (the “**Agreement**”) regarding certain real property legally described on **Exhibit A** attached hereto (the “**Property**”).

B. Seller and Buyer desire to execute and record this memorandum to provide notice of the Agreement.

AGREEMENT

1. **Notice.** This Memorandum is executed and is to be recorded to give notice of the Agreement.

2. **Purchase Right.** Pursuant to the Agreement, Seller has granted to Buyer the exclusive right to purchase at one time or in multiple closings, not to exceed four (4) closings, all or portions of the Property upon the terms and conditions more particularly set forth therein.

3. **Termination.** Upon Seller’s request, Buyer shall execute and acknowledge a written termination of this Memorandum, in recordable form, upon expiration or earlier termination of the Agreement or consummation of the closing of the Property or last closing of the remaining Property.

4. **Single Instrument.** The Agreement contains other terms, conditions, provisions, covenants, representations and warranties, all of which are hereby incorporated in this Memorandum by reference as though fully set forth herein, and both the Agreement and this Memorandum shall be deemed to constitute a single instrument. A copy of the Agreement is maintained at the offices of Seller and Buyer. Nothing contained herein shall be construed to amend, modify, amplify, interpret or supersede any provision of the Agreement, which shall in all things control.

5. **Counterparts.** This Memorandum may be executed and delivered in counterparts, each of which shall be an original, but together shall constitute one and the same instrument.

6. **Successors and Assigns.** This Memorandum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature Pages Follow]

SIGNATURE PAGE
TO

SELLER

City of Council Bluffs, Iowa,
a municipal corporation

By: _____
Name: _____
Its: _____

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

The foregoing was acknowledged before me this _____ day of _____, 2019, by _____, the _____ of the City of Council Bluffs, Iowa, a municipal corporation.

Notary Public

**SIGNATURE PAGE
TO
MEMORANDUM OF PURCHASE RIGHT**

BUYER

Opus Development Company, L.L.C.,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing was acknowledged before me this ____ day of _____, 2019, by
_____, the _____ of Opus Development Company, L.L.C., a
Delaware limited liability company, on behalf of such company.

Notary Public

EXHIBIT A
TO
MEMORANDUM OF PURCHASE RIGHT
LEGAL DESCRIPTION

Lot 1 in River Road Subdivision, an Official Plat in the City of Council Bluffs, Pottawattamie County, Iowa

EXHIBIT C

LEASES

1. Sign Location Lease dated on or around September 26, 2019 (the “**Billboard Lease**”) between Seller and The Lamar Companies in the form approved by Buyer
2. Oral farm lease (the “**Farm Lease**”) between Seller and Robert Adkins, Jr.
3. Land Lease Contract dated June 1, 2014 (the “**Airplane Club Lease**”) between Richard P. Borman & Chas B. Everest Ptr dba DEB Limited Partnership and Twin Cities Eagle Squadron AMA Chapter #3680

EXHIBIT D

LEVEE MAINTENANCE DOCUMENTS

1. Levee Maintenance Agreement and Easement between Farmland Industries, Inc., Council Bluffs Industrial Foundation, Inc., Cargill, Inc., Warren Oil Company, Robert N. Schlott and Barbara Schlott, Thelma J. Schlott as devisee under will of Norman P. Schlott, Eugene R. Severs and Barbara J. Severs, and the City of Council Bluffs, Iowa, dated December 7, 1982 and recorded December 19, 1982 in Book 84, Page 11239 in the records of the Pottawattamie County, Iowa, Recorder.
2. 1982 Levee Maintenance Agreement Updated 2011 Assessment dated February 24, 2012

PURCHASE AGREEMENT

This Purchase Agreement is made as of _____, 2019 (“**Effective Date**”), by and between the City of Council Bluffs, Iowa, a municipal corporation (“**Seller**”), and Opus Development Company, L.L.C., a Delaware limited liability company (“**Buyer**”).

Buyer desires to purchase certain property owned by Seller, and Seller desires to sell such property to Buyer pursuant to the terms and conditions set forth in this Agreement.

Accordingly, Seller and Buyer agree as follows:

Article 1. DEFINITIONS. The following terms shall have the meanings set forth below:

- 1.1 Abstract. As defined in Section 5.1.1.
- 1.2 Agreement. This Agreement, including the following exhibits attached hereto and hereby made a part hereof:

<u>Exhibit A:</u>	Legal Description of the Land
<u>Exhibit B:</u>	Form of Memorandum
<u>Exhibit C:</u>	Leases
<u>Exhibit D:</u>	Levee Maintenance Documents
- 1.3 Airplane Club Lease. As defined in Exhibit C.
- 1.4 Billboard Lease. As defined in Exhibit C.
- 1.5 Broker. The Lund Company d/b/a Cushman & Wakefield.
- 1.6 Closing. As defined in Article 2.
- 1.7 Closing Date. As defined in Article 10.
- 1.8 Closing Notice. As defined in Article 10.
- 1.9 Commitment. The title insurance commitment with respect to the Property or a Development Parcel, as applicable, described in Section 5.1.1.
- 1.10 Development Parcel. All or a portion of the Property identified in the Closing Notice.
- 1.11 Earnest Money. As defined in Section 3.2.1.
- 1.12 Executory Period. The period between the Effective Date and a Closing.
- 1.13 Farm Lease. As defined in Exhibit C.
- 1.14 Hazardous Material. Any substance, chemical, waste or material that is or becomes regulated under applicable law because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, including asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products and any substance, chemical, waste or material regulated by any Hazardous Material Law.

- 1.15 Hazardous Material Laws. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, as such acts may be amended from time to time, and any other Federal, state, county, municipal, local or other law, statute, code, ordinance, rule or regulation which relates to or deals with human health or the environment in the jurisdiction in which the Property is located.
- 1.16 Improvements. All buildings, structures, fixtures and improvements located on the Land, if any.
- 1.17 Inspection Period. As defined in Section 4.1.
- 1.18 Land. The real property located in the City of Council Bluffs, Pottawattamie County, Iowa, legally described on Exhibit A attached hereto, together with all easements, appurtenances and hereditaments thereto.
- 1.19 Leases. As defined in Section 7.1.3
- 1.20 Levee Maintenance Documents. Those agreements identified on Exhibit D attached hereto.
- 1.21 Permitted Exceptions. The easements, restrictions, reservations and other matters affecting title to the Property as may be determined to be Permitted Exceptions pursuant to Article 5.
- 1.22 Property. The Land and the Improvements, collectively, excluding any Development Parcels sold pursuant to this Agreement.
- 1.23 Purchase Price. The purchase price for a Development Parcel described in Section 3.1.
- 1.24 Records. All records of Seller relating to the Property, including (a) all records regarding real estate taxes and assessments, (b) all reports and studies (including soil, engineering, geotechnical and environmental reports or tests, including all drafts and letters and other documents which order, describe or limit the scope of such tests, reports or studies), (c) all service contracts, leases, licenses and permits related to the Property, and (d) all originals and copies of surveys regarding the Property.
- 1.25 Survey. The survey of the Property or a Development Parcel, as applicable, described in Section 5.1.2.
- 1.26 Title Company. First American Title Insurance Company having an address at 121 South 8th Street, Suite 1250, Minneapolis, MN 55402, Attention: Dani Haag.
- 1.27 Title Evidence. The Commitment, Survey, and UCC Searches.
- 1.28 UCC Searches. The UCC searches described in Section 5.1.3.

Article 2. Purchase and Sale; Memorandum; Exclusivity.

- 2.1 Purchase and Sale. Seller hereby agrees to sell to Buyer, upon and subject to the terms and conditions hereinafter set forth, the Property. The purchase and sale of the Property or Development Parcels shall take place at one or multiple closings (each, a “**Closing**”) but not more than four (4) Closings, provided that any Closings shall take place on or before the third anniversary of the Effective Date. If Buyer purchases a Development Parcel that is less than all of the Property, the balance of the Property shall remain subject to this Agreement and Buyer’s right to purchase such Property and the remaining Property shall be at least ten (10) acres, have access to a public road, and have the ability to have direct access to current or future sanitary sewer, electric, and gas utility lines.

- 2.2 Memorandum. A memorandum of this Agreement (the “**Memorandum**”), the form of which is attached hereto as **Exhibit B**, shall be signed by both parties upon the execution of this Agreement and shall be recorded at Buyer’s cost in the real estate records in and for Pottawattamie County, Iowa.
- 2.3 Exclusivity. Seller shall not, during the Executory Period or before the termination of this Agreement, (a) promote the sale of the Property to, or solicit offers to purchase the Property from, other parties or (b) discuss or negotiate with other parties regarding the sale of the Property.

Article 3. Purchase Price.

- 3.1 Amount. Buyer shall pay to Seller as and for the purchase price for a Development Parcel an amount equal to \$0.50 per land square foot. The land square footage of a Development Parcel shall be determined by the Survey.
- 3.2 Manner of Payment. The Purchase Price for a Development Parcel shall be payable as follows:
- 3.2.1 (a) For the first Development Parcel that Buyer may purchase pursuant to this Agreement, Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) as earnest money (“**Initial Earnest Money**”), to be deposited by Buyer in escrow with Title Company within three business (3) days after the Effective Date and held and disbursed pursuant to the terms of this Agreement.
- (b) For any Development Parcel after the Closing of the first Development Parcel, Reset Earnest Money (defined below) to be deposited by Buyer in escrow with Title Company pursuant to Section 4.3 below and held and disbursed pursuant to the terms of this Agreement.
- 3.2.2 The Additional Earnest Money, if any (together with Initial Earnest Money or any Reset Earnest Money, as applicable, to the extent deposited with and then being held by the Title Company, the “**Earnest Money**”), deposited by Buyer in escrow with Title Company pursuant to Section 4.2 below and held and disbursed pursuant to the terms of this Agreement. For purposes of clarity only, “Earnest Money” does not include any Initial Earnest Money, Reset Earnest Money or Additional Earnest Money that has been credited to a Purchase Price at a previous Closing.
- 3.2.3 The balance of the Purchase Price in cash or by certified or cashier’s check or wire transfer of immediately available funds on the applicable Closing Date.

Article 4. Inspection.

- 4.1 Inspection Period. Buyer shall have a period of three hundred sixty-five (365) days following the Effective Date (the “**Initial Inspection Period**,” together with, if any, the Additional Inspection Period(s), the “**Inspection Period**”), during which Buyer may inspect the physical and environmental condition of the Property (or portion thereof), the availability of all permits and approvals, the location and availability of utilities and access, existing soil conditions, the impact of governmental requirements and the feasibility of developing the Property (or portion thereof) as proposed by Buyer. Buyer and its affiliates and their respective employees, agents and independent contractors shall have access to the Property at reasonable times and after reasonable notice to Seller. Buyer shall restore any damage to the Property caused by such inspection and shall indemnify and hold Seller harmless from all liabilities incurred by Seller and arising out of any such entry, except that (a) Buyer shall not have any obligation in respect of any Hazardous Materials existing about the Property, and (b) Buyer shall not have any obligation for any loss, cost or damage arising out of Seller’s negligence or willful misconduct. The foregoing indemnity shall survive termination of this Agreement. Upon expiration of the then current Inspection Period, the Earnest Money will become non-refundable, except as otherwise set forth in this Agreement. The Earnest Money shall be credited to the Purchase Price at the next occurring Closing. If Buyer elects to terminate the Purchase Agreement during an Inspection Period, the Earnest Money shall be refunded to Buyer.

- 4.2 Additional Inspection Periods. Buyer may extend the then-current Inspection Period for up to two (2) consecutive periods of one hundred eighty (180) days each (each an “**Additional Inspection Period**”). Each Additional Inspection Period may be extended only by (a) Buyer’s deposit with the Title Company of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (“**Additional Earnest Money**”) and (b) Buyer’s delivery to Seller of a notice extending the Inspection Period, each of which shall be delivered before the expiration of the then-current Inspection Period. Upon expiration of the then-current Inspection Period, the Earnest Money will become non-refundable, except as otherwise set forth in this Agreement. All Earnest Money shall be credited to the Purchase Price at the next occurring Closing.
- 4.3 Reset of Inspection Period. Seller acknowledges and agrees that Buyer may purchase portions of the Property at one or more Closings. At each Closing for a Development Parcel that is at least ten (10) acres, the “Initial Inspection Period” shall automatically be amended to mean the period commencing on the Effective Date and expiring three hundred sixty-five (365) days after such Closing, and Buyer shall have the right to exercise two (2) consecutive Additional Inspection Periods as set forth in Section 4.2 above. The Buyer shall deposit Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (“**Reset Earnest Money**”) with the Title Company within three (3) business days after any reset of Inspection Period. The Reset Earnest Money shall be refundable during the then-current Inspection Period.
- 4.4 Delivery Requirements. To the extent not previously delivered by Seller to Buyer, Seller shall deliver to Buyer within five (5) business days after the Effective Date true and complete copies of each of the Records.

Article 5. Title Examination.

5.1 Title Evidence.

- 5.1.1 Within five (5) business days after the Effective Date, Seller shall deliver the updated abstract for the Property to the Title Company (“**Abstract**”). Buyer shall obtain a commitment to insure title to the Property issued by Title Company. The Commitment shall (a) be an ALTA Commitment (6-17-06) for an ALTA Owner’s Policy (6-17-06) in an amount to be determined with provision to increase the policy amount to cover the cost of improvements to be constructed by Buyer, (b) show Seller as owner of the Property, (c) commit to delete all of the so-called “standard exceptions” to coverage and (d) include copies of all documents, instruments and matters shown as exceptions or referenced therein.
- 5.1.2 Buyer shall obtain a current survey of the Property, prepared and certified by a registered land surveyor, reasonably satisfactory to Buyer, who is licensed in the State of Iowa. The survey shall (a) conform to the “2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys” as adopted in 2016 by the American Land Title Association and the National Society of Professional Surveyors, Inc. (the “**ALTA/NSPS Requirements**”), including optional items 1, 2, 3, 4, 6(b), 7(a), 8, 9, 11, 13, 14, 16, 17, 19 (if applicable), and 20 (\$1,000,000) of Table A thereto, and (b) contain a certification to Buyer, Title Company and any other party designated by Buyer in the applicable form as specified by the ALTA/NSPS Requirements.
- 5.1.3 Buyer shall obtain a report of UCC searches of the Uniform Commercial Code records of the secretary of state, county recorder and any other applicable filing location in the jurisdiction in which the Property is located under the Uniform Commercial Code as adopted therein.

The Title Evidence shall be deemed received by Buyer for purposes of this Section 5.1 only when a Commitment, Survey, and UCC Searches conforming to the foregoing requirements have been received by Buyer.

- 5.2 Buyer’s Objections and Requirements. Buyer shall be allowed fifteen (15) business days after receipt of the last of the Title Evidence for examination thereof and making any objections to the form and/or content of

the same. Any objections not made within said period shall be deemed to be waived by Buyer and shall be Permitted Exceptions. Buyer's objections may include additional requirements with regard to the Title Evidence based upon its initial review of the same, including requiring (a) satisfaction of Title Company's requirement as set forth in the Commitment, (b) deletion of all the so-called "standard exceptions" to coverage, (c) affirmative insurance of any easements appurtenant to the Property, (d) reasonable affirmative title insurance endorsements (including comprehensive, zoning, access, subdivision, contiguity and survey accuracy) with respect to the Property if available in the jurisdiction in which the Property is located, and (e) revisions to the Title Evidence as to any matters reasonably warranting additional investigation, affirmative insurance and/or certification. Buyer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time, including but not limited to any revisions to the Title Evidence to limit such Title Evidence to a Development Parcel.

5.3 Correction of Title. Seller shall be allowed fifteen (15) days after the making of Buyer's objections to cure the same and shall diligently proceed and use its best efforts to do so. Pending such cure, the Closing for a Development Parcel shall be postponed to the extent necessary to accommodate such time period; provided however, Seller shall not be allowed any additional time beyond the originally scheduled Closing Date for such Development Parcel to discharge or satisfy any mortgage, judgment or other monetary lien. If such cure is not completed within said fifteen (15) day period, Buyer shall have the option to do any of the following:

5.3.1 Terminate this Agreement and receive a refund of the Earnest Money;

5.3.2 Cure the defect and deduct the cost of curing from the Purchase Price for such Development Parcel at Closing; or

5.3.4 Waive one or more of its objections and proceed to Closing for such Development Parcel.

Article 6. Conditions Precedent.

6.1 Conditions in Favor of Buyer. The obligations of Buyer under this Agreement are contingent upon each of the following:

6.1.1 During the Inspection Period, Buyer shall have determined that it is satisfied with the matters and conditions disclosed by the reports, investigations and tests received or performed by Buyer pursuant to Section 4.1, with its review and analysis of the Title Evidence and the Records, with its governmental approvals needed for its contemplated development, with the lease termination agreement(s) between Seller and any tenant(s) on the Property and with any other condition related to Buyer's contemplated development.

6.1.2 On the Closing Date of a Development Parcel, the Property shall be subdivided such that such Development Parcel has a separate legal description and is a separate tax parcel, subject only to conditions acceptable to Buyer in its sole and absolute discretion.

6.1.3 On the Closing Date of a Development Parcel, Title Company shall be irrevocably committed to issue to Buyer an owner's policy of title insurance pursuant to the Commitment with respect to such Development Parcel and any appurtenant easements designated by Buyer pursuant to Section 5.2 subject only to the Permitted Exceptions and otherwise in a form approved by Buyer pursuant to Sections 5.2 and 5.3.

6.1.4 On the Closing Date of a Development Parcel, each of the representations and warranties of Seller in Section 7.1 shall be true and correct as if the same were made on such Closing Date.

- 6.1.5 On the Closing Date of a Development Parcel, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement as and when required under this Agreement with respect to such Development Parcel.

If any conditions in this Section 6.1 have not been satisfied on or before the applicable date set forth in this Section 6.1 with respect to each condition, then Buyer may terminate this Agreement with respect to such Development Parcel by notice to Seller on or before the applicable date, subject, however, to Article 14, or revoke the Closing Notice for the applicable Development Parcel (which notice for such Development Parcel or a different Development Parcel may be delivered at a later time), if delivered, such that the rights and obligations of the parties revert back to those that existed before the delivery of the Closing Notice. To the extent that any of the conditions in this Section 6.1 require the satisfaction of Buyer, such satisfaction shall be determined by Buyer in its sole and absolute discretion. The conditions in this Section 6.1 are specifically stated and for the sole benefit of Buyer. Buyer in its discretion may unilaterally waive (conditionally or absolutely) the fulfillment of any one or more of the conditions, or any part thereof, by notice to Seller. Seller shall not take or authorize, directly or indirectly, any action that modifies or changes the circumstances upon which the conditions set forth in this Section 6.1 were deemed satisfied or waived by Buyer without Buyer's consent.

- 6.2 Conditions in Favor of Seller. The obligations of Seller under this Agreement are contingent upon each of the following:

- 6.2.1 On the Closing Date with respect to a Development Parcel, each of the representations and warranties of Buyer in Section 7.2 shall be true and correct as if the same were made on such Closing Date.
- 6.2.2 On the Closing Date with respect to a Development Parcel, Buyer shall have performed all of the obligations required to be performed by Buyer under this Agreement as and when required under this Agreement with respect to such Development Parcel.

If any of the conditions in this Section 6.2 have not been satisfied on or before the applicable date set forth in this Section 6.2 with respect to each condition, then Seller may terminate this Agreement by notice to Buyer on or before the applicable date, subject however to Article 14. The conditions in this Section 6.2 are specifically stated and for the sole benefit of Seller. Seller in its discretion may unilaterally waive any one or more of the conditions, or any part thereof, by notice to Buyer.

- 6.3 Cooperation. The parties shall cooperate with each other to all reasonable extents in the parties' attempts to satisfy the conditions set forth in Sections 6.1 and 6.2, respectively, including executing such documents as may be reasonably requested by the other in connection therewith (such as environmental worksheets and other documents as may be reasonably requested by the other in connection therewith). Additionally, Seller shall, at the request of Buyer, cooperate and work together with Buyer (including, without limitation, joining in the execution of the materials described in clause (a) below) in connection with: (a) applications, agreements, amendments, approvals and annexation agreements relating to, among other things, zoning, site plan, planned development, subdivision, protective covenants, TIF financing, utility and other development matters to permit the development of the Property (or portion thereof) in accordance with Buyer's proposed development plans, and (b) any requirements of local, state or federal governments, or any agency thereof, any public utility, or the proposed development relating to the proposed development of the Property (or portion thereof), including but not limited to granting reasonably-sized utility, water, sanitary sewer, storm sewer, roadway, drainage, access and other easements in favor of Buyer in form and substance reasonably acceptable to Seller and Buyer. Seller agrees to timely and properly perform and pay all requirements of the covenants, duties and obligations of the owner or developer as are set forth in any development, annexation or other applicable agreement made by and between Seller or any of its predecessors in interest (as developer or owner, as the case may be) and the City of Council Bluffs or Pottawattamie County, Iowa, or other applicable authority or otherwise affecting the Property. Seller agrees to indemnify, defend and hold harmless Buyer and the Property from any and all claims, costs, losses,

damages or expenses (including but not limited to reasonable attorneys' fees) arising out of or alleged to have arisen out of Seller's failure to perform any of said obligations, covenants or duties. The provisions of this Section 6.3 shall survive the Closing of each Development Parcel. Notwithstanding the foregoing, any action by Seller under this Section 6.3 shall be subject to any administrative and legislative approval processes applicable to Seller and to such action.

Article 7. Representations and Warranties.

7.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

- 7.1.1 Seller has not entered into any contracts for the sale of or option to purchase any of the Property other than this Agreement. Seller has received no notice of and has no knowledge of any rights of first refusal or first offer, options to purchase any of the Property or any other rights or agreements which may delay or prevent this transaction.
- 7.1.2 There has been no labor or materials of any kind furnished to or for the benefit of the Property for which payment in full has not been made.
- 7.1.3 No person or entity is entitled to possession of any of the Property, other than Seller and Seller's tenants under the Leases identified on Exhibit C attached hereto (the "**Leases**"). The Leases are in full force and effect and neither Seller nor the tenants under their respective Leases are or have been in default under the terms of their respective Leases. Except for amendments and renewals identified on Exhibit C attached hereto, there are no amendments or other agreements affecting the Leases. The Farm Lease shall terminate no later than March 1, 2020, and the tenant under the Farm Lease shall not have possession of the Property after March 1, 2020. The Airplane Club Lease and the Billboard Lease shall terminate no later than the Closing Date for the Development Parcel that is affected by such Lease, and the tenants under such Leases shall not have possession of the Property after such Closing Date. At Buyer's direction to do so, Seller will terminate any or all of the Leases before the Closing Date.
- 7.1.4 The Property has not been classified under any designation under applicable law to obtain a special low ad valorem tax rate or receive either an abatement or deferment of ad valorem taxes which, in such case, will result in any "green acres", catch-up or other deferred ad valorem taxes in order to recover the amounts previously abated or deferred.
- 7.1.5 Seller has received no notice of and has no knowledge of any pending or proposed special assessments affecting the Property or any proposed or pending public improvements which may give rise to any special assessments affecting the Property.
- 7.1.6 Seller has received no notice of and has no knowledge of any pending or threatened condemnation or transfer in lieu thereof affecting any of the Property, nor has Seller agreed or committed to dedicate any of the Property.
- 7.1.7 Seller has received no notice of and has no knowledge of any pending or threatened action which would impair access to and from all adjoining streets, roads and highways.
- 7.1.8 Seller has received no notice and has no knowledge of any actual or threatened curtailment, cancellation or suspension of any utility (including telephone and communications, electricity, gas, sanitary sewer, storm sewer and water (fire and domestic)).
- 7.1.9 Seller has received no notice of and has no knowledge that any of the Property or its use or uses are in violation of applicable law or any applicable private restriction applicable to the Property.

- 7.1.10 Seller has received no notice of and has no knowledge of any action, litigation, investigation or proceeding of any kind pending or threatened against Seller or any of the Property, and Seller knows of no facts which could give rise to any such action, litigation, investigation or proceeding.
- 7.1.11 Seller has not generated, manufactured, buried, spilled, leaked, discharged, emitted, stored, disposed of, used or released any Hazardous Materials about the Property, and has permitted no other party to do any of the same. Seller at all times has operated its business at the Property in compliance with Hazardous Material Laws and has kept in full force and effect all licenses, permits, and other authorizations required pursuant to any Hazardous Material Law for the lawful and efficient operation of Seller's business at the Property. Seller has received no notice of and has no knowledge (a) that any Hazardous Material are or have ever been generated, manufactured, buried, spilled, leaked, discharged, emitted, stored, disposed of, used or released about the Property, or (b) of any, requests, notices, investigations, demands, administrative proceedings, hearings, litigation or other action proposed, threatened or pending relating to any of the Property and alleging non-compliance with or liability under any Hazardous Material Law, or (c) that any above-ground or underground storage tanks or other containment facilities of any kind containing any Hazardous Materials are or have ever been located about the Property.
- 7.1.12 There are no leases or possessory rights in favor of any party, service or maintenance contracts, equipment leases or other contracts regarding any of the Property, except for the Leases which shall terminate by the dates prescribed in Section 7.1.3.
- 7.1.13 Seller has delivered or, within the time frame provided in Section 4.4, shall deliver to Buyer true, correct and complete copies of the Records in Seller's custody and control. Seller does not warrant and shall not be responsible for the accuracy or completeness of any Record not prepared by Seller or an affiliate of Seller or their conclusions or recommendations unless Seller or any affiliate has knowledge that the same are inaccurate, incomplete or misleading in any material respect.
- 7.1.14 Seller has the full power, capacity and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. This Agreement has been duly executed and delivered by Seller and is a valid and binding obligation of Seller enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto do not and will not conflict with or result in any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and/or any of the Property is bound or subject.
- 7.1.15 Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.
- 7.1.16 Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.
- 7.1.17 The Property is subject to certain levee maintenance fees arising from certain documents identified on **Exhibit D** attached hereto. There are no other agreements related to levee maintenance that affect the Property. The share of such fees allocated to the Property shall not exceed 13.1819%, and the share of such fees allocated to a Development Parcel shall be its proportionate share of the Property by acreage. Seller shall provide such evidence or documentation, including any recordable documents, reasonably acceptable to Buyer to confirm such allocation.

The foregoing representations and warranties are express representations and warranties which Buyer shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Buyer. Consummation of this Agreement by Buyer with knowledge of any such breach shall not constitute a waiver or release by Buyer of any claims arising out of or in connection with such breach. The foregoing representations and warranties (including as remade pursuant to Section 10.2.4) shall survive the Closings or the earlier termination of this Agreement.

7.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

7.2.1 Buyer has been duly formed and is in good standing under the laws of the State of Delaware and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto. This Agreement has been duly executed and delivered by Buyer and is a valid and binding obligation of Buyer enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto have each been duly authorized by all necessary corporate action on the part of Buyer and that such execution, delivery and performance does and will not conflict with or result in a violation of Buyer's bylaws or any judgment, order or decree of any court or arbiter to which Buyer is a party, or any agreement to which Buyer and/or any of the Property is bound or subject.

7.2.2 Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are express representations and warranties which Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. Consummation of this Agreement by Seller with knowledge of any such breach shall not constitute a waiver or release by Buyer of any claims arising out of or in connection with such breach. The foregoing representations and warranties shall survive the Closings or the earlier termination of this Agreement.

Article 8. Condition of Property at Closing. Seller shall deliver the applicable Development Parcel to Buyer at the Closing for such Development Parcel in a condition consistent with the representation and warranties in Section 7.1, and in any event in the same or better condition than which it existed on the date Buyer delivers its Closing Notice for the applicable Development Parcel.

Article 9. Operation Pending Closing. During the Executory Period, Seller shall (a) not lease, convey or otherwise transfer any of the Property, except for the Leases, (b) not execute any contracts, leases, amendments to the Leases or other agreements regarding any of the Property that are not terminable on thirty (30) days' advance notice, (c) not undertake any improvements or alterations of the Property without the consent of Buyer, and (d) promptly deliver to Buyer a copy of any notice, consent, waiver, request or other communication Seller receives from any public or private entity with respect to any of the Property. Upon receipt of Buyer's direction to terminate one or more of the Leases, Seller shall terminate such Leases such that they are terminated at or before the Closing. Seller shall be responsible for all costs related to the termination of the Leases.

Article 10. Closing.

10.1 Closing Date. The Closing for a Development Parcel shall occur on the date identified in a written notice ("**Closing Notice**") delivered by Buyer to Seller and Title Company at least three (3) business days in advance of the desired closing date, which date shall be a commonly-accepted business day (the "**Closing**

Date”). Each such Closing Notice shall also specify (a) the applicable Development Parcel to be purchased, and (b) the Purchase Price for such Development Parcel. Such Closing shall take place at the offices of Title Company or at such other place, date and time as Seller and Buyer may agree.

10.2 Seller’s Closing Documents. At each Closing, Seller shall execute, acknowledge (where appropriate), and deliver to Buyer the following, each dated as of the Closing Date and in form and substance reasonably satisfactory to Buyer:

10.2.1 A general warranty deed conveying to Buyer the applicable Development Parcel, subject only to Permitted Exceptions.

10.2.2 An Iowa declaration of value statement in a form required by the Iowa Department of Revenue.

10.2.3 An Iowa groundwater hazard statement in a form required by the Iowa Department of Natural Resources.

10.2.4 A certificate certifying that the representations and warranties contained in Section 7.1 of this Agreement with respect to the applicable Development Parcel are true and correct as of the Closing Date.

10.2.5 An affidavit of Seller regarding liens, judgments, residence, tax liens, bankruptcies, parties in possession, survey and mechanics’ or materialmens’ liens and other matters affecting title to the applicable Development Parcel and/or as may be reasonably required by Title Company to delete the so-called “standard exceptions” from the title insurance policy described in Section 6.1.3.

10.2.6 A transferor’s certification stating that Seller is not a “foreign person”, “foreign partnership”, “foreign trust” or “foreign estate” as those terms are defined in Section 1445 of the Internal Revenue Code, and containing such additional information as may be required thereunder.

10.2.7 Any appropriate required Federal Income Tax reporting form.

10.2.8 All documents and instruments which (a) Buyer or Title Company may reasonably determine are necessary to transfer the applicable Development Parcel to Buyer subject only to the Permitted Exceptions, (b) Buyer or Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement with respect to such Development Parcel, (c) Title Company may require as a condition to issuing the title insurance policy described in Section 6.1.3 with respect to such Development Parcel, or (d) may be required of Seller under applicable law, including any revenue or tax certificates or statements, or any affidavits, certifications or statements relating to the environmental condition of any of such Development Parcel, the presence (or absence) of wells about such Development Parcel, the presence (or absence) of storage tanks about such Development Parcel, or the extent of compliance of any of such Development Parcel with applicable law.

10.2.9 A settlement statement with respect to such Development Parcel consistent with this Agreement.

10.3 Seller’s Additional Closing Deliveries. At Closing, Seller shall cause to be delivered to Buyer all originals of the Records with respect to the applicable Development Parcel in Seller’s custody and control, to the extent not previously delivered to Buyer pursuant to Section 4.2.

10.4 Buyer’s Closing Deliveries. At Closing, Buyer shall cause to be delivered to Seller:

- 10.4.1 The portion of the Purchase Price with respect to the applicable Development Parcel payable pursuant to Sections 3.2 as adjusted pursuant to Section 10.6 in cash or by wire transfer of immediately available funds. The Earnest Money with respect to such Development Parcel shall be applied to and credited against the Purchase Price for such Development Parcel and shall be disbursed to Seller by Title Company at the Closing for such Development Parcel.
- 10.4.2 All documents and instruments, each executed and acknowledged (where appropriate) by Buyer, which (a) Seller or Title Company may reasonably determine are necessary to evidence the authority of Buyer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant to this Agreement with respect to the applicable Development Parcel, or (b) may be required of Buyer under applicable law, including any purchaser's affidavits or revenue or tax certificates or statements.
- 10.4.3 A settlement statement with respect to the applicable Development Parcel consistent with this Agreement executed by Buyer.
- 10.5 Closing Escrow. Buyer and/or Seller at their option may deposit the respective Closing deliveries described in Sections 10.2, 10.3 and 10.4 with Title Company with appropriate instructions for recording and disbursement consistent with this Agreement.
- 10.6 Closing Adjustments. The following adjustments shall be made at Closing:
- 10.6.1 Seller shall be responsible for and pay the real estate taxes for fiscal years prior to the year of Closing with respect to the applicable Development Parcel. Real estate taxes for fiscal year of Closing with respect to such Development Parcel shall be prorated between Seller and Buyer based on the Closing Date. If the Closing shall occur before the tax rate or assessed value for such fiscal period is determined, the apportionment of taxes shall be upon the basis of the last known taxes payable, but if such taxes are based upon a partial or different assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current tax levy's assessed value, legislative tax rollbacks and real estate tax exemption that will be applicable as shown on the Pottawattamie County Assessor's records on the Closing Date with respect to the applicable Development Parcel. Seller shall pay in full all "green acres", catch-up or other deferred taxes applicable to any of such Development Parcel as of the Closing Date with respect to such Development Parcel.
- 10.6.2 Rents, sewer, water, utilities and similar costs and expenses applicable to the applicable Development Parcel due and payable in the year of Closing shall be prorated between Seller and Buyer on a daily basis as of the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable subsequent thereto.
- 10.6.3 Seller shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to the applicable Development Parcel as of the Closing Date for such Development Parcel.
- 10.6.4 Seller shall pay all transfer tax, if any, regarding the deed for the applicable Development Parcel to be delivered by Seller to Buyer.
- 10.6.5 Seller shall pay the cost of recording all documents for the applicable Development Parcel other than the deed to be delivered by Seller to Buyer, necessary to place record title to such Development Parcel in Seller in the condition required pursuant to Sections 5.2 and 6.1.3. Buyer will pay the cost of recording all other documents for the applicable Development Parcel other than the deed to be delivered by Seller to Buyer.

- 10.6.6 Seller will pay all service charges for and costs to update the Abstract and all fees charged by Title Company for any escrow regarding Buyer's objections to title pursuant to Sections 5.2 and 5.3. Buyer shall pay all costs to prepare the Commitment (other than the cost to update the Abstract), Survey and UCC Searches and all premiums required for the owner's title insurance policy described in Section 6.1.3 with respect to the applicable Development Parcel and for any mortgagee's title insurance policy regarding any mortgage with respect to the applicable Development Parcel given by Buyer in connection with this transaction.
- 10.6.7 Seller and Buyer shall each pay one half (1/2) of any Closing fee payable to Title Company with respect to this transaction.
- 10.6.8 Except as provided in Article 14, Seller and Buyer shall each pay its own attorneys' fees incurred in connection with this transaction.
- 10.6.9 All other adjustments with respect to the applicable Development Parcel shall be made in accordance with the custom and practice of the local market in which the Property is located.

If any of the amounts allocated under this Section 10.6 cannot be calculated with complete precision at Closing because the amount or amounts of one or more items included in such calculation are not then known, then such calculation shall be made on the basis of the reasonable estimates of Seller and Buyer, subject to prompt adjustment (by additional payment or refund, as necessary) when the amount of any such item or items become known. Except as otherwise specifically provided in this Agreement, all apportionments under this Section 10.6 shall be made final at Closing with respect to the applicable Development Parcel and there shall be no post-Closing adjustments or other allocations.

- 10.7 Possession. Seller shall deliver exclusive legal and actual possession of the applicable Development Parcel to Buyer on the Closing Date for such Development Parcel subject only to the Permitted Exceptions.

Article 11. Indemnities.

- 11.1 Seller's Indemnities. Seller hereby agrees to indemnify and hold Buyer harmless from and against all liabilities incurred by Buyer by reason of any of the following:
- 11.1.1 The breach of any of the representations and warranties set forth in Section 7.1 (including as remade from time to time pursuant to Section 10.2.4) or any other provision of this Agreement or any instrument delivered pursuant hereto.
- 11.1.2 The operation and condition of the applicable Development Parcel on or prior to such Development Parcel's Closing.
- 11.2 Buyer's Indemnities. Buyer hereby agrees to indemnify and hold Seller harmless from and against all liabilities incurred by Seller by reason of any of the following:
- 11.2.1 The breach of any of the representations and warranties set forth in Section 7.2 or any other provision of this Agreement or any instrument delivered pursuant hereto.
- 11.2.2 The operation of the applicable Development Parcel following such Development Parcel's Closing.
- 11.3 Survival. The terms of this Article 11 shall survive termination of this Agreement, provided however the indemnities related to Sections 11.1.1 and 11.2.1 shall survive the Closings or earlier termination of this Agreement.

Article 12. Condemnation. If prior to Closing eminent domain proceedings are commenced against any or all of the Property, Seller shall immediately give notice thereof to Buyer, and Buyer at its option (to be exercised within thirty (30) days after Seller's notice) may either (a) terminate this Agreement and receive a refund of the Earnest Money, or (b) proceed to Closing with respect to the applicable Development Parcel and receive at such Closing either a credit against the Purchase Price with respect to such Development Parcel in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing with respect to an applicable Development Parcel, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Buyer.

Article 13. Brokers. Buyer and Seller each hereby represent that, except for the Broker, there are no other brokers involved or that have a right to proceeds in this transaction. Seller shall pay one-quarter (1/4) of any commissions to the Broker and Buyer shall pay three-quarters (3/4) of any commissions to the Broker. The commission to the Broker shall not exceed four percent (4%) of the Purchase Price for a Development Parcel. Seller hereby agrees to indemnify and hold Buyer harmless from all loss, cost, liability, damage or expense (including reasonable attorneys' fees at both trial and appellate levels) incurred by Buyer as a result of any claim arising out of the acts of Seller (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with such party (except that Buyer shall have no obligations hereunder with respect to any claim by the Broker). The representations, warranties and indemnity obligations contained in this section shall survive the Closings or the earlier termination of this Agreement.

Article 14. Default. If either party shall default in any of their respective obligations under this Agreement, the other party, by notice to such defaulting party specifying the nature of the default and the date on which this Agreement shall terminate (which date shall be not less than thirty (30) days after the giving of such notice), may terminate this Agreement, and upon such date, unless the default so specified shall have been cured, this Agreement shall terminate. In the case of any default by Buyer, Seller's sole and exclusive remedy shall be termination of this Agreement as provided above and, upon any such termination, the Earnest Money shall be forfeited to Seller as agreed and final liquidated damages. In the case of any default by Seller, upon termination of this Agreement, the Earnest Money shall be returned to Buyer. Buyer also shall have the right to specifically enforce this Agreement or seek damages from Seller, provided that any action therefor is commenced within six (6) months after such right arises. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

Article 15. Termination; Confirmation. Except as expressly provided in this Agreement to the contrary, if this Agreement is terminated with respect to the Property pursuant to the terms hereof, the Earnest Money shall be returned to Buyer and upon such return the respective rights of Seller and Buyer arising out of this Agreement with respect to the Property shall immediately cease. In such event, Buyer agrees to execute, acknowledge, and deliver to Seller within ten (10) days after written request, a termination of this Agreement with respect to the Property in recordable form in order to remove the cloud of this Agreement from the Property, but failure to give such termination shall not affect the termination of this Agreement with respect to the Property.

Article 16. Assignability. Buyer may assign its rights under this Agreement with respect to the Property or an applicable Development Parcel without the consent of Seller and without affecting its rights under this Agreement with respect to any other portion of the Property or Development Parcels, provided that Buyer assigns to an affiliate of Buyer or to a third party with which Buyer or an affiliate of Buyer has contracted to provide construction or development services. Buyer may assign its rights under this Agreement with respect to the Property or a Development Parcel to any other third party with the consent of Seller, which consent shall not be unreasonably withheld, without affecting its rights under this Agreement with respect to any other portion of the Property or Development Parcels.

Article 17. Confidentiality. Seller and Buyer agree to retain the confidentiality of the identity of the other and of the terms of this Agreement, and not to disclose the same to any third party other than their respective affiliates, consultants, lawyers, accountants, potential partners and investors and lenders, and to governmental authorities in

connection with Buyer's proposed development of the Property or Development Parcels other than to the extent required by applicable law. Notwithstanding the foregoing, this Agreement shall be subject to Chapter 22 of the Iowa Code.

Article 18. Notices. Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's address as follows:

If to Seller: City of Council Bluffs, Iowa
Attn: Hon. Matt Walsh, Mayor
209 Pearl Street
Council Bluffs, IA 51503

with copy to:

City of Council Bluffs, Iowa
Attn: Richard Wade, City Attorney
209 Pearl Street
Council Bluffs, IA 51503

If to Buyer: Opus Development Company, L.L.C.
Attn.: Jason Conway
10350 Bren Road West
Minnetonka, MN 55343

with copies to:

Opus Development Company, L.L.C.
Attn: Legal Department
10350 Bren Road West
Minnetonka, MN 55343

and

Faegre Baker Daniels LLP
Attn: Lica Tomizuka
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

or to such party at such other address as such party, by ten (10) days' prior written notice given as herein provided, shall designate. Any notice given in any other manner shall be effective only upon receipt by the addressee.

Article 19. Miscellaneous.

19.1 Entire Agreement; Modification. This Agreement embodies the entire agreement and understanding between Seller and Buyer, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in a writing executed by both Seller and Buyer. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.

- 19.2 Survival; No Merger. The terms of this Agreement shall survive and be enforceable after every Closing and shall not be merged therein.
- 19.3 Governing Law. This Agreement shall be construed under and governed by the laws of the State of Iowa.
- 19.4 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.
- 19.5 Time of the Essence; Calculation of Time Periods; Expiration. Time is of the essence under this Agreement. In computing any period of time described in this Agreement, if the last day of the designated period is a Saturday, Sunday, or legal holiday, the period shall run until the next day which is not a Saturday, Sunday, or legal holiday.
- 19.6 Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Buyer merely because of their respective efforts in preparing it.
- 19.7 Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, and the following words and phrases shall have the following meanings: (i) “including” shall mean “including but not limited to”, (ii) “terms” shall mean “terms, provisions, duties, covenants, conditions, representations, warranties and indemnities”, (iii) “any of the Property” shall mean “the Property or any part thereof or interest therein or the applicable Development Parcel or any part thereof or interest therein” as the context may require, (iv) “rights” shall mean “rights, duties and obligations”, (v) “liabilities” shall mean “liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys’ fees”, (vi) “incurred by” shall mean “imposed upon or suffered or incurred or paid by or asserted against”, (vii) “applicable law” shall mean “all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations”, (viii) “about the Property” shall mean “in, on, under or about the Property or the applicable Development Parcel” as the context may require, (ix) “operation” shall mean “use, non-use, possession, occupancy, condition, operation, maintenance or management”, and (x) “this transaction” shall mean “the purchases, sales and related transactions contemplated by this Agreement.”
- 19.8 Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of Seller and Buyer.
- 19.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Agreement may be transmitted by fax or by electronic mail in portable document format (“pdf”) and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. At the request of either party, any electronic or facsimile document is to be re-executed in original form by the parties who executed the electronic or facsimile document.

[Signature Pages Follow]

**SIGNATURE PAGE
FOR
PURCHASE AGREEMENT**

Seller has caused this Agreement to be executed and delivered as of the date first above written.

SELLER:

SELLER

City of Council Bluffs, Iowa,
a municipal corporation

By: _____
Name: _____
Its: _____

**SIGNATURE PAGE
FOR
PURCHASE AGREEMENT**

Buyer has caused this Agreement to be executed and delivered as of the date first above written.

BUYER:

OPUS DEVELOPMENT COMPANY, L.L.C.

Date: _____

By: _____

Name: _____

Its: _____

JOINDER OF TITLE COMPANY

The undersigned hereby agrees to act as Title Company under the foregoing Purchase Agreement and to hold and disburse the Earnest Money in accordance with the terms thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

Date: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Lot 1 in River Road Subdivision, an Official Plat in the City of Council Bluffs, Pottawattamie County, Iowa

EXHIBIT B

FORM OF MEMORANDUM

Prepared by and return to: Matt Hardin, Faegre Baker Daniels LLP, 801 Grand Ave., Fl. 33, Des Moines, IA 50309, 515-447-4730

MEMORANDUM OF PURCHASE RIGHT

THIS MEMORANDUM OF PURCHASE RIGHT (this “**Memorandum**”) is made as of _____, 2019, by and between the City of Council Bluffs, Iowa, a municipal corporation (“**Seller**”), and Opus Development Company, L.L.C., a Delaware limited liability company (“**Buyer**”).

RECITALS

A. Seller and Buyer are parties to that certain Purchase Agreement dated on or around the date hereof (the “**Agreement**”) regarding certain real property legally described on **Exhibit A** attached hereto (the “**Property**”).

B. Seller and Buyer desire to execute and record this memorandum to provide notice of the Agreement.

AGREEMENT

1. **Notice.** This Memorandum is executed and is to be recorded to give notice of the Agreement.

2. **Purchase Right.** Pursuant to the Agreement, Seller has granted to Buyer the exclusive right to purchase at one time or in multiple closings, not to exceed four (4) closings, all or portions of the Property upon the terms and conditions more particularly set forth therein.

3. **Termination.** Upon Seller’s request, Buyer shall execute and acknowledge a written termination of this Memorandum, in recordable form, upon expiration or earlier termination of the Agreement or consummation of the closing of the Property or last closing of the remaining Property.

4. **Single Instrument.** The Agreement contains other terms, conditions, provisions, covenants, representations and warranties, all of which are hereby incorporated in this Memorandum by reference as though fully set forth herein, and both the Agreement and this Memorandum shall be deemed to constitute a single instrument. A copy of the Agreement is maintained at the offices of Seller and Buyer. Nothing contained herein shall be construed to amend, modify, amplify, interpret or supersede any provision of the Agreement, which shall in all things control.

5. **Counterparts.** This Memorandum may be executed and delivered in counterparts, each of which shall be an original, but together shall constitute one and the same instrument.

6. **Successors and Assigns.** This Memorandum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature Pages Follow]

SIGNATURE PAGE

TO

MEMORANDUM OF PURCHASE RIGHT

SELLER

City of Council Bluffs, Iowa,
a municipal corporation

By: _____

Name: _____

Its: _____

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

The foregoing was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of the City of Council Bluffs, Iowa, a municipal corporation.

Notary Public

**SIGNATURE PAGE
TO
MEMORANDUM OF PURCHASE RIGHT**

BUYER

Opus Development Company, L.L.C.,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing was acknowledged before me this ____ day of _____, 2019, by
_____, the _____ of Opus Development Company, L.L.C., a
Delaware limited liability company, on behalf of such company.

Notary Public

EXHIBIT A
TO
MEMORANDUM OF PURCHASE RIGHT
LEGAL DESCRIPTION

Lot 1 in River Road Subdivision, an Official Plat in the City of Council Bluffs, Pottawattamie County, Iowa

EXHIBIT C

LEASES

1. Sign Location Lease dated on or around September 26, 2019 (the “**Billboard Lease**”) between Seller and The Lamar Companies in the form approved by Buyer
2. Oral farm lease (the “**Farm Lease**”) between Seller and Robert Adkins, Jr.
3. Land Lease Contract dated June 1, 2014 (the “**Airplane Club Lease**”) between Richard P. Borman & Chas B. Everest Ptr dba DEB Limited Partnership and Twin Cities Eagle Squadron AMA Chapter #3680

EXHIBIT D

LEVEE MAINTENANCE DOCUMENTS

1. Levee Maintenance Agreement and Easement between Farmland Industries, Inc., Council Bluffs Industrial Foundation, Inc., Cargill, Inc., Warren Oil Company, Robert N. Schlott and Barbara Schlott, Thelma J. Schlott as devisee under will of Norman P. Schlott, Eugene R. Severs and Barbara J. Severs, and the City of Council Bluffs, Iowa, dated December 7, 1982 and recorded December 19, 1982 in Book 84, Page 11239 in the records of the Pottawattamie County, Iowa, Recorder.
2. 1982 Levee Maintenance Agreement Updated 2011 Assessment dated February 24, 2012

RESOLUTION NO. 19-209

A RESOLUTION OF INTENT TO APPROVE THE TERMS OF A PURCHASE AGREEMENT FOR THE SALE OF LOT 1 OF THE RIVER ROAD SUBDIVISION AND TO SET A PUBLIC HEARING.

WHEREAS, the City intends to authorize the sale of Lot 1 of the River Road Subdivision to Opus Development Company, L.L.C., a Delaware limited liability company; and

WHEREAS, the City will dispose of its interest by executing a purchase agreement with Opus Development Company, L.L.C.; and

WHEREAS, it is in the best interest of the City of Council Bluffs to execute the purchase agreement.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That this matter is set a public hearing on the 23rd day of September, 2019 at 7 o'clock p.m.

ADOPTED
AND
APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest:

JODI QUAKENBUSH

City Clerk

NOTICE OF EXPIRATION OF RIGHT OF REDEMPTION FROM TAX SALE

TO: Jill Marie Schieffer
3616 John Street
Council Bluffs, IA 51501

The Persons in whose Name
the Following Described
Property is Assessed

TO: Jill Marie Schieffer and Parties in Possession
3616 John Street
Council Bluffs, IA 51501

The Persons in Possession
of the Following Described
Property

You, and each of you, are notified that on the 19th day of June, 2017, the following described property, situated in Pottawattamie County, Iowa, to-wit:

Lot 4 in Block 10, Moore's Addition Section 2, a Subdivision in Pottawattamie County, Iowa, now a part of the City of Council Bluffs, Pottawattamie County, Iowa,

with a street address of 3616 John Street, Council Bluffs, Iowa 51501, and Tax Parcel No. 744416251004, was sold by the County Treasurer of Pottawattamie County, Iowa, for the then delinquent real estate taxes against said property to G180, and a Certificate of Purchase at Tax Sale, Certificate No. 17-0300, was duly issued to G180 by the County Treasurer of Pottawattamie County, Iowa, pursuant to said sale, which Certificate is now lawfully held and owned by G180 and that the right of redemption will expire and a Deed for said property will be executed and delivered unless redemption from said sale is made within ninety (90) days from the completed service of this Notice.

DATED this 26th day of August, 2019.

G180

BY: _____


Curtis J. Heithoff #2248
508 South 8th Street
Council Bluffs, Iowa 51501
Telephone: 712-325-0888
Email: cjheithoffcb@gmail.com

ITS ATTORNEY

APPLICATION TO PURCHASE CITY PROPERTY

Submit To: Community Development Department
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503

08/23/19
08/23

THE UNDERSIGNED (hereby designated as Buyers) hereby offer to buy the real estate situated in Council Bluffs, Pottawattamie County, Iowa, generally described as follows:

812 S. 17th St Council Bluffs IA 51501
EVERETT ADJ LT 3 BLK 35 LYING SELY OF UNION AVE

Buyers are applying to purchase this property for the following purpose(s):

To add on to the existing Adjoining property that I
already own / possible small garage in the future.

Buyers offer a total sum of \$ 435.00 + forgivable mortgage (43.50)

Buyers submit a down payment in the sum of \$ 43.50 + \$50 Non-refundable Administrative Fee.

In consideration of the information above, Buyers hereby certify and agree to the following:

- Buyers shall submit a down payment of 10% of the last assessed or appraised value for a buildable lot, OR 10% of a value established by the Street Property Fee Schedule for non-buildable remnant parcels.
- The down payment shall be refunded if the offer is not accepted by the City Council, however, if the buyer does not purchase the property within the specified timeframe (60 days, unless otherwise approved), or withdraws their offer, the down payment is not refundable. The administrative fee is not refundable under any circumstances.
- City personnel shall review all applications submitted and make any recommendations deemed appropriate with respects to acceptance, rejection or modification (if any), however, approval of this application shall be in the sole discretion of the Council Bluffs City Council.
- Title shall be taken subject to applicable zoning restrictions, and Buyer understands and attests that their proposed use would conform with all permitted uses in that zoning classification. Any proposed use deemed to be non-conforming shall result in forfeiture of this application.
- City shall quit claim its title interest to the Buyer by City Deed, subject to any and all applicable easements, covenants, servient estates and any other appurtenant restrictions to the land.
- Buyers are not subject to any liens, delinquent taxes, unpaid property violations or other outstanding costs and/or fines associated with property ownership and maintenance.
- Buyers shall finance the purchase of the property by any one of the following means (please circle):
 - Cash
 - Certified Check
 - Third Party Mortgage
 - City Financing with Mortgage/Promissory Note
- All subsequent taxes shall be paid by Buyers.
- All subsequent special assessments shall be paid by Buyers.
- Upon payment of the purchase price as provided in paragraph (g), the City shall convey title by City Deed and shall pay all filing fees associated with recording the deed with the Pottawattamie County Recorder.

Stacey Gunter 8/23/19
Buyer Signature Date
Stacey Gunter
Print Name
1700 9th Ave CB IA 51501
Address
402 686 4337
Phone
teeemarie@netzero.net
Email

Buyer Signature Date

Print Name

Address

Phone

Email

Internal Use Only

____ Buildable Lot
____ Remnant Parcel
____ Previously Vacated ROW

07B-19-025 Date Received
Case #Assigned
Payment with Offer

____ Offer Sufficient for Review
Approved for Processing: _____

Find Property Res Sales Comm/Ind Sales

7544 35 271 002

--- Permanent Property Address ---
COUNCIL BLUFFS, CITY OF

----- Mailing Address -----
COUNCIL BLUFFS, CITY OF
209 PEARL ST
COUNCIL BLUFFS, IA 51503

=====
District: 000 CO BLUFFS CITY/CO BLUFFS

===== REAL ESTATE TAXES ON TREASURER'S WEBPAGE =====

Go to: <https://www.municipalonlinepayments.com/pottawattamiecoia/tax/search/detail/754435271002>

===== TAX DESCRIPTION* =====

* Not to be used on legal documents

EVERETTS ADD LT 3 BLK 35 LYING SELY OF UNION AVE

===== ASSESSED VALUE =====

* Class is for Assessment purposes only - Not Zoning

land	dwelling	land	building	total	ag acres	year	class*
\$0	\$0		\$0	\$0		2017	R
\$0	\$0		\$0	\$0		2018	R
\$0	\$0		\$0	\$0		2019	R

===== EXEMPTIONS & CREDITS =====

2016 RL03	\$5,400.00	(NIU) GOVERNMENT
2017 RE03	\$5,400.00	GOVERNMENT
2018 MGOV	\$5,400.00	MUNICIPAL GOVERNMENT
2019 MGOV	\$8,500.00	MUNICIPAL GOVERNMENT

===== OWNERS =====

* Book/Page LINKS TO RECORDER'S WEBPAGE

1 D COUNCIL BLUFFS, CITY OF book/page: 2015/3370 D

===== SALES HISTORY =====

Sale Date	Amount	Code	Book/Page
03/24/2015	0	<u>D2</u>	<u>2015/03370</u>
08/27/2013	36000	<u>D22</u>	<u>2013/13920</u>
12/20/2011	36000	<u>C24</u>	<u>2011/16912</u>
11/15/1994	13000	<u>C000</u>	0095/20062

===== ASSESSMENT DATA =====

PDF: 28 MAP: 16

Interior Listing: Inspected Date Listed: 10/07/2015 EK Date Reviewed: 10/02/2018 KK

LAND.....2700 sqFt .06 acres

Lot 1: Frontage	Rear	Side-1	Side-2	Rear-Lot
70	20	60	60	

[Zoom Out](#)[Zoom In](#)

600ft x 600ft

Click any parcel to go to its web page
See [more maps](#) at the [County GIS Department](#).

As of: On Web

[Find Property](#) [Res Sales](#) [Comm/Ind Sales](#)

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA
ATTN: CITY LEGAL DEPARTMENT
OR CITY CLERK
209 PEARL STREET
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. 19-PW-2025

NOTICE OF CLAIM/LOSS

NAME OF CLAIMANT: Rebecca Zaloudak DAY PHONE: 402-720-6059
ADDRESS: 44 E Ridge Drive Council Bluffs DOB: 09-15-1987
2/15/805

DATE & TIME OF LOSS/ACCIDENT: 8-22-19 1230
LOCATION OF LOSS/ACCIDENT: By Hwy on West Broadway Rd
DESCRIPTION OF LOSS/ACCIDENT: Huge pot hole located on the right
side of road. Both Drivers sustained
flat tires & broken rims resulting in flat tires
& broken rims (USE BACK OF FORM IF NECESSARY)

TOTAL DAMAGES CLAIMED: \$ Estimated by police - \$5000

WITNESS(ES) (Name(s), Address(es), Phone No(s)) Larry Lube Staff Edwards
2312 W Broadway
Council Bluffs IA 51503

WAS POLICE REPORT FILED ☐ YES ☒ NO - Filing p 7 leave city Hall

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:
0

HAVE YOU RESUMED NORMAL ACTIVITIES? ☐ YES ☒ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY
OTHER RELEVANT INFORMATION:

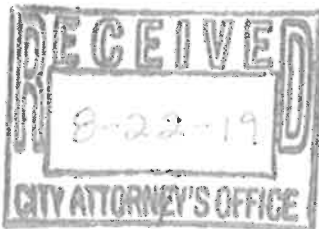
LIST INSURANCE PROVIDER AND COVERAGE: Aesop

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY
CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A
FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)

8-22-19
DATE

Rebecca Zaloudak
CLAIMANT'S SIGNATURE



CLERK RCD
22 AUG 19
PM 2:39

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA
ATTN: CITY LEGAL DEPARTMENT
OR CITY CLERK
209 PEARL STREET
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. 19-PW-2024

NOTICE OF CLAIM/LOSS

Rad Wilson 402-618-5574
(Father)

NAME OF CLAIMANT: Heather (Wilson) Plum DAY PHONE: _____
ADDRESS: 427 Fleming Ave, Co. Bluffs, IA 51503 DOB: 4/20/90
DATE & TIME OF LOSS/ACCIDENT: Sunday, Feb 7, 2019 11:30am
LOCATION OF LOSS/ACCIDENT: 427 Fleming Ave, CB, IA 51503
DESCRIPTION OF LOSS/ACCIDENT: Road Grader backed into concrete wall at end
of street. Broke a section out cracking area
around hole. (USE BACK OF FORM, IF NECESSARY)
TOTAL DAMAGES CLAIMED: \$? TBD
WITNESS(ES) (Name(s), Address(es), Phone No(s)): _____

WAS POLICE REPORT FILED ☐ YES ☒ NO

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:

HAVE YOU RESUMED NORMAL ACTIVITIES? ☐ YES ☐ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY
OTHER RELEVANT INFORMATION: _____

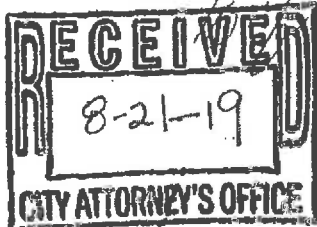
LIST INSURANCE PROVIDER AND COVERAGE: _____

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY
CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A
FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)

8/20/19
DATE

Heather Plum
CLAIMANT'S SIGNATURE



CLERK RVD
22 AUG 19

AM8:55

19-PW-2026

*******NOTICE OF CLAIM*******

Date: 08-21-2019

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To: CITY OF COUNCIL BLUFFS
CITY CLERK
209 PEARL ST
COUNCIL BLUFFS, IA 51501

CERTIFIED MAIL# 92148901066154000141663931

RE: Damage to COX Property

COX Claim Num: ESR000002979571
Damage/Discovery Date: 09-01-2018
Damage Location: N 25TH ST AND AVENUE Q, COUNCIL BLUFFS, IA
Damage County: UNKN
Damage Amount: UNDETERMINED

CLERK RCVD

Dear Sir/Madam:

27 AUG 19

Please be advised that COX Facilities sustained damage as a result of the negligent acts or omissions by employees or agents of CITY OF COUNCIL BLUFFS .

PM 2:52

Investigation has revealed that on or about 09-01-2018 employees or agents of CITY OF COUNCIL BLUFFS, THE CITY OF COUNCIL BLUFFS WAS DOING GROUND WORK FOR A BUILDING AND DAMAGED A COX CABLE in the area of N 25TH ST AND AVENUE Q, COUNCIL BLUFFS, IA.

REQUEST FOR GOVERNMENTAL NOTICE FORM

If your Governmental Entity requires the completion of its own form to complete proper notice, please forward a copy to the address listed above. Every good faith effort has been made to identify the proper office and address to perfect our notice. Please forward to your attorney, if misdirected, to contact us. Matters herein stated are alleged on information and belief this pleader believes to be true. If there is insurance to cover this matter, kindly advise as to the name of the insurance company, its address and the claim number assigned. If you have any questions, or need additional information, please contact me at 1-800-321-4158 ext 8232.

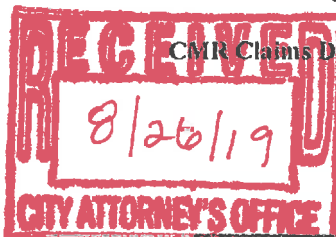
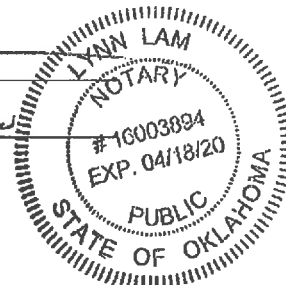
Sincerely,
Chelsea Dongelewic

Chelsea Dongelewic

NOTARY

Commission Expires

4/19/20



CLAIMS MANAGEMENT RESOURCES

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA
ATTN: CITY LEGAL DEPARTMENT
OR CITY CLERK
209 PEARL STREET
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. 19-PW-2027

NOTICE OF CLAIM/LOSS

NAME OF CLAIMANT: Mark and Barb Holt DAY PHONE: 402-657-8569
ADDRESS: 2411 Eagle Ridge Dr Council Bluffs DOB: _____

DATE & TIME OF LOSS/ACCIDENT: June 27 2019 Early A.M.

LOCATION OF LOSS/ACCIDENT: 2411 Eagle Ridge Drive

DESCRIPTION OF LOSS/ACCIDENT: Back up in finished Basement of Sanitary Sewer - Floor drain, two toilets, two showers - Bill's Sewer ran a camera said City Sewer was at fault - Hire Service master to clean (USE BACK OF FORM, IF NECESSARY)

TOTAL DAMAGES CLAIMED: \$ Total of two invoices - \$441.12

WITNESS(ES) (Name(s), Address(es), Phone No(s)) Mike Mark 402 510 6223
Service Master - 402 339 9911
Barb Holt - 402 657 8620

WAS POLICE REPORT FILED ☐ YES ☒ NO

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:

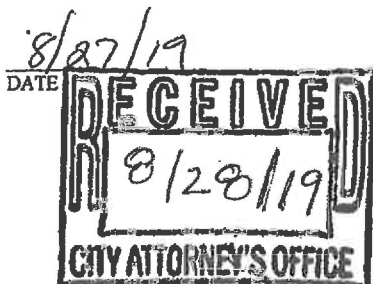
HAVE YOU RESUMED NORMAL ACTIVITIES? ☒ YES ☐ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY OTHER RELEVANT INFORMATION: _____

LIST INSURANCE PROVIDER AND COVERAGE: _____

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)



MDH
CLAIMANT'S SIGNATURE

CLERK RCVD

28 AUG 19

AM10:23

Council Communication

Department: City Clerk
Case/Project No.: ZC-19-003
Submitted by: Christopher
Gibbons, Planning Coordinator

Ordinance 6397
ITEM 4.A.

Council Action: 9/9/2019

Description

Ordinance to amend the zoning map as adopted by reference in Section 15.02.070, by rezoning property legally described as being all of Blks 7 & 8, Bryan & Clark's Subdivision & the vacated S. 33rd St right-of-way in between said blocks; & all of Blk 6, Ferry's Addition, along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multifamily Residential District to MCR/Mixed Commercial Residential District, as defined in Chapter 15.12. Location: Between 1st Ave and 2nd Ave from S 32nd St to S 34th St.

Background/Discussion

See attachments.

Recommendation

ATTACHMENTS:

Description	Type	Upload Date
ZC-19-003 Staff Report	Other	8/16/2019
ZC-19-003 Attachment A	Other	8/16/2019
ZC-19-003 Attachment B	Map	8/16/2019
ZC-19-003 Attachment C	Other	8/16/2019
ZC-19-003 Attachment D	Other	8/16/2019
ZC-19-003 Public Hearing Notice	Other	8/16/2019
Ordinance 6397	Ordinance	8/20/2019

Council Communication

Department: Community Development CASE # ZC-19-003 Property Owner: City of Council Bluffs Applicant: Community Development Department	Ordinance No. _____	City Council: 08/26/19 Public Hearing: 09/09/19 Planning Commission: 08/13/2019
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Subject/Title

Request: Rezone property legally described as being all of Blocks 7 and 8, Bryant and Clark's Subdivision and the vacated South 33rd Street right-of-way in between said blocks; and all of Block 6, Ferry's Addition; along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multi-family Residential District to MCR/Mixed Commercial Residential District.

Location: Between 1st Avenue and 2nd Avenue from South 32nd Street to South 34th Street.

Background

The Community Development Department is proposing to rezone city-owned property legally described above from R-3/Low Density Multi-Family Residential District to MCR/Mixed Commercial District, which is a new commercial zoning district that is being considered by City Council concurrent with this request (see Case #ZT-19-005). The subject property is comprised of 5.53 acres of land and was acquired by the City of Council Bluffs from Bunge Corp. in 2012. Between the years 2013-2014, the City of Council Bluffs demolished the former Bunge grain elevator facilities and associated site infrastructure for future redevelopment purposes. In 2015, the City Council adopted the West Broadway Corridor Plan, which included a residential redevelopment concept for the subject property (see Attachment A). The Community Development Department is proposing to rezone the property from R-3 to MCR in order to implement the vision of the West Broadway Corridor Plan while allowing a higher value, higher density development with the possibility of mixed-use.

Land Use and Zoning

In 2016, the City Council rezoned the subject property from I-1/Light Industrial District and C-2/Commercial District to R-3/Low Density Multi-Family Residential District (see Case #ZC-16-002, Ordinance No. 6720) so that it could be redeveloped with a variety of housing typologies as shown in the West Broadway Corridor Plan. Surrounding zoning in the general vicinity of the request includes C-2/Commercial District to the north, east, and west, along with R-2/Two-Family Residential and R-3/Low Density Multi-Family Residential to the south (see Attachment B). Additionally, the property is partially located within the West Broadway Corridor Design Overlay.

Surrounding land uses in the general vicinity of the request include:

- North: City-owned vacant land, Arby's, Burger King, T S Bank, Romantix, and commercial storage;
- East: City-owned vacant land, single-family dwellings, and an automobile repair/sales business;
- South: Single-family residential dwellings and an eight unit apartment building; and
- West: City-owned vacant land, a contractor shop, and commercial/retail establishments.

The future land use plan of the Bluffs Tomorrow: 2030 Plan designates the subject property as Multi-Family/Mixed Use (see Case #CP-19-001, Resolution No. 19-45). The proposed MCR District is consistent with the Bluffs Tomorrow: 2030 Plan.

All property owners within 200 feet of the subject property were notified of the proposed rezoning. No one has indicated any opposition to the proposed rezoning request as of the date of this report.

All City Departments and local utilities were notified of the proposed rezoning. The following comments were received:

- Black Hills Energy stated they have no concerns for the proposed request.
- Council Bluffs Water Works stated they have no comments for the proposed request.
- Council Bluffs Fire Department stated they have no comments for the proposed request.
- Council Bluffs Public Works Department stated they have no concerns for the request and confirmed utilities (sanitary and storm sewers) are located adjacent to this site to support future redevelopment.

The following attachments are included with the case staff report:

Attachment A: West Broadway Corridor Plan redevelopment concept

Attachment B: Location/zoning map

Attachment C: Conceptual R-3 District density design

Attachment D: Conceptual MCR District density design

Discussion

1. The MCR/Mixed Commercial Residential District is intended to encourage an urban pattern of development characterized as “mixed-use” in order to promote human interaction, pleasing aesthetics, economic resiliency, efficient land use, and maximization of resources. The MCR district also supports and encourages a variety of transportation options for multiple modes of transportation. The MCR district is applicable to areas of the City where higher density residential and commercial uses are appropriate and where municipal utility infrastructure is readily available or can be extended by a project.
2. The subject property is located within an area of the City commonly referred to as the ‘West Broadway Corridor’ which is the primary east/west commercial corridor that connects Downtown Council Bluffs with Downtown Omaha. The adopted West Broadway Corridor Plan shows properties within it being redeveloped with a variety of commercial, residential, and mixed commercial residential land uses. The MCR District will allow for high-density residential uses and/or mixed commercial residential uses to be developed in a manner that is consistent with the West Broadway Corridor Plan.
3. The subject property directly abuts 1st Avenue, which is currently an unimproved 66 foot-wide right-of-way that extends from South 36th Street to Downtown Council Bluffs. The West Broadway Corridor Plan identified 1st Avenue as being a multi-modal transportation corridor that is capable of supporting public transit, pedestrian sidewalks, a bike trail, and stormwater management. The Community Development Department and the Furthering Interconnections, Revitalization, Streetscapes, Transportation, and Aesthetics for a Vibrant Economy (FIRST AVE) Advisory Committee are working with consultants on the design of the 1st Avenue trail. Once the final design is complete it’s anticipated that the segment of 1st Avenue that abuts the subject property will be constructed as part of the future development project at this location and will provide residents direct access to different transportation modes.

4. Adequate utilities are available within the adjacent right-of-ways to support new development.
5. The subject property is zoned R-3 District and contains 5.53 acres of undeveloped land. Based on the site development standards of the R-3 District the subject property is allowed a maximum of 121 multi-family dwelling units, which calculates to 20 units/per acre (see Attachment C). The MCR District requires a minimum of 40 dwellings units per acre, which can come from a variety of housing typologies including multi-family apartment buildings, mixed commercial/residential structures, and/or townhomes that have at least four attached units (see Attachment D). Based on the size of the property and the above stated MCR District density calculation, the subject property must be developed with a minimum of 221 dwellings units. The increased density allows developers to maximize their return on investment while at the same time provide more housing opportunities in the West End. It also allows the City to capture a larger amount of property taxes on the same acreage and grow population in an area that has existing utilities, public transportation, employment, commercial/retail establishments, schools, and other supportive services.
6. The City is preparing to release a Request for Proposals to develop the subject property and the land located at the southeast corner of the intersection of West Broadway and South 34th Street with commercial and residential uses. The selected proposal must adopt a development plan that addresses all of the standards of the MCR District, and will be subject to review by the City Planning Commission and approval by City Council.

Recommendation

The Community Development Department recommends approval to rezone property legally described as being all of Blocks 7 and 8, Bryant and Clark's Subdivision and the vacated South 33rd Street right-of-way in between said blocks; and all of Block 6, Ferry's Addition; along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multi-Family Residential District to MCR/Mixed Commercial Residential District, based on reasons stated above.

Public Hearing

Staff speaker for the request:

1. Christopher Gibbons, Planning Coordinator, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommends approval to rezone property legally described as being all of Blocks 7 and 8, Bryant and Clark's Subdivision and the vacated South 33rd Street right-of-way in between said blocks; and all of Block 6, Ferry's Addition; along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multi-Family Residential District to MCR/Mixed Commercial Residential District, as per staff recommendation.

VOTE: AYE 7 NAY 0 ABSTAIN 0 ABSENT 4 VACANT 0 Motion: Carried

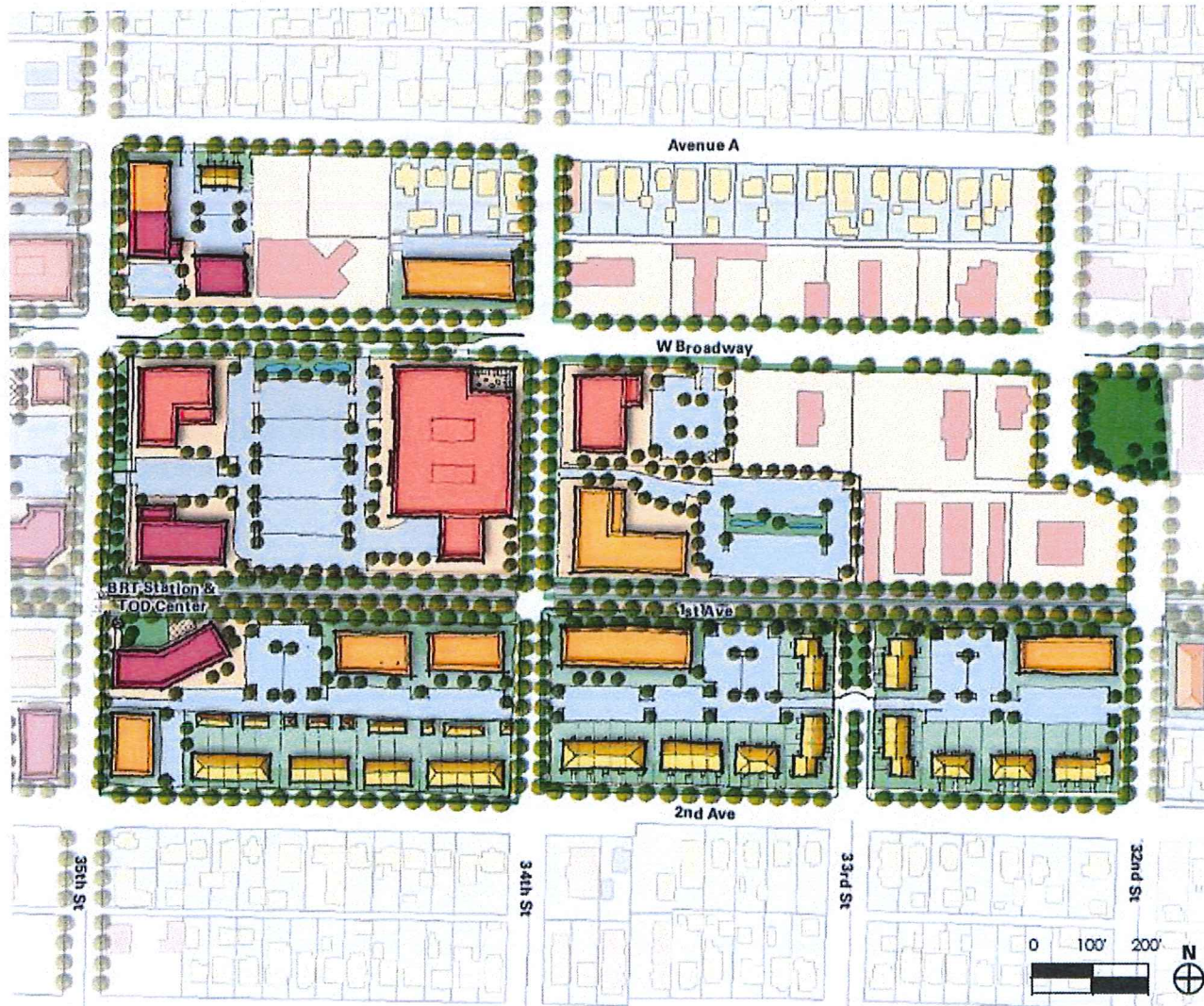
Attachments

Attachment A: West Broadway Corridor Plan redevelopment concept

Attachment B: Location/zoning map Attachment C: Conceptual R-3 District density design Attachment D: Conceptual MCR District density design

Prepared by: Christopher Gibbons, Planning Coordinator
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West Broadway Corridor Plan – Redevelopment Concept for the Western Gateway



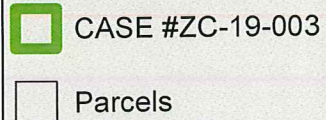
Illustrative Plan

 COMMERCIAL LAND	 PARKING LOT
 RESIDENTIAL LAND	 FLEX
 PUBLIC PARKS & OPEN SPACE	 MIXED-USE
 HOTEL	 SINGLE-FAMILY RESIDENTIAL
 RETAIL	 MULTI-FAMILY RESIDENTIAL
	 AGE-RESTRICTED MULTI-FAMILY

CITY OF COUNCIL BLUFFS - CITY PLANNING COMMISSION

CASES #ZC-19-003 LOCATION/ZONING MAP

Map Legend



0 100 200
1 inch = 200 feet

2016 Aerial Photograph



Note: Subject properties are highlighted in red.

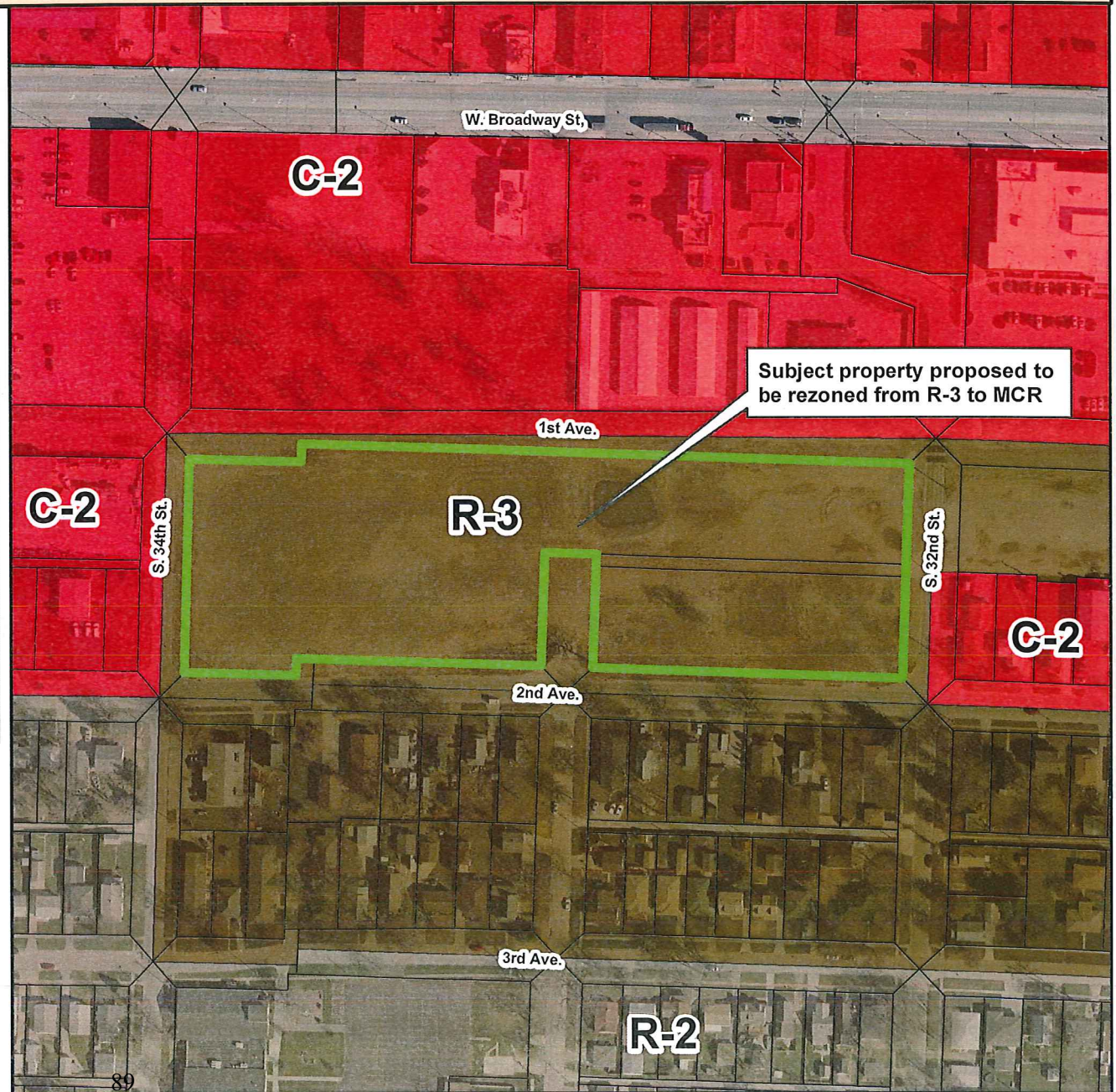


Last Amended: 7/29/19



Council Bluffs Community
Development Department
209 Pearl Street
Council Bluffs, IA 51503
Telephone: (712) 328.4629

DISCLAIMER
This map is prepared and compiled from City documents, plans and other public records data. Users of this map are hereby notified that the City assumes no liability for any errors or omissions in the information contained on this map or the use of the same by the user or anyone else. The user should verify the accuracy of information/data contained on this map before using it. The City assumes no legal responsibility for the information contained on this map.

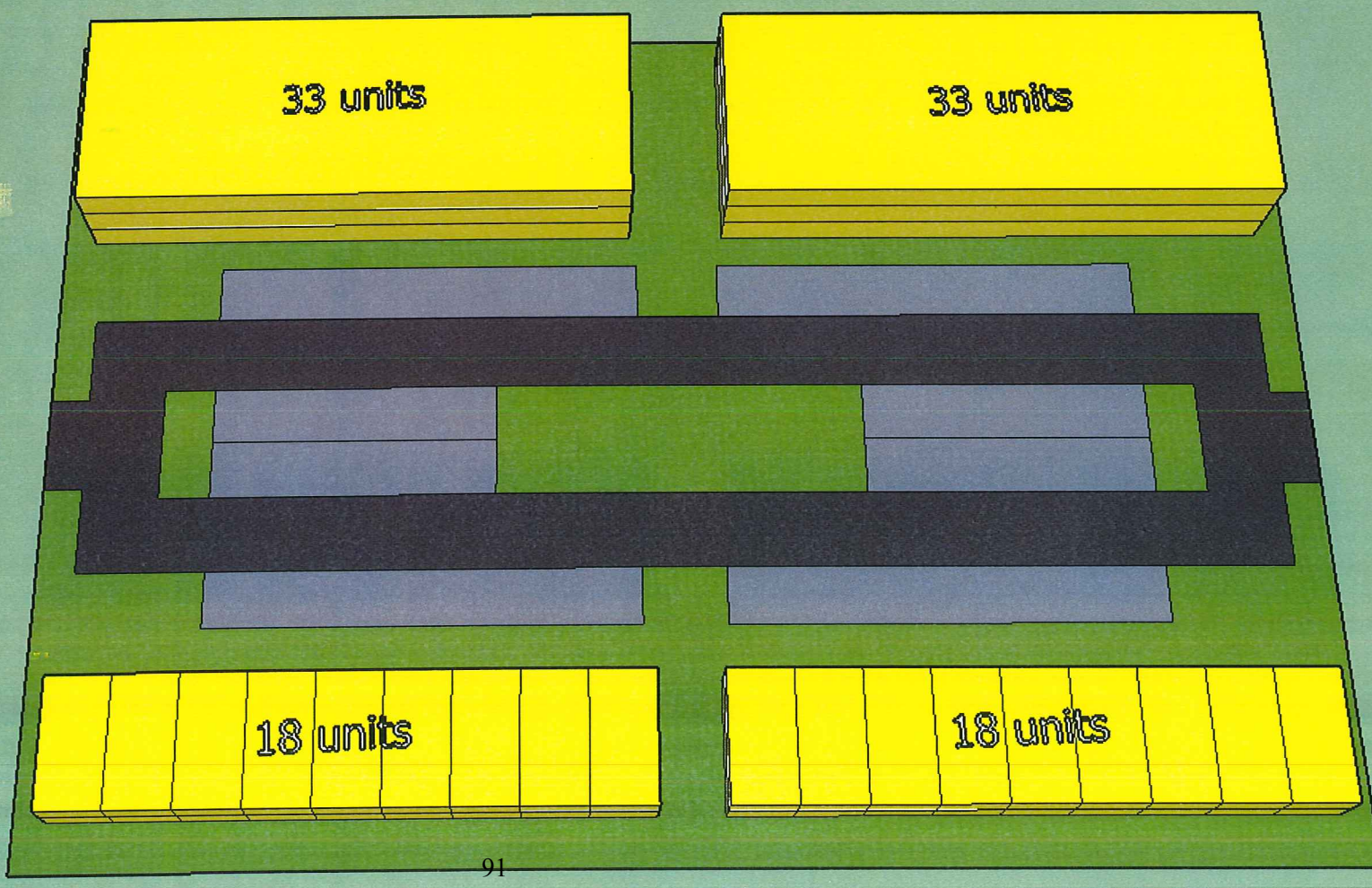


Example: R-3 District Development Concept



Example: MCR District Development Concept

2.54 Acre Site
MCR Minimum: 102 units
(40 units/acre)
Two 3-story buildings
Two 2-story buildings
800-1,000 sq. ft. units
Surface parking lot
102 stalls



NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a public hearing on an ordinance to amend the zoning map as adopted by reference in Section 15.02.070, by rezoning property legally described as all of Blocks 7 and 8, Bryant and Clark's Subdivision and the vacated South 33rd Street right-of-way in between said blocks; and all of Block 6, Ferry's Addition; along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multi-Family Residential District to MCR/Mixed Commercial Residential District.

You are further notified that the Public Hearing on said matters will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m., on the 9th day of September, 2019, in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

Jodi Quakenbush, City Clerk

ORDINANCE NO. 6397

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF COUNCIL BLUFFS, IOWA, AS ADOPTED BY REFERENCE IN SECTION 15.02.070 OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY REZONING PROPERTY LEGALLY DESCRIBED AS BEING ALL OF BLOCKS 7 AND 8, BRYANT AND CLARK'S SUBDIVISION AND THE VACATED SOUTH 33RD STREET RIGHT-OF-WAY IN BETWEEN SAID BLOCKS; AND ALL OF BLOCK 6, FERRY'S ADDITION; ALONG WITH ALL VACATED ALLEYS ADJACENT TO SAID SUBDIVISION BLOCKS, FROM R-3/LOW DENSITY MULTIFAMILY RESIDENTIAL DISTRICT TO MCR/MIXED COMMERCIAL RESIDENTIAL DISTRICT AS DEFINED IN CHAPTER 15.12 OF THE MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA.

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.070 of the 2015 Municipal Code of the City of Council Bluffs, Iowa, be and the same is hereby amended to rezone property legally described as being all of Blocks 7 and 8, Bryant and Clark's Subdivision and the vacated South 33rd Street right-of-way in between said blocks; and all of Block 6, Ferry's Addition; along with all vacated alleys adjacent to said subdivision blocks, from R-3/Low Density Multifamily Residential District to MCR/Mixed Commercial Residential District as defined in Chapter 15.12 of the Municipal Code of Council Bluffs, Iowa.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

ADOPTED AND APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest:

JODI QUAKENBUSH

City Clerk

First Consideration: 8-26-19

Second Consideration: 9-9-19

Public Hearing: 9-9-19

Third Consideration: _____

Council Communication

Department: City Clerk
Case/Project No.: ZT-19-005
Submitted by: Community
Development

Ordinances 6398, 6399 & 6400
ITEM 4.B.

Council Action: 9/9/2019

Description

Ordinances to amend several sections of Title 15 "Zoning" by enacting Chapter 15.12 "MCR/Mixed Commercial Residential District;" by amending Chapter 15.27 "Zoning Districts" to add "MCR/Mixed Commercial Residential District" as a new commercial district; and by amending Chapter 15.33 "Signs" to establish sign standards for the MCR/Mixed Commercial Residential District.

Background/Discussion

See attachments.

Recommendation

ATTACHMENTS:

Description	Type	Upload Date
ZT-19-005 Staff Report	Other	8/16/2019
ZT-19-005 Attachment A	Code Section	8/16/2019
ZT-19-005 Attachment B	Code Section	8/16/2019
ZT-19-005 Attachment C	Code Section	8/16/2019
ZT-19-005 Attachment D	Other	8/16/2019
ZT-19-005 Public Hearing Notice	Other	8/16/2019
Ordinance 6398	Ordinance	8/20/2019
Ordinance 6399	Ordinance	8/20/2019
Ordinance 6400	Ordinance	8/20/2019

Council Communication

Department: Community Development Case #ZT-19-005 Applicant: Community Development Department	Ordinance No.	City Council: 08/26/19 Public Hearing: 09/09/19 Planning Commission: 08/13/19
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Subject/Title

Request: Amend several sections of Title 15: Zoning of the Municipal Code (Zoning Ordinance) by enacting Chapter 15.12 MCR/Mixed Commercial Residential District; amending Chapter 15.27, Zoning Districts to add “MCR/Mixed Commercial Residential District” as a new commercial district; and amending Chapter 15.33, Signs, to establish sign standards for the MCR/Mixed Commercial Residential District.

Background/Discussion

The Community Development Department is proposing the following amendments to Title 15: Zoning of the Council Bluffs Municipal Code (Zoning Ordinance):

1. Enacting Chapter 15.12 MCR/Mixed Commercial Residential District, which intended is “*to encourage an urban pattern of development characterized as “mixed-use” in order to promote human interaction, pleasing aesthetics, economic resiliency, efficient land use, and maximization of resources. The MCR district also supports and encourages a variety of transportation options for multiple modes of transportation. The MCR district is applicable to areas of the City where higher density residential and commercial uses are appropriate and where municipal utility infrastructure is readily available or can be extended by a project*”.

A synopsis of the MCR District includes:

- a. A list of principal and conditional land uses that are appropriate within MCR District;
- b. Site development standards that require buildings to be constructed within 10 feet of a property line which abuts a public or private street, and a minimum density of 40 residential units per acre;
- c. Architectural design standards that require the following:
 - i. Building facades that are constructed with architectural details such as color changes, material changes, wall offsets, height variations, wall setbacks, accent lines, and upper floor step backs to articulate building elevations. Blank walls that are void of any architectural details are not permitted;
 - ii. Building façade walls that are constructed out of high quality durable materials (e.g., cast stone, fire-clay brick, burnished or split-face CMU, transparent glass, pre-cast concrete with an approved finished treatment, etc.). Complimentary building materials such as fiber cement board, EIFS/stucco, or wood siding may be allowed on less prominent areas of the building and cannot comprise more than 40% of the total gross square footage of all building elevations;
 - iii. Roofs shall be generally flat and concealed by use of a parapet wall or other architecture

features; however, curved or pitched roofs may be on portions of a building as an architectural accent and not as the primary roof design; and
iv. Accentuated building entrances for street facing building facades.

- d. Landscaping standards that all require all disturbed areas on a development site that are not used for buildings, structures, paving or impervious surfaces must be planted with trees, shrubs, and/or grasses in accordance with the adopted development plan. Developers are also required to plant street trees within the public rights-of-way adjacent to their development site(s);
 - e. Exterior lighting standards that accommodates both vehicular and pedestrian traffic;
 - f. Minimum and maximum off-street parking requirements for multi-family residential and mixed commercial residential uses, as well as, standards for providing bicycle parking and on-street parking;
 - g. Pedestrian facilities standards that require building entrances to be connected to adjacent sidewalks;
 - h. Screening requirements for roof-top mechanical units, exterior dumpsters, loading/unloading areas, ground mounted HVAC units, etc.;
 - i. Stormwater detention being installed underground as opposed to above ground, unless it's designed as a site amenity;
 - j. All development shall provide a minimum of 50 square feet of site amenity space (e.g., balconies, pools, recreational areas, etc.) per dwelling unit; and
 - k. Development plan review procedures that includes language to allow the Community Development Director administrative authority to make minor amendments to an adopted development plan.
2. Amending Chapter 15.27, Zoning Districts, to add the MCR/Mixed Commercial Residential District as a new commercial zoning district; and
 3. Amending Chapter 15.33, Signs, to require that all signage in an MCR/Mixed Commercial Residential District be subject to development plan approval.

The following attachments are included with this report:

Attachment A: Proposed Chapter 15.12 MCR/Mixed Commercial Residential District

Attachment B: Proposed text amendment for Chapter 15.27, Zoning Districts

Attachment C: Proposed text amendment for Chapter 15.33, Signs relative to the MCR District

Attachment D: Representative building examples in Council Bluffs and Omaha.

Comments

All City Departments and local utility providers were notified of the proposed text amendment change, with no adverse comments being received.

The Community Development Department has the following comments for the proposed text amendments:

1. The MCR District is intended to maximize the use of public and private resources by locating higher density developments within areas of the City that have existing infrastructure, and access to public transportation, employment, commercial/retail establishments, schools, and other supportive services. Areas of the City that are most appropriate to be zoned MCR District include, but are not limited to, the City-owned properties within the West Broadway Corridor, Downtown Council Bluffs and periphery areas, the Mall of Bluffs, and the riverfront.
2. Most multi-family residential developments within the City of Council Bluffs are located within the R-3/

Low Density Multi-Family Residential District and the R-4/High Density Multi-Family Residential District. Both of these zoning districts serve a meaningful purpose for providing multi-family residential housing in the community; however, they place a maximum threshold for the number of dwellings units allowed on a property based on square footage of the land. This approach is well suited for suburban type development where infrastructure has to be extended, personal automobiles are the primary mode of transportation, and there are no commercial/retail/supportive services within a reasonable walking distance from the development site. The proposed MCR District takes the opposite approach and requires a minimum of 40 units per acre, which results in higher density development that allows developers to maximize their return on investment and provide more housing opportunities in areas of the City with existing resources to support the development. The higher density also allows the City to capture a higher amount of property taxes with minimal need for utility extensions and/or other public improvements.

3. The MCR District features some form-based zoning code principles as well as performance based standards to ensure development sites are designed to be aesthetically pleasing, provide opportunities for human interactions on adjacent rights-of-way, limit the placement of parking lots to the sides and rears of buildings, and create additional opportunities for multiple modes of transportation (e.g., transit, automobiles, bicycles). The City of Council Bluffs and City of Omaha have several representative examples of the type of development that is appropriate for the MCR District (see Attachment D).
4. The MCR District requires that City Council review and adopt a development plan concurrent with a rezoning request, which allows the public an opportunity to participate in the discussion of each new development proposal in this District.

Recommendation

The Community Development Department recommends approval to amend several sections of Title 15: Zoning of the Municipal Code (Zoning Ordinance) by enacting Chapter 15.12 MCR/Mixed Commercial Residential District; amending Chapter 15.27, Zoning District to add 'MCR/Mixed Commercial Residential District' as a new commercial district; and amending Chapter 15.33, Signs, to establish sign standards for the MCR/Mixed Commercial Residential District, based on reasons stated above.

Public Hearing

Staff speaker for the request:

1. Brandon Garrett, Community Development Director, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503
2. Christopher Gibbons, Planning Coordinator, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommends approval to amend several sections of Title 15: Zoning of the Municipal Code (Zoning Ordinance) by enacting Chapter 15.12 MCR/Mixed Commercial Residential District; amending Chapter 15.27, Zoning Districts to add "MCR/Mixed Commercial Residential District" as a new commercial district; and amending Chapter 15.33, Signs, to establish sign standards for the MCR/Mixed Commercial Residential District, as per staff's recommendation.

VOTE: AYE 7 NAY 0 ABSTAIN 0 ABSENT 4 VACANT 0 Motion: Carried

Attachments

Attachment A: Proposed Chapter 15.12, MCR/Mixed Commercial Residential District

Attachment B: Proposed text amendment for Chapter 15.27, Zoning Districts

Attachment C: Proposed text amendment for Chapter 15.33, Signs relative to the MCR District

Attachment D: Representative building examples in Council Bluffs and Omaha.

Prepared by: Christopher N. Gibbons, Planning Coordinator

Chapter 15.12 – MCR/Mixed Commercial-Residential District

Sections:

15.12.010 - Statement of intent.

The MCR district is intended to encourage an urban pattern of development characterized as “mixed-use” in order to promote human interaction, pleasing aesthetics, economic resiliency, efficient land use, and maximization of resources. The MCR district also supports and encourages a variety of transportation options for multiple modes of transportation. The MCR district is applicable to areas of the City where higher density residential and commercial uses are appropriate and where municipal utility infrastructure is readily available or can be extended by a project.

15.12.020 - Principal uses.

The following principal uses shall be permitted outright in an MCR district:

- (1) Congregate housing, life care facility, or nursing home;
- (2) Community recreation services;
- (3) Dwelling, multifamily
- (4) Dwellings, townhome (minimum four attached units)
- (5) Family home
- (5) Group care home
- (6) Mixed commercial/residential structure (containing one or more of the following uses)
 - a. Business, professional office;
 - b. Consumer service establishments (limited to the following):
 - i. Accountants;
 - ii. Architects;
 - iii. Arts and crafts studio;
 - iv. Attorneys;
 - v. Banks, savings and loans, and credit unions;
 - vi. Barber shops and beauty shops;
 - vii. Dress makers and tailors;
 - viii. Insurance agencies;
 - ix. Laundry and dry cleaning pick-up stations;
 - x. Management consultants;
 - xi. Medical office or clinic for people;
 - xii. Pet shops;
 - xiii. Photographers’ studios;
 - xiv. Real estate office; and
 - xv. Travel agencies.
 - c. Retail Shopping Establishment (limited to the following):
 - i. Antique stores;
 - ii. Appliance, television and radio sales;
 - iii. Art galleries, commercial;
 - iv. Art supplies;
 - v. Bakeries;
 - vi. Bicycle sales and repair shop;
 - vii. Bookstores;

- viii. Candy and ice cream stores;
- ix. Clothing, clothing accessories and dry goods;
- x. Department stores;
- xi. Drug stores;
- xii. Floor coverings;
- xiii. Florists;
- xiv. Furniture stores;
- xv. Gift and card shop;
- xvi. Grocery, delicatessen, and specialty food store;
- xvii. Hardware, paint, and wallpaper stores;
- xviii. Jewelry, leather goods and luggage stores;
- xix. Music stores;
- xx. News and tobacco stores;
- xxi. Photographic equipment and supplies;
- xxii. Second hand store;
- xxiii. Shoe stores;
- xxiv. Sporting goods;
- xxv. Toy and hobby stores; and
- xxvi. Variety stores;

"Retail shopping establishment" shall not be construed or interpreted to include any adult entertainment activities.

- d. Other
 - i. Religious assembly;
 - ii. Restaurant (limited, general); and
 - iii. Tattoo parlor

- (7) Park and recreation services;
- (8) Private parking lot;
- (9) Public parking lot; and
- (10) Public safety services.

15.12.030 - Conditional uses.

The following conditional uses shall be permitted in an MCR district, when authorized in accordance with the requirements set forth in Chapter 15.21:

- (1) Mixed commercial/residential structure (containing one or more of the following uses):
 - i. Any land use proposed with a drive-thru window;
 - ii. College or universities;
 - iii. Day care services;
 - iv. School
 - v. Small alcohol production facility; and
 - vi. Tavern.
- (2) Garage (private, public);
- (3) Government maintenance facility; and
- (4) Local utility services.

15.12.040 - Accessory uses.

The following uses shall be permitted in an MCR district:

01. Uses of land or structures customarily incidental and subordinate to one of the principal uses, unless otherwise excluded.

15.12.050 – Site development regulations.

Lots or parcels of land zoned MCR after the effective date of this chapter shall submit a development plan for consideration by the Planning Commission and City Council concurrent with the rezoning application. The development plan review shall follow the procedure stated in this Chapter, and all components of an approved development plan shall prevail over conflicting standards or regulations elsewhere in this Title. All proposed development projects shall include, but not be limited to, the following standard regulations as part of the associated development plan:

Required Yards	Principal Structure	Accessory Structure
	The base of a principal structure shall be constructed within 10 feet of a property line that abuts a public right-of-way or a private street. The base of a principal structure may be as much as 20 feet from a public right-of-way or private street if the additional setback area is developed with active outdoor space (e.g. dining, courtyard, patios, etc.) between the building and public right-of-way and/or private street. Maximum interior and rear yards shall be determined as part of the adoption of a development plan.	Minimum five (5) feet from rear or side property lines and cannot be located between a building façade and any abutting public or private street.
Maximum Height	Principal Structure	Accessory Structure
	100 feet	24 feet
Lot Coverage: all structures	80% maximum	
Minimum residential density	40 units per acre	

01. Adopted master plans

- A. All properties in the MCR District that are located within an area of the City that has an adopted master plan by City Council shall be developed in accordance with said adopted master plan(s).

02. Architectural details

- A. Building façades shall be constructed with architectural details such as color changes, material changes, minor wall offsets, height variations, wall setbacks, accent lines, and upper floor step backs to articulate building elevations. Building facades that are blank and/or void of architectural detailing shall not be permitted. An exception to these standards may be granted by the Community Development Director for those areas of a building facade that are not visible from a public/private street, or a residential use, and shall be identified prior to development plan approval.
- B. Building façade walls shall be constructed primarily out of high quality, durable materials such as natural/cast stone (1.5" thick or greater), fire-clay brick, burnished or split face CMU block, transparent glass (non-mirrored/non-tinted), architectural grade metal panels, or architectural grade precast concrete with an approved finished treatment. Complementary materials such as fiber cement board, EIFS/stucco, or wood siding may be used on less prominent areas of a building façade in a manner that complements the primary building material. Complimentary materials shall comprise no more than 40% of the total gross square footage of all building elevations, and no single complimentary material shall comprise more than 50% of the gross square footage of a single building facade. Complimentary materials may only be used when located a minimum of four feet above the base of a building.

For the purpose of this Chapter, a 'building elevation' is defined as the perimeter surface of a building set approximately parallel to a lot line; and a 'building façade' is defined as that portion of any exterior elevation on a building extending from grade to top of the parapet, wall, or eaves and the entire width of the building elevation.

- C. Roofs shall be designed to be generally flat and shall be concealed from view by use of parapet walls or other architectural methods. Portions of roofs that are curved or pitched may be allowed as architectural accents but shall not be used as the primary roof design. Roof-mounted mechanical equipment shall be located below the highest vertical element of a building, and shall be screened from view with parapet walls, equipment wells, architectural screens, or similar features that are compatible to the overall design of the building to which they are attached to.
- D. Buildings shall be constructed to front at least one street or public rights-of-way. All street-facing façades within 10 feet of a street or public rights-of-way shall include an accentuated

entrance that is clearly distinguished using covered walkways, awnings, canopies, porches, and/or projected or recessed building mass.

- E. Attached signage, balconies, canopies, decks, eaves, overhangs, and/or other architectural features that are not integral to the structural support of a building may project into public rights-of-way subject to issuance of a permit from the Public Works Department.

03. Landscaping

- A. All areas on a site that are not covered by buildings, structures, paving or impervious surface are considered landscape areas and shall be landscaped in accordance with an adopted development plan.

04. Exterior lighting

- A. Light pole materials on private property shall be painted or finished aluminum or steel. Wood poles shall not be accepted.
- B. Light poles on private property that are used to illuminate vehicular access and parking areas shall not exceed twenty five (25) feet in height from existing grade.
- C. Sidewalks and walkways on private property shall be illuminated with pedestrian scale lighting that does not exceed 15 feet in height from existing grade.
- D. Low-scale, decorative lighting may be used to illuminate accent architectural details, building entries, or signs.
- E. Building façade accent lighting shall be limited to an upward angle of 45 degrees and shall be focused on the building to minimize light spillover onto adjacent properties and right-of-ways.
- F. All lighting on private property shall comply with the standards stated in Section 15.24.050, Lighting controls, of this Title.

05. Parking

- A. All off-street parking in the MCR District shall conform with Chapter 15.23 of this Title, except when determining the total amount of required off-street parking for a multi-family residential use or mixed commercial/residential use, which shall be based upon the following:

Land Use	Required Off-Street Parking
Multi-Family Residential & Townhomes	Minimum of 1 parking stall per dwelling unit Additional parking may be provided but shall not exceed 25% of the total number of required off-street parking stalls for any development.
Mixed Commercial/Residential	Minimum of 1 stall per dwelling unit + 1 space per every 250 square feet of gross floor area of commercial space. Additional parking may be provided but shall not exceed 25% of the total

	number of required off-street parking stalls for any development.
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- B. Off-street parking in this District is encouraged to be designed as an integral component of a principal structure when feasible; however, surface parking lots shall be allowed when designed to comply with the following standards:
- i. Surface parking areas, vehicular drive aisles, and loading/unloading area shall be located behind and/or to the side of a principal building, and shall not be permitted between a principal building and a primary street frontage. The primary street frontage for a development shall be determined by the Community Development Department at the time of plan review. Surface parking areas visible from a public right-of-way shall be screened with a maximum four-foot tall masonry wall in combination with landscaping, or a maximum six-foot tall wrought iron fence in combination with landscaping.
 - ii. Large, non-ornamental, deciduous shade trees shall be installed in parking lots in excess of fifteen (15) spaces. The trees shall be located in planting areas of not less than fifty (50) square feet of unpaved surface per tree and at least one tree shall be planted for each three thousand (3,000) square feet of paving on-site.
- C. The total number of required off-street parking spaces may be reduced by an amount to be determined through a parking demand study establishing that sufficient parking is or can be met by the subject use(s) through shared parking with an adjacent property, or nearby on-street parking. The parking demand study shall provide information about the anticipated parking demand at peak times during the day and the distance relationship between available on-street parking or shared parking spaces and the specific use(s) served.
- D. Direct vehicular access to all off-street parking, drive aisles, and loading/unloading areas shall come from an alley, a non-arterial street, and/or via shared parking facilities with an adjacent property owner. Direct vehicular access shall not be allowed to any arterial street, or to any rights-of-way with a designated pedestrian walking trail or bicycle lane, unless approved by City Council as part of an adopted development plan.
- E. On-street parking shall be constructed as a component of new developments, whenever adequate right-of-way is available, in accordance with adopted Public Works standards.
- F. Bicycle parking shall be provided with all residential developments at a minimum rate of one-half space per dwelling unit. Bicycle parking may be provided indoors, outdoors, or combination thereof. Outdoor bicycle parking must be on a hard-surface and connected to the pedestrian/bicycle network.

06. Pedestrian facilities

- A. A minimum five foot-wide accessible, pedestrian route shall be installed to connect each building entrance with a public sidewalk. Exception: Service entrances that do not provide the general public access to a building are not required to provide any pedestrian facilities.
- B. Construction or reconstruction of adjacent sidewalks and/or street improvements shall be in accordance with adopted Public Works Standards, and shall be included in a project's adopted development plan.

07. Screening and utilities

- A. All exterior dumpsters, garbage/recycling storage, loading/unloading areas, ground-mounted HVAC units, and other utility apparatuses/appurtenances shall be completely screened from view using architectural design features, landscaping, fencing, or a combination thereof. Wall mount air conditioning units shall be integrated into the design of the building in order to be screened from view.
- B. Deciduous, non-ornamental street canopy trees shall be planted between sidewalks and streets. A minimum of 50 square feet shall be provided for planting space with no less than six feet of width. Spacing of trees shall be no greater than 50 feet. Initial tree plantings shall be no less than two inches in diameter.
- C. Utility services shall be installed underground, unless determined impractical by the Community Development Director.
- D. Required stormwater detention shall be contained underground in accordance with all adopted Public Works standards. Best Management Practices for stormwater are encouraged. Surface stormwater features may be considered only if designed as a site amenity.

08. Signs

- A. Signage shall be approved as part of the adopted development plan, and shall comply with Chapter 15.33 of this Title.

15.12.60 – Additional regulations.

- A. All residential developments shall include an active outdoor site amenity such as playgrounds, plazas, decks, roof-top patios, swimming pools, and recreation areas. Passive areas such as landscape setbacks, bicycle parking, tree plantings, berms, and basic stormwater features do not qualify. A minimum of 50 square feet of site amenity space is required per dwelling unit.
- B. Property owners shall maintain all buildings, landscaping, and other site features in accordance with the adopted development plan.

15.12.070 – Development plan review procedure.

01. Application. A completed application form, ten (10) copies of the development plan, along with the required fee, shall be submitted to the Community Development Department. The development plan shall be reviewed in accordance with the procedures outlined below. The following information shall be submitted to the Community Development Department:
- (A) A letter of intent stating the proposed uses, improvements necessary to serve the development, construction time frame, and phasing;
 - (B) The development name and legal description of the boundary;
 - (C) A north arrow, scale, bar scale, and date;
 - (D) The names and addresses of the owner, and the architect or engineer preparing the plan;
 - (E) A location map showing the proposed development and its relationship to existing abutting subdivisions and community facilities such as streets, schools, parks, and commercial areas;
 - (F) All established floodway or floodway fringe encroachment limits;
 - (G) A soils and drainage report prepared by the engineer. The report shall show the general soil and drainage conditions and include preliminary recommendations as to the adaptability of the property proposed for development;
 - (H) Location and size of any sites to be considered for dedication to public use;
 - (I) Layout, numbers, and dimensions of proposed lots;
 - (J) The location, width, name, grade, and typical cross-sections of all proposed streets within the development and the width and name of any platted street located within two hundred (200) feet of the site;
 - (K) The location and width of other public ways, railroad rights-of-way, utility, and all other easements existing or proposed within the development and within two hundred (200) feet;
 - (L) Existing and proposed contour intervals of not more than five feet;
 - (M) All existing and proposed underground installations within the proposed development or adjacent thereto or the location of the nearest available facilities;
 - (N) The location of all existing and proposed structures, proposed parking areas, pedestrian ways, private and public streets, and landscaping;
 - (O) Proposed signage plan;
 - (P) Architectural drawings, renderings, or other visual documents which illustrate proposed building design.

The Community Development Director shall determine the adequacy and completeness of the development plan application. The Community Development Director may require additional information prior to scheduling review by the City Planning Commission.

02. Review by City Planning Commission. The City Planning Commission, in reviewing the development plan, shall take into consideration conformance with the comprehensive plan, recognized principles of land use planning, landscape, architecture, the conservation and stabilization of the value of property, adequate open space for light and air, congestion of public streets, the promotion of public safety, health, convenience and comfort and the general welfare of persons using the facility. In addition to the proposed use meeting the general requirements herein set forth, the commission, in recommending approval of the proposed

development plan, may recommend certain conditions to be attached to such use which the commission deems necessary in order to carry out the intent and purpose of this title. Such conditions may include, but are not limited to, an increase in the required lot or yard area, control of the location and number of vehicular access points to the property, limitations to the number of signs, limitations to coverage or height of buildings situated on the property because of obstruction to view and reduction of light and air to adjacent property, required screening and landscaping where necessary reduce noise and glare, and designation of responsibility for maintenance of the property.

03. Review by City Council. After review of the development plan by the City Planning Commission, it shall be forwarded to the City Council, with its written recommendations, whether for approval or denial, whereupon the City Council may take action on the plan. Approval of the development plan shall be by City Council resolution.
04. Building Permit Review. The Community Development Director shall review all building and Public Works construction permits for compliance with the approved development plan. No building or Public Works construction permit shall be issued if determined by the Community Development Director to be inconsistent with the approved development plan. If the Community Development Director determines that major changes are requested, review and approval by the City Planning Commission and City Council shall be required.
05. Amendment to Development Plan. Proposed amendments to an approved development plan shall be subject to the same review and approval procedure as an initial application. Minor amendments to an adopted development plan may be administratively approved at the discretion of the Community Development Director.

Chapter 15.27 - ZONING DISTRICTS^[4]

Sections:

Footnotes:

--- (4) ---

Editor's note— Ord. No. 6012, § 3, adopted Oct. 27, 2008, repealed the former Ch. 15.27, §§ 15.27.010—15.27.070, and enacted a new Ch. 15.27 as set out herein. The former Ch. 15.27 pertained to board of adjustment and derived from Ord. No. 5315, § 5 (part), adopted 1997.

15.27.010 - Zoning districts.

For the purposes of this ordinance, the city is divided into zoning districts as outlined below:

A. Open Space/Recreation Districts:

A-1 Open Space Conservation District

A-2 Parks, Estates and Agricultural District

A-3 Riverboat Docking District

B. Residential Districts:

R-1E Single Family Residential Estates District

R-1 Single-Family Residential District

R-1M Single-Family Mobile Home Residential District

R-2 Two-Family Residential District

R-3 Low Density Multi-Family Residential District

R-4 High Density Multi-Family Residential District

C. Commercial Districts:

MCR Mixed Commercial Residential District

A-P Administrative-Professional District

C-1 Neighborhood Commercial District

C-2 General Commercial District

C-3 Central Business District

C-4 Downtown Business District

P-C Planned Commercial District

D. Industrial Districts:

I-1 Light Industrial District (All references to the WM District within this ordinance shall be referred to as the I-1 District)

I-2 General Manufacturing District (All references to the GM District within this ordinance shall be referred to as the I-2 District)

I-3 Heavy Industrial District

P-I Planned Industrial District

E. Overlay Districts:

PR Planned Residential District

RO Recreation-Tourism District

AZ Airport Hazard District

CDO Corridor Design Overlay District

(Ord. No. 6012, § 3, 10-27-2008)

15.27.020 - Zoning district boundaries.

- A. District boundaries shall be lot lines, other legally described lines or the centerline of streets, alleys, railroad rights-of-way, waterways or such lines extended.
- B. The location and boundaries of these boundaries of these districts are shown on the official zoning map of the city, which is made part of this title by reference.

(Ord. No. 6012, § 3, 10-27-2008)

15.27.030 - Annexed territory.

Annexed land shall retain the same zoning classification after annexation that it had prior to annexation. Those regulations shall remain in place until the city completes the legislative action to rezone the property.

- A. Voluntary Annexation. All applications for voluntary annexation of land to the city shall designate the zoning classification which the applicant wishes for their property. The application shall be referred to the planning commission for recommendation on both the annexation and the requested zoning. Consideration of the zoning shall follow the procedures for a zoning amendment.
- B. Involuntary Annexation. Whenever, after public hearing, the city council may determine that involuntary annexation shall be referred to the planning commission for recommendation. Consideration of the zoning shall follow the procedures for a zoning amendment.

(Ord. No. 6012, § 3, 10-27-2008)

- (6) The maximum allowable area of each monument or ground sign face will be measured from the finish grade to the top of the structure and from one end of the structure to the other. The maximum allowable square feet per sign face shall not be greater than each property's linear feet of street frontage, as measured on one adjacent street, or one hundred fifty (150) square feet, whichever is less.

(Ord. 5920 § 2 (part), 2007).

15.33.060 - Zoning district designations.

(a) For purposes of this chapter, agricultural/open space districts shall include the following zoning districts:	
(1) A-1	Open space district
(2) A-2	Parks, estates and agricultural district
(3) A-3	Riverboat docking district
(b) For purposes of this chapter, residential districts shall include the following zoning districts:	
(1) R-1E	Single-family residential estates district
(2) R-1	Single-family residential district
(3) R-1M	Single-family manufactured housing district
(4) R-2	Two-family residential district
(5) R-3	Low density multifamily residential district
(6) R-4	High density multifamily residential district
(7) PR	Planned residential district
(8) A-P	Administrative-professional district
(c) For purposes of this chapter, commercial districts shall include the following zoning districts:	
(1) C-1	Neighborhood commercial district
(2) C-2	Commercial district

(3) C-3	Commercial district
(4) C-4	Commercial district
(5) PC	Planned commercial district
(6) MCR	Mixed commercial residential district
(d) For purposes of this chapter, industrial districts shall include the following zoning districts:	
(1) P-I	Planned industrial district
(2) I-1	Light industrial district
(3) I-2	General industrial district
(4) I-3	Heavy industrial district

(Ord. 5920 § 2 (part), 2007).

15.33.070 - Prohibited signs.

All signs not expressly permitted in these regulations or exempt from regulation in Section 15.33.080 are prohibited in the city. The following signs are prohibited in all zoning districts:

- (1) Signs painted on or attached to rocks, trees, or other natural objects;
- (2) Signs placed on utility poles (e.g., garage sale signs);
- (3) Signs on or over public property and right-of-way unless specifically authorized by the appropriate public agency;
- (4) Signs or sign structures which resemble or conflict with traffic control signs or devices, which mislead or confuse persons traveling on public streets, or which create a traffic hazard;
- (5) Signs or sign structures which create a safety hazard by obstructing the clear view of pedestrians or vehicles, or which obscure official signs or signals;
- (6) Signs which obstruct doors, windows, or public right-of-way;
- (7) Searchlights or beacons;
- (8) Flashing/blinking/pulsating signs;
- (9) Swinging signs with over four feet of ground clearance and/or more than eight feet in height from the ground surface;
- (10) Pennants and streamers, except for grand opening and/or special events by permit only;

- (C) Detached signs shall not exceed one hundred (100) square feet or ten (10) feet in height.
- (D) On-premise directionals shall not exceed three square feet per face and exceed three feet in height.

(Ord. 5920 § 2 (part), 2007).

(Ord. No. 6284, § 1, 2-27-2017).

15.33.170 - Commercial district signs.

In addition to the exempt signs in Section 15.33.080 and temporary signs in Section 15.33.090, the following types of signs are permitted in commercial districts, subject to the following limitations. In case of conflicts between these conditions, the most restrictive condition shall apply.

(1) Permitted sign types as limited below:

(A) Detached.

- (i) Ground and monument signs;
- (ii) Pole signs;
- (iii) Center signs in lieu of pole sign;
- (iv) On-premise directionals.

(B) Attached.

- (i) Wall, awning or canopy signs;
- (ii) Below peak roof signs;
- (iii) Projecting signs, including blade signs;
- (iv) Banners.

- (2) Total permitted maximum sign area is limited as follows. With corner or double frontage premises, additional total sign area is based on the longest abutting street frontage plus one-half of the other length feet of the other street frontage, not to exceed four hundred (400) square feet.

District	Maximum Sign Area
C-1	1 × street frontage, or 100 sq. ft., whichever is less
C-2	2 × street frontage
C-3	2 × street frontage
C-4	2 × street frontage
PC	Subject to an approved development plan
MCR	Subject to an approved development plan

(3) Design Regulations for Detached Signage. If the property lies within the West Broadway design corridor as defined in Section 15.33.130 or within seven hundred (700) feet of Interstate right-of-way as defined in Section 15.33.140, additional regulations apply.

(A) Ground or monument signs, maximum of one per premise, exclusive of directional signs, subject to the limitations in Section 15.33.100.

District	Maximum Size	Maximum Height	Maximum Number
C-1	1 × street frontage	10 feet	1 per premise
C-2	1.5 × street frontage	10 feet	1 per premise
C-3	1.5 × street frontage	10 feet	1 per premise
C-4	1.5 × street frontage	10 feet	1 per premise
PC*	1.5 × street frontage	10 feet	1 per premise
MCR*	Subject to an approved development plan		

* Unless modified by an approved development plan.

(B) Pole signs, maximum of one per premise and subject to the limitations in Section 15.33.100. Pole signs are not permitted within the West Broadway design corridor as defined in Section 15.33.130.

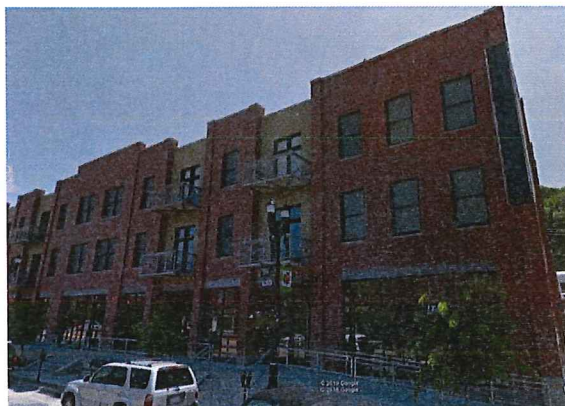
(C) Center sign in lieu of a pole sign, maximum of one per premise.

District	Maximum Size	Maximum Height	Maximum Number
C-1	1 × street frontage	15 feet	1 per premise
C-2	1.5 × street frontage	25 feet ¹	1 per premise
C-3	1.5 × street frontage	25 feet ¹	1 per premise
C-4	not permitted		
PC	Subject to an approved development plan		

Representative Building Examples in Council Bluffs and Omaha



The Rise at 103 W. Broadway



The Sawyer Building at 125 W. Broadway

The Yard at 415 Cuming Street



Townhomes on South 10th Street

Dundee Flats at 4829 Dodge Street



NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

A public hearing is to be held by the City Council of the City of Council Bluffs, Iowa, on the 9th day of September, 2019 at 7:00 p.m. in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

The hearing is in regards to the City's intent to amend several sections of Title 15: Zoning of the Municipal Code (Zoning Ordinance) by enacting Chapter 15.12 MCR/Mixed Commercial Residential District; amending Chapter 15.27, Zoning Districts to add "MCR/Mixed Commercial Residential District" as a new commercial district; and amending Chapter 15.33, Signs, to establish sign standards for the MCR/Mixed Commercial Residential District.

(Case ZT-19-005)

ORDINANCE NO. 6398

AN ORDINANCE TO AMEND TITLE 15 “ZONING” OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA BY ENACTING NEW CHAPTER 15.12, “MCR/MIXED COMMERCIAL RESIDENTIAL DISTRICT”.

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Title 15 Zoning of the 2015 Municipal Code of Council Bluffs, Iowa, be and is hereby amended by enacting new Chapter 15.12 “MCR/Mixed Commercial Residential District” to read as follows:

Chapter 15.12 – MCR/Mixed Commercial-Residential District

Sections:

15.12.010 - Statement of intent.

The MCR district is intended to encourage an urban pattern of development characterized as “mixed-use” in order to promote human interaction, pleasing aesthetics, economic resiliency, efficient land use, and maximization of resources. The MCR district also supports and encourages a variety of transportation options for multiple modes of transportation. The MCR district is applicable to areas of the City where higher density residential and commercial uses are appropriate and where municipal utility infrastructure is readily available or can be extended by a project.

15.12.020 - Principal uses.

The following principal uses shall be permitted in an MCR district:

- (1) Congregate housing, life care facility, or nursing home;
- (2) Community recreation services;
- (3) Dwelling, multifamily;
- (4) Dwellings, townhome (minimum four attached units);
- (5) Family home;
- (5) Group care home;
- (6) Mixed commercial/residential structure (containing one or more of the following uses);
 - a. Business, professional office;
 - b. Consumer service establishments (limited to the following):
 - i. Accountants;
 - ii. Architects;
 - iii. Arts and crafts studio;
 - iv. Attorneys;
 - v. Banks, savings and loans, and credit unions;
 - vi. Barber shops and beauty shops;
 - vii. Dress makers and tailors;
 - viii. Insurance agencies;
 - ix. Laundry and dry cleaning pick-up stations;
 - x. Management consultants;

- xi. Medical office or clinic for people;
- xii. Pet shops;
- xiii. Photographers' studios;
- xiv. Real estate office;
- xv. Travel agencies.
- c. Retail Shopping Establishment (limited to the following):
 - i. Antique stores;
 - ii. Appliance, television and radio sales;
 - iii. Art galleries, commercial;
 - iv. Art supplies;
 - v. Bakeries;
 - vi. Bicycle sales and repair shop;
 - vii. Bookstores;
 - viii. Candy and ice cream stores;
 - ix. Clothing, clothing accessories and dry goods;
 - x. Department stores;
 - xi. Drug stores;
 - xii. Floor coverings;
 - xiii. Florists;
 - xiv. Furniture stores;
 - xv. Gift and card shop;
 - xvi. Grocery, delicatessen, and specialty food store;
 - xvii. Hardware, paint, and wallpaper stores;
 - xviii. Jewelry, leather goods and luggage stores;
 - xix. Music stores;
 - xx. News and tobacco stores;
 - xxi. Photographic equipment and supplies;
 - xxii. Second hand store;
 - xxiii. Shoe stores;
 - xxiv. Sporting goods;
 - xxv. Toy and hobby stores;
 - xxvi. Variety stores.

"Retail shopping establishment" shall not be construed or interpreted to include any adult entertainment activities.

- d. Other
 - i. Religious assembly;
 - ii. Restaurant (limited, general);
 - iii. Tattoo parlor.
- (7) Park and recreation services;
- (8) Private parking lot;
- (9) Public parking lot;
- (10) Public safety services.

15.12.030 - Conditional uses.

The following conditional uses shall be permitted in an MCR district, when authorized in accordance with the requirements set forth in Chapter 15.21:

- (1) Mixed commercial/residential structure (containing one or more of the following uses):
 - a. Any land use proposed with a drive-thru window;
 - b. College or universities;
 - c. Day care services;
 - d. School
 - e. Small alcohol production facility;
 - f. Tavern.
- (2) Garage (private, public);
- (3) Government maintenance facility;
- (4) Local utility services.

15.12.040 - Accessory uses.

The following uses shall be permitted in an MCR district:

- (1) Uses of land or structures customarily incidental and subordinate to one of the principal uses, unless otherwise excluded.

15.12.050 – Site development regulations.

Lots or parcels of land zoned MCR after the effective date of this chapter shall submit a development plan for consideration by the Planning Commission and City Council concurrent with the rezoning application. The development plan review shall follow the procedure stated in this Chapter, and all components of an approved development plan shall prevail over conflicting standards or regulations elsewhere in this Title. All proposed development projects shall include, but not be limited to, the following standard regulations as part of the associated development plan:

Required Yards	<p>Principal Structure The base of a principal structure shall be constructed within 10 feet of a property line that abuts a public right-of-way or a private street. The base of a principal structure may be as much as 20 feet from a public right-of-way or private street if the additional setback area is developed with active outdoor space (e.g. dining, courtyard, patios, etc.) between the building and public right-of-way and/or private street. Maximum interior and rear yards shall be determined as part of the adoption of a development plan.</p>	<p>Accessory Structure Minimum five (5) feet from rear or side property lines and cannot be located between a building façade and any abutting public or private street.</p>
Maximum Height	<p>Principal Structure 100 feet</p>	<p>Accessory Structure 24 feet</p>
Lot Coverage: all structures	80% maximum	
Minimum residential density	40 units per acre	

- (1) Adopted master plans.
 - a. All properties in the MCR District that are located within an area of the City that has an adopted master plan by City Council shall be developed in accordance with said adopted master plan(s).
- (2) Architectural details.
 - a. Building façades shall be constructed with architectural details such as color changes, material changes, minor wall offsets, height variations, wall setbacks, accent lines, and upper floor step backs to articulate building elevations. Building facades that are blank and/or void of architectural detailing shall not be permitted. An exception to these standards may be granted by the Community Development Director for those areas of a building facade that are not visible from a public/private street, or a residential use, and shall be identified prior to development plan approval.
 - b. Building façade walls shall be constructed primarily out of high quality, durable materials such as natural/cast stone (1.5” thick or greater), fire-clay brick, burnished or split face CMU block, transparent glass (non-mirrored/non-tinted), architectural grade metal panels, or architectural grade precast concrete with an approved finished treatment. Complementary materials such as fiber cement board, EIFS/stucco, or wood siding may be used on less prominent areas of a building façade in a manner that complements the primary building material.

Complimentary materials shall comprise no more than 40% of the total gross square footage of all building elevations, and no single complimentary material shall comprise more than 50% of the gross square footage of a single building facade. Complimentary materials may only be used when located a minimum of four feet above the base of a building.

For the purpose of this Chapter, a 'building elevation' is defined as the perimeter surface of a building set approximately parallel to a lot line; and a 'building façade' is defined as that portion of any exterior elevation on a building extending from grade to top of the parapet, wall, or eaves and the entire width of the building elevation.

- c. Roofs shall be designed to be generally flat and shall be concealed from view by use of parapet walls or other architectural methods. Portions of roofs that are curved or pitched may be allowed as architectural accents but shall not be used as the primary roof design. Roof-mounted mechanical equipment shall be located below the highest vertical element of a building, and shall be screened from view with parapet walls, equipment wells, architectural screens, or similar features that are compatible to the overall design of the building to which they are attached to.
 - d. Buildings shall be constructed to front at least one street or public rights-of-way. All street-facing façades within 10 feet of a street or public rights-of-way shall include an accentuated entrance that is clearly distinguished using covered walkways, awnings, canopies, porches, and/or projected or recessed building mass.
 - e. Attached signage, balconies, canopies, decks, eaves, overhangs, and/or other architectural features that are not integral to the structural support of a building may project into public rights-of-way subject to issuance of a permit from the Public Works Department.
- (3) Landscaping.
- a. All areas on a site that are not covered by buildings, structures, paving or impervious surface are considered landscape areas and shall be landscaped in accordance with an adopted development plan.
- (4) Exterior lighting.
- a. Light pole materials on private property shall be painted or finished aluminum or steel. Wood poles shall not be accepted.
 - b. Light poles on private property that are used to illuminate vehicular access and parking areas shall not exceed twenty five (25) feet in height from existing grade.
 - c. Sidewalks and walkways on private property shall be illuminated with pedestrian scale lighting that does not exceed 15 feet in height from existing grade.
 - d. Low-scale, decorative lighting may be used to illuminate accent architectural details, building entries, or signs.

- e. Building façade accent lighting shall be limited to an upward angle of 45 degrees and shall be focused on the building to minimize light spillover onto adjacent properties and right-of-ways.
 - f. All lighting on private property shall comply with the standards stated in Section 15.24.050, Lighting controls, of this Title.
- (5) Parking.
- a. All off-street parking in the MCR District shall conform with Chapter 15.23 of this Title, except when determining the total amount of required off-street parking for a multi-family residential use or mixed commercial/residential use, which shall be based upon the following:

Land Use	Required Off-Street Parking
Multi-Family Residential & Townhomes	Minimum of 1 parking stall per dwelling unit Additional parking may be provided but shall not exceed 25% of the total number of required off-street parking stalls for any development.
Mixed Commercial/Residential	Minimum of 1 stall per dwelling unit + 1 space per every 250 square feet of gross floor area of commercial space. Additional parking may be provided but shall not exceed 25% of the total number of required off-street parking stalls for any development.

- b. Off-street parking in this District is encouraged to be designed as an integral component of a principal structure when feasible; however, surface parking lots shall be allowed when designed to comply with the following standards:
 - i. Surface parking areas, vehicular drive aisles, and loading/unloading area shall be located behind and/or to the side of a principal building, and shall not be permitted between a principal building and a primary street frontage. The primary street frontage for a development shall be determined by the Community Development Department at the time of plan review. Surface parking areas visible from a public right-of-way shall be screened with a maximum four-foot tall masonry wall in combination with landscaping, or a maximum six-foot tall wrought iron fence in combination with landscaping.
 - ii. Large, non-ornamental, deciduous shade trees shall be installed in parking lots in excess of fifteen (15) spaces. The trees shall be located in planting areas of not less than fifty (50) square feet of unpaved surface per tree and at least one tree shall be planted for each three thousand (3,000) square feet of paving on-site.
- c. The total number of required off-street parking spaces may be reduced by an amount to be determined through a parking demand study establishing that sufficient parking is or can be met by the subject use(s) through shared parking with an adjacent property, or nearby on-street parking. The parking demand study shall provide information about the anticipated parking demand at peak

- times during the day and the distance relationship between available on-street parking or shared parking spaces and the specific use(s) served.
- d. Direct vehicular access to all off-street parking, drive aisles, and loading/unloading areas shall come from an alley, a non-arterial street, and/or via shared parking facilities with an adjacent property owner. Direct vehicular access shall not be allowed to any arterial street, or to any rights-of-way with a designated pedestrian walking trail or bicycle lane, unless approved by City Council as part of an adopted development plan.
 - e. On-street parking shall be constructed as a component of new developments, whenever adequate right-of-way is available, in accordance with adopted Public Works standards.
 - f. Bicycle parking shall be provided with all residential developments at a minimum rate of one-half space per dwelling unit. Bicycle parking may be provided indoors, outdoors, or combination thereof. Outdoor bicycle parking must be on a hard-surface and connected to the pedestrian/bicycle network.
- (6) Pedestrian facilities.
- a. A minimum five foot-wide accessible, pedestrian route shall be installed to connect each building entrance with a public sidewalk. Exception: Service entrances that do not provide the general public access to a building are not required to provide any pedestrian facilities.
 - b. Construction or reconstruction of adjacent sidewalks and/or street improvements shall be in accordance with adopted Public Works Standards, and shall be included in a project's adopted development plan.
- (7) Screening and utilities.
- a. All exterior dumpsters, garbage/recycling storage, loading/unloading areas, ground-mounted HVAC units, and other utility apparatuses/appurtenances shall be completely screened from view using architectural design features, landscaping, fencing, or a combination thereof. Wall mount air conditioning units shall be integrated into the design of the building in order to be screened from view.
 - b. Deciduous, non-ornamental street canopy trees shall be planted between sidewalks and streets. A minimum of 50 square feet shall be provided for planting space with no less than six feet of width. Spacing of trees shall be no greater than 50 feet. Initial tree plantings shall be no less than two inches in diameter.
 - c. Utility services shall be installed underground, unless determined unpractical by the Community Development Director.
 - d. Required stormwater detention shall be contained underground in accordance with all adopted Public Works standards. Best Management Practices for stormwater are encouraged. Surface stormwater features may be considered only if designed as a site amenity.

- (8) Signs.
 - a. Signage shall be approved as part of the adopted development plan, and shall comply with Chapter 15.33 of this Title.

15.12.060 – Additional regulations.

- (1) All residential developments shall include an active outdoor site amenity such as playgrounds, plazas, decks, roof-top patios, swimming pools, and recreation areas. Passive areas such as landscape setbacks, bicycle parking, tree plantings, berms, and basic stormwater features do not qualify. A minimum of 50 square feet of site amenity space is required per dwelling unit.
- (2) Property owners shall maintain all buildings, landscaping, and other site features in accordance with the adopted development plan.

15.12.070 – Development plan review procedure.

- (1) Application. A completed application form, ten (10) copies of the development plan, along with the required fee, shall be submitted to the Community Development Department. The development plan shall be reviewed in accordance with the procedures outlined below. The following information shall be submitted to the Community Development Department:
 - a. A letter of intent stating the proposed uses, improvements necessary to serve the development, construction time frame, and phasing;
 - b. The development name and legal description of the boundary;
 - c. A north arrow, scale, bar scale, and date;
 - d. The names and addresses of the owner, and the architect or engineer preparing the
 - e. A location map showing the proposed development and its relationship to existing abutting subdivisions and community facilities such as streets, schools, parks, and commercial areas;
 - f. All established floodway or floodway fringe encroachment limits;
 - g. A soils and drainage report prepared by the engineer. The report shall show the general soil and drainage conditions and include preliminary recommendations as to the adaptability of the property proposed for development;
 - h. Location and size of any sites to be considered for dedication to public use;
 - i. Layout, numbers, and dimensions of proposed lots;
 - j. The location, width, name, grade, and typical cross-sections of all proposed streets within the development and the width and name of any platted street located within two hundred (200) feet of the site;
 - k. The location and width of other public ways, railroad rights-of-way, utility, and all other easements existing or proposed within the development and within two hundred (200) feet;
 - l. Existing and proposed contour intervals of not more than five feet;
 - m. All existing and proposed underground installations within the proposed development or adjacent thereto or the location of the nearest available facilities;

- n. The location of all existing and proposed structures, proposed parking areas, pedestrian ways, private and public streets, and landscaping;
- o. Proposed signage plan;
- p. Architectural drawings, renderings, or other visual documents which illustrate proposed building design.

The Community Development Director shall determine the adequacy and completeness of the development plan application. The Community Development Director may require additional information prior to scheduling review by the City Planning Commission.

- (2) Review by City Planning Commission. The City Planning Commission, in reviewing the development plan, shall take into consideration conformance with the comprehensive plan, recognized principles of land use planning, landscape, architecture, the conservation and stabilization of the value of property, adequate open space for light and air, congestion of public streets, the promotion of public safety, health, convenience and comfort and the general welfare of persons using the facility. In addition to the proposed use meeting the general requirements herein set forth, the commission, in recommending approval of the proposed development plan, may recommend certain conditions to be attached to such use which the commission deems necessary in order to carry out the intent and purpose of this title. Such conditions may include, but are not limited to, an increase in the required lot or yard area, control of the location and number of vehicular access points to the property, limitations to the number of signs, limitations to coverage or height of buildings situated on the property because of obstruction to view and reduction of light and air to adjacent property, required screening and landscaping where necessary reduce noise and glare, and designation of responsibility for maintenance of the property.
- (3) Review by City Council. After review of the development plan by the City Planning Commission, it shall be forwarded to the City Council, with its written recommendations, whether for approval or denial, whereupon the City Council may take action on the plan. Approval of the development plan shall be by City Council resolution.
- (4) Building Permit Review. The Community Development Director shall review all building and Public Works construction permits for compliance with the approved development plan. No building or Public Works construction permit shall be issued if determined by the Community Development Director to be inconsistent with the approved development plan. If the Community Development Director determines that major changes are requested, review and approval by the City Planning Commission and City Council shall be required.
- (5) Amendment to Development Plan. Proposed amendments to an approved development plan shall be subject to the same review and approval procedure as an initial application. Minor amendments to an adopted development plan may be administratively approved at the discretion of the Community Development Director.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest:

JODI QUAKENBUSH

City Clerk

First Consideration: 8-26-19

Second Consideration: 9-9-19

Public Hearing: 9-9-19

Third Consideration: _____

ORDINANCE NO. 6399

AN ORDINANCE TO AMEND CHAPTER 15.27 ZONING DISTRICTS OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA BY AMENDING SECTION 15.27.010 “ZONING DISTRICTS” TO INCLUDE MCR/MIXED COMMERCIAL RESIDENTIAL DISTRICT.

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Chapter 15.27 Zoning Districts of the 2015 Municipal Code of Council Bluffs, Iowa, be and is hereby amended by amending Section 15.27.010 “Zoning Districts” to include MCR/Mixed Commercial Residential District read as follows:

15.27.010 - Zoning districts.

For the purposes of this ordinance, the city is divided into zoning districts as outlined below:

- A. Open Space/Recreation Districts:
 - A-1 Open Space Conservation District
 - A-2 Parks, Estates and Agricultural District
 - A-3 Riverboat Docking District
- B. Residential Districts:
 - R-1E Single Family Residential Estates District
 - R-1 Single-Family Residential District
 - R-1M Single-Family Mobile Home Residential District
 - R-2 Two-Family Residential District
 - R-3 Low Density Multi-Family Residential District
 - R-4 High Density Multi-Family Residential District
- C. Commercial Districts:
 - MCR Mixed Commercial Residential District**
 - A-P Administrative-Professional District
 - C-1 Neighborhood Commercial District
 - C-2 General Commercial District
 - C-3 Central Business District

C-4 Downtown Business District

P-C Planned Commercial District

D. Industrial Districts:

I-1 Light Industrial District (All references to the WM District within this ordinance shall be referred to as the I-1 District)

I-2 General Manufacturing District (All references to the GM District within this ordinance shall be referred to as the I-2 District)

I-3 Heavy Industrial District

P-I Planned Industrial District

E. Overlay Districts:

PR Planned Residential District

RO Recreation-Tourism District

AZ Airport Hazard District

CDO Corridor Design Overlay District

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest: _____

JODI QUAKENBUSH

City Clerk

First Consideration: 8-26-19

Second Consideration: 9-9-19

Public Hearing: 9-9-19

Third Consideration: _____

Case #ZT-19-005

ORDINANCE NO. 6400

AN ORDINANCE TO AMEND CHAPTER 15.33 SIGNS OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA BY AMENDING SECTION 15.33.060 “ZONING DISTRICT DESIGNATIONS” AND SECTION 15.33.170 “COMMERCIAL DISTRICT SIGNS” RELATIVE TO MCR/MIXED COMMERCIAL RESIDENTIAL DISTRICT.

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Chapter 15.33 Signs of the 2015 Municipal Code of Council Bluffs, Iowa, be and is hereby amended by amending Section 15.33.060 “Zoning District Designations” and Section 15.33.170 “Commercial district signs” relative to MCR/Mixed Commercial Residential District to read as follows:

15.33.060-Zoning district designations.

(a) For purposes of this chapter, agricultural/open space districts shall include the following zoning districts:	
(1) A-1	Open space district
(2) A-2	Parks, estates and agricultural district
(3) A-3	Riverboat docking district
(b) For purposes of this chapter, residential districts shall include the following zoning districts:	
(1) R-1E	Single-family residential estates district
(2) R-1	Single-family residential district
(3) R-1M	Single-family manufactured housing district
(4) R-2	Two-family residential district
(5) R-3	Low density multifamily residential district
(6) R-4	High density multifamily residential district
(7) PR	Planned residential district
(8) A-P	Administrative-professional district
(c) For purposes of this chapter, commercial districts shall include the following zoning districts:	
(1) C-1	Neighborhood commercial district
(2) C-2	Commercial district
(3) C-3	Commercial district
(4) C-4	Commercial district
(5) PC	Planned commercial district

(6) MCR	Mixed commercial residential district
(d) For purposes of this chapter, industrial districts shall include the following zoning districts:	
(1) P-I	Planned industrial district
(2) I-1	Light industrial district
(3) I-2	General industrial district
(4) I-3	Heavy industrial district

15.33.170 - Commercial district signs.

In addition to the exempt signs in Section 15.33.080 and temporary signs in Section 15.33.090, the following types of signs are permitted in commercial districts, subject to the following limitations. In case of conflicts between these conditions, the most restrictive condition shall apply.

- (1) Permitted sign types as limited below:
 - (A) Detached.
 - (i) Ground and monument signs;
 - (ii) Pole signs;
 - (iii) Center signs in lieu of pole sign;
 - (iv) On-premise directionals.
 - (B) Attached.
 - (i) Wall, awning or canopy signs;
 - (ii) Below peak roof signs;
 - (iii) Projecting signs, including blade signs;
 - (iv) Banners.
- (2) Total permitted maximum sign area is limited as follows. With corner or double frontage premises, additional total sign area is based on the longest abutting street frontage plus one-half of the other length feet of the other street frontage, not to exceed four hundred (400) square feet.

District	Maximum Sign Area
C-1	1 × street frontage, or 100 sq. ft., whichever is less
C-2	2 × street frontage
C-3	2 × street frontage
C-4	2 × street frontage
PC	Subject to an approved development plan
MCR	Subject to an approved development plan

- (3) Design Regulations for Detached Signage. If the property lies within the West Broadway design corridor as defined in Section 15.33.130 or within seven hundred (700) feet of Interstate right-of-way as defined in Section 15.33.140, additional regulations apply.

- (A) Ground or monument signs, maximum of one per premise, exclusive of directional signs, subject to the limitations in Section 15.33.100.

District	Maximum Size	Maximum Height	Maximum Number
C-1	1 × street frontage	10 feet	1 per premise
C-2	1.5 × street frontage	10 feet	1 per premise
C-3	1.5 × street frontage	10 feet	1 per premise
C-4	1.5 × street frontage	10 feet	1 per premise
PC*	1.5 × street frontage	10 feet	1 per premise
MCR*	Subject to an approved development plan		

*Unless modified by an approved development plan.

- (B) Pole signs, maximum of one per premise and subject to the limitations in Section 15.33.100. Pole signs are not permitted within the West Broadway design corridor as defined in Section 15.33.130.

- (C) Center sign in lieu of a pole sign, maximum of one per premise.

District	Maximum Size	Maximum Height	Maximum Number
C-1	1 × street frontage	15 feet	1 per premise
C-2	1.5 × street frontage	25 feet ¹	1 per premise
C-3	1.5 × street frontage	25 feet ¹	1 per premise
C-4	not permitted		
PC	Subject to an approved development plan		
MCR	Subject to an approved development plan		

¹ Maximum height shall not exceed fifteen (15) feet within one hundred fifty (150) feet of a residential district.

- (D) On-premise directional signs, which are included in the calculations for total permitted sign area for the premises, shall not exceed the following in each commercial district:

District	Maximum Size	Maximum Height	Maximum Number
C-1	3 square feet	4 feet	2 per entrance drive
C-2	4 square feet	6 feet	2 per entrance drive

C-3	4 square feet	6 feet	2 per entrance drive
C-4	4 square feet	6 feet	2 per entrance drive
PC	Subject to an approved development plan		
MCR	Subject to an approved development plan		

- (E) Attached wall, banners, awning or canopy signs.
- (F) Projecting signs, where permitted, are treated as wall signs for calculating maximum sign area. Projecting signs, one per premise are permitted in C-3 and C-4 districts, subject to the limitations in Section 15.33.100. Blade type signs are permitted in C-3 and C-4 districts, subject to the limitations in Section 15.33.100. Blade signs are the only type of projecting sign which is permitted in a **MCR** and PC district, subject to an approved development plan.
- (G) Roof signs, below peak only, where permitted, are treated as wall signs for calculating maximum sign area. Below peak roof signs are permitted in C-2, C-3, C-4, **MCR** and PC districts. They are not permitted in a C-1 district.

District	Maximum Sign Area
C-1	1.5 square feet per lineal foot of the building to which it is attached
C-2	2 square feet per lineal foot of the building to which it is attached
C-3	2 square feet per lineal foot of the building to which it is attached
C-4	2 square feet per lineal foot of the building to which it is attached
PC	Subject to an approved development plan
MCR	Subject to an approved development plan

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest: _____

JODI QUAKENBUSH

City Clerk

First Consideration: 8-26-19

Second Consideration: 9-9-19

Public Hearing: 9-9-19

Third Consideration: _____

Council Communication

Department: Parks and Recreation
Case/Project No.: Iowa DOT
Acquisition - Portion of Westwood
Park
Submitted by: Vincent M
Martorello

Resolution 19-210
ITEM 4.C.

Council Action: 9/9/2019

Description

Resolution authorizing the Mayor and City Clerk to execute a quit claims deed to the State of Iowa in connection with Council Bluffs Interstate Systems Improvements

Background/Discussion

The proposed acquisition is associated with the Iowa DOT's Council Bluffs Interstate System Improvements. The property is necessary to construct the improvements to I-29 as part of Iowa DOT Project Number: IMN-029-3(168)53--0E-78.

IDOT proposes a purchase agreement and quitclaim deed to buy a portion of Westwood Park to the east of I-29 immediately adjacent to the Avenue off-ramp. The property is approximately 12,016 square feet in size (0.28 acres) and is located to the west of an existing baseball field located in the park. The selling of the property will not impeded or interrupt any function of the park or impact any future development plans for the park.

The specific description of the property is

A parcel of land located in Government Lot 3, Government, Lot 4 and accretions in SW ¼ SE ¼ in 75N, R44W of the 5th P.M., City of Council Bluffs, Pottawattamie County, Iowa.

Commencing at the NW Corner of Lot 25, Block 43, Brown's Subdivision in the City of Council Bluffs, thence N88° 28'37"W 105.30 feet along the extend north line of said Lot 25 to Point of Beginning; thence S1°17'42" W400.86 feet to the present north right of way line of Union Pacific Railroad; thence N89° 11'41" W30.00 feet along present north right of way line to point on the present easterly right of way line of Interstate Route No 29; thence N1° 18'20" E401.24 feet along said present easterly right of way line to a point on the extended north of said Lot 25; thence S88° 28'37" E29.93 feet along said extended north line to Point of Beginning, said parcel contain 12.016 sq. ft. or 0.28 acres.

The property was appraised in February 2019 and a valuation of \$24,000.00 was determined. An exhibit identifying the location for the proposed acquisition is attached. An exhibit showing an aerial of the park with location identified is attached.

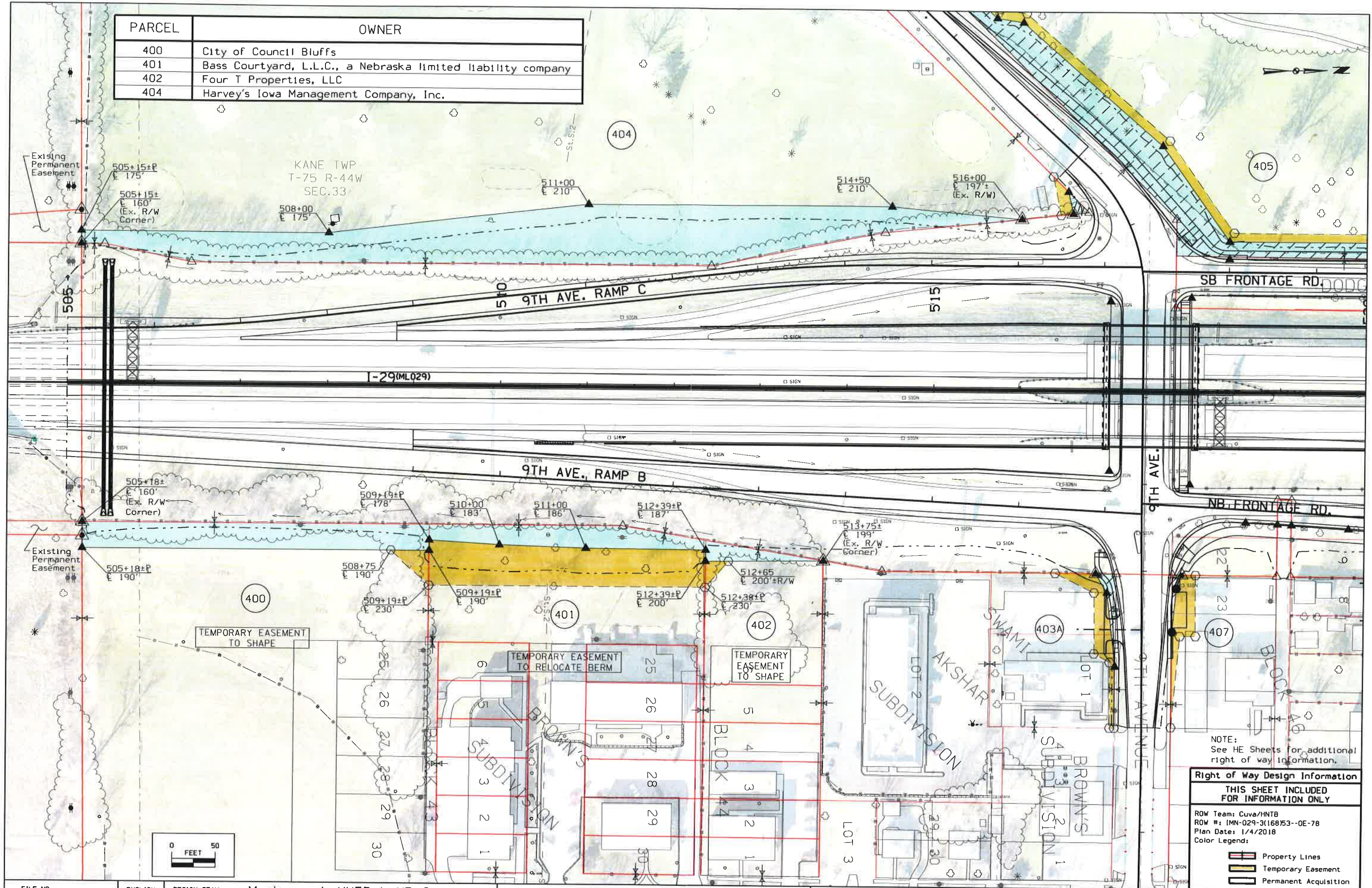
Recommendation

Approve this resolution

ATTACHMENTS:

Description	Type	Upload Date
IDOT ROW Design	Other	8/29/2019
Aerial of Westwood Park	Other	8/29/2019
Resolution 19-210	Resolution	9/4/2019
Deed	Other	9/4/2019

PARCEL	OWNER
400	City of Council Bluffs
401	Bass Courtyard, L.L.C., a Nebraska Limited Liability company
402	Four T Properties, LLC
404	Harvey's Iowa Management Company, Inc.



NOTE:
See HE Sheets for additional
right of way information.

Right of Way Design Information
**THIS SHEET INCLUDED
FOR INFORMATION ONLY**

ROW Team: Cuva/HNTB
ROW #: IMN-029-3(168)53--0E-78
Plan Date: 1/4/2018
Color Legend:

- Property Lines
- Temporary Easement
- Permanent Acquisition

Westwood Park



Area of Westwood Park
subject to IDOT purchase



Legend

 City Park

RESOLUTION
NO 19-210

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE QUIT CLAIM DEEDS
TO THE STATE OF IOWA
IN CONNECTION WITH
COUNCIL BLUFFS INTERSTATE SYSTEM IMPROVEMENTS**

- WHEREAS, Iowa Department of Transportation wishes to acquire Real Property to construct improvements to Interstate 29, within the city, as therein described; and
- WHEREAS, Iowa Department of Transportation has submitted Purchase Agreements and Quitclaim Deeds for said property and the acquisition documents are on file in the office of the City Clerk.
- WHEREAS, a Notice of Public Hearing was published as required by law, and a public hearing was held on September 9, 2019; and
- WHEREAS, the city council deems approval of said acquisition agreement to be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute Quit Claim Deeds to grant Real Property to the State of Iowa in connection with Council Bluffs Interstate Improvements.

ADOPTED
AND
APPROVED

September 9, 2019

Matthew J. Walsh, Mayor

ATTEST:

Jodi Quakenbush, City Clerk



Prepared by: Joseph Cuva, Office of Right of Way, 800 Lincoln Way, Ames, IA 50010, 515-239-1273
Return to: Joseph Cuva, Office of Right of Way, 800 Lincoln Way, Ames, IA 50010, 515-239-1273
Address Tax Statements: Tax Exempt-IA Code Sec. 427.1 (Prop Mgmt-ROW Office, IDOT, 800 Lincoln Way, Ames, IA 50010)

QUITCLAIM DEED (CORPORATE GRANTOR)

For the consideration of TWENTY-FOUR THOUSAND AND NO/100-----(\$24,000.00)-----
DOLLARS and other valuable consideration in hand paid by Iowa Department of
Transportation, the **CITY OF COUNCIL BLUFFS, IOWA**, a municipal corporation
organized and existing under the laws of the State of Iowa, does hereby convey to the
STATE OF IOWA, all its right, title, estate, claim and demand in the following described
real estate in Pottawattamie County, Iowa:

THE RIGHTS, TITLE, CLAIM, INTEREST, IF ANY, GRANTED IS TO LAND DESCRIBED AS FOLLOWS:

A parcel of land located in Government Lot 3, Government Lot 4 and
accretions in SW $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 33, T75N, R44W of the 5th P.M., City of
Council Bluffs, Pottawattamie County, Iowa, as shown on Acquisition Plat
Exhibit "A" attached hereto and by reference made a part hereof, said parcel
is more particularly described as follows:

Commencing at the NW Corner of Lot 25, Block 43, Brown's Subdivision in
the City of Council Bluffs, thence N88°28'37"W 105.30 feet along the
extended north line of said Lot 25 to the Point of Beginning; thence
S1°17'42"W 400.86 feet to the present north right of way line of Union Pacific
Railroad; thence N89°11'41"W 30.00 feet along said present north right of
way line to a point on the present easterly right of way line of Interstate
Route No. 29; thence N1°18'20"E 401.24 feet along said present easterly
right of way line to a point on the extended north line of said Lot 25; thence
S88°28'37"E 29.93 feet alone said extended north line to the Point of
Beginning, said parcel contain 12,016 sq. ft. or 0.28 acres.

This quitclaim deed, is given in fulfillment of a certain Purchase Agreement executed by the
grantor on _____, 20____, and signed by the grantee on _____,
20____, on file in the Office of Right of Way, Iowa Department of Transportation, 800
Lincoln Way, Ames, Iowa 50010, except for those terms that survive the execution of this
document.

The additional amount of \$400.00, as agreed to by the aforesaid Agreement, is paid as severance damages to the remaining property and is not subject to real estate transfer tax.

This land is being acquired for public purposes and a Declaration of Value is not required. Iowa Code Sec. 428A.1.

This deed and transfer are exempt from transfer tax as the grantor is a political subdivision of the State of Iowa. Iowa Code Sec. 428A.2(6).

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, according to the context.

Dated _____, 20__

CITY OF COUNCIL BLUFFS, IOWA

By: _____ (Sign in Ink)
Matt Walsh, Mayor

(AFFIX CORPORATE SEAL ABOVE) By: _____ (Sign in Ink)
Jodi Quakenbush, City Clerk

STATE OF _____, COUNTY OF _____, ss:

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quakenbush, 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 Council Bluffs, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted by the City Council, under Roll Call No. _____ of the City Council on the _____ day of _____, 20__, and that Matt Walsh and Jodi Quakenbush acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public. (Sign in Ink)

(AFFIX NOTARIAL SEAL ABOVE ▲)



IOWA DEPARTMENT OF TRANSPORTATION

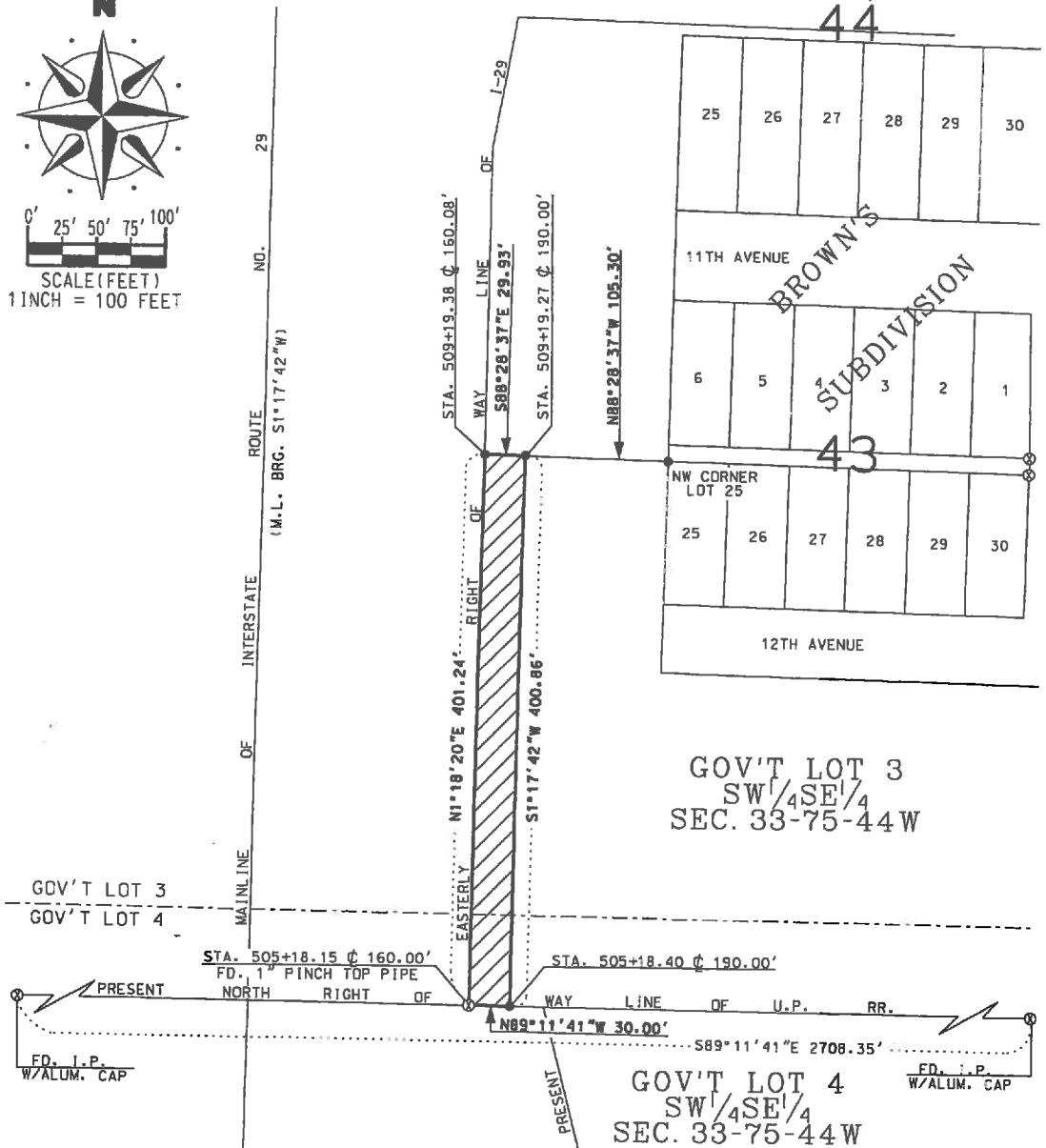
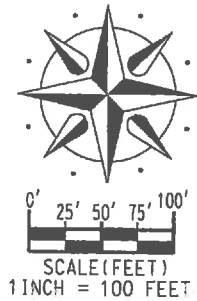
ACQUISITION PLAT

EXHIBIT "A"



COUNTY **POTTAWATTAMIE** STATE CONTROL NO. _____
PROJECT NO. **IMN-029-3(168)53--OE-78** PARCEL NO. **400**
SECTION **33** TOWNSHIP **75N** RANGE **44W**
ROW - FEE **12,016** SQ. FT. _____ ACRES, QUIT CLAIM _____ AC
ACQUIRED ACCESS RIGHTS FROM STA. _____ TO STA. _____ MAIN LINE _____ SIDE
ACQUIRED ACCESS RIGHTS FROM STA. _____ TO STA. _____ SIDE ROAD _____ SIDE
ACQUIRED FROM _____
CONVEY TO _____

CITY OF COUNCIL BLUFFS, IOWA



LEGEND	
● SET 3/8" IRON PINW/CAP # 15482	
⊙ FOUND LOT CORNER	
○ CALCULATED POINT	
▲ FOUND SECTION CORNER	
△ SET SECTION CORNER	
(R) RECORD DISTANCE	
(M) MEASURE DISTANCE	

	I hereby certify that this land surveying document was prepared by me and the related survey work was performed by me or under my direct supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.	
	<i>William J. Fox</i> 1-4-18 WILLIAM J. FOX Date	
	License number <u>15482</u>	
	Pages covered by this seal <u>1</u>	

My License Renewal date is December 31, 2019

Council Communication

Department: Community
Development
Case/Project No.: OTB-19-023
Submitted by: Moises Monrroy,
Planner

Resolution 19-211
ITEM 4.D.

Council Action: 9/9/2019

Description

Resolution to vacate and dispose of Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent. Location: Formerly addressed as 1827 3rd Avenue. OTB-19-023

Background/Discussion

See attachments

Recommendation

ATTACHMENTS:

Description	Type	Upload Date
OTB-19-023 Staff Report	Other	8/30/2019
OTB-19-023 Attachment A	Map	8/30/2019
Resolution 19-211	Resolution	9/4/2019

Council Communication

Department: Community Development CASE #OTB-19-023 Applicant: Anne and Danny Starr 2004 30 th Avenue Council Bluffs, IA 51501	Resolution of Intent No. _____ Resolution to Dispose No. _____	Set Public Hearing: 8/26/2019 Public Hearing: 9/9/2019												
Subject/Title Request of Anne and Danny Starr to purchase property described as Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa. The property was formerly addressed as 1827 3 rd Avenue.														
Background/Discussion <p>The City has received an offer to purchase the property described above. The property is classified as 'transitional dispose' and 'buildable'. The applicants wish to acquire the lot to place a modular/prefabricated home that will sit on a slab foundation. According to the adopted policy of April 23, 2018, the property should be priced at the most recent assessed value, which on this property is \$11,666.00. The applicants have offered the full amount of the assessed value to purchase the property and have submitted a \$1,166.60 down payment.</p> <p>The following costs have been incurred on this property:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Permits and Inspections Division:</td> <td style="width: 30%;">\$ 22,076.00 – Demolition</td> </tr> <tr> <td>Permits and Inspections Division:</td> <td>\$ 980.00 – Board-Up</td> </tr> <tr> <td>Permits and Inspections Division:</td> <td>\$ 235.00 – Petition Charges</td> </tr> <tr> <td>Permits and Inspections Division:</td> <td>\$ 150.00 – Title Search</td> </tr> <tr> <td>Permits and Inspections Division:</td> <td>\$ 90.00 – Change of Title/Court Recorder</td> </tr> <tr> <td>Total</td> <td>\$ 23,531.00</td> </tr> </table> <p>The subject property is 60 feet wide by 125 feet deep, and is 7,500 square feet in size, which exceeds all Site Development standards for a property located in the R-2/Two-Family Residential District. The property is large enough to accommodate a residential dwelling, as the applicant has proposed. The applicant has not submitted any plans for the proposed modular/prefabricated home. As per Section 15.03.230 of the Council Bluffs Municipal Code (Zoning Ordinance), a detached single-family dwelling is defined as an “independent building designed or constructed to contain one dwelling unit which is located on one lot, with no physical or structural connection to any other dwelling unit,” with “a floor area of not less than five hundred (500) square feet and a minimum width of not less than twenty (20) feet.” The proposed modular/prefabricated home must be designed to meet the definition of a detached single-family dwelling in order to be placed on the subject property. The property is located in the AH Flood Zone, meaning any new construction must comply with the flood hazard regulations of that zone.</p>			Permits and Inspections Division:	\$ 22,076.00 – Demolition	Permits and Inspections Division:	\$ 980.00 – Board-Up	Permits and Inspections Division:	\$ 235.00 – Petition Charges	Permits and Inspections Division:	\$ 150.00 – Title Search	Permits and Inspections Division:	\$ 90.00 – Change of Title/Court Recorder	Total	\$ 23,531.00
Permits and Inspections Division:	\$ 22,076.00 – Demolition													
Permits and Inspections Division:	\$ 980.00 – Board-Up													
Permits and Inspections Division:	\$ 235.00 – Petition Charges													
Permits and Inspections Division:	\$ 150.00 – Title Search													
Permits and Inspections Division:	\$ 90.00 – Change of Title/Court Recorder													
Total	\$ 23,531.00													
Recommendation <p>The Community Development Department recommends disposing of the property legally described as Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa, for the purchase price of \$11,666.00, which is the most recently assessed value, subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The applicants shall have 60 days from the date of approval to pay the remaining fee to purchase the parcel, a total of \$10,499.40. 														

2. The modular/prefabricated home proposed to be installed on the subject property shall meet the minimum size requirements of a detached single-family dwelling, as defined by Section 15.03.230 of the Council Bluffs Municipal Code (Zoning Ordinance).

Attachment

Attachment A: Location map

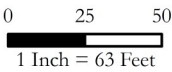
Prepared by: Moises Monrroy, Planner, Community Development Department

CASE OTB-19-023



Council Bluffs Community
Development Department
209 Pearl Street
Council Bluffs, IA 51503
Telephone: (712) 328.4629

DISCLAIMER
This map is prepared and compiled from City documents, plans and other public records data. Users of this map are hereby notified that the City expressly denies any and all responsibilities for errors, if any, in the information contained on this map, the inaccuracy of the same by the user or anyone else. The user should verify the accuracy of information/data contained on this map before using it. The City assumes no legal responsibility for the information contained on this map.



144
Last Amended: 8/13/19



Return to: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503 – Phone: (712) 890-5261
Prepared by: Community Development Dept., Council Bluffs, IA 51503 – Phone: (712) 328-4629

RESOLUTION NO. 19-211

A RESOLUTION TO DISPOSE OF CITY PROPERTY DESCRIBED AS LOT 1, BLOCK 11, EVERETT'S ADDITION, AND THE NORTH ½ OF THE VACATED ALLEY ADJACENT, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, the City has previously expressed its intent to dispose of owned property described as Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa; and

WHEREAS, a public hearing has been held in this matter on September 9, 2019 at 7:00 pm.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the Mayor and City Clerk hereby authorized, empowered and directed to execute a quit claim deed conveying the City's interest in the above-described property as follows:

Anne and Dany Starr and all successors in interest: Lot 1, Block 11, Everett's Addition, and the North ½ of the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa; and

BE IT FURTHER RESOLVED

That the purchase price be \$11,666.00 cash due at closing and the property closing must occur within 60 days of the date of approval.

BE IT FURTHER RESOLVED

That the modular/prefabricated home proposed to be installed on the subject property shall meet the minimum size requirements of a detached single-family dwelling, as defined by Section 15.03.230 of the Council Bluffs Municipal Code (Zoning Ordinance).

Resolution # _____

Page 2 of 2

ADOPTED
AND
APPROVED:

September 9, 2019

Matthew J. Walsh Mayor

ATTEST: _____
Jodi Quakenbush City Clerk

Council Communication

Department: Community
Development
Case/Project No.: OTB-19-024
Submitted by: Chris Meeks,
Planner

Resolution 19-212
ITEM 4.E.

Council Action: 9/9/2019

Description

Resolution to vacate and dispose of property described as Lot 2, River Road Subdivision. Location: North of 2849 River Road. OTB-19-024

Background/Discussion

See attachments.

Recommendation

ATTACHMENTS:

Description	Type	Upload Date
OTB-19-024 Staff Report	Other	8/30/2019
OTB-19-024 Attachment A	Map	8/30/2019
OTB-19-024 Attachment B	Other	8/30/2019
Resolution 19-212	Resolution	9/4/2019

Council Communication

Department: Community Development CASE #OTB-19-024 Applicant: Warren Distribution Attn: Chuck Downey 950 S. 10 th Street, Suite 300 Omaha, NE 68108-3296	Resolution to Dispose No. _____	Public Hearing: 9/9/2019
Subject/Title Request of Warren Distribution, represented by Chuck Downey, to purchase property described as Lot 2, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa. The property is located North of 2849 River Road.		
Background/Discussion <p>The City has received an offer to purchase the property described above. The property is classified as ‘transitional Preserve’ and ‘buildable’, though the City Council agreed to review the sale of the property to Warren Distribution and the OPUS Group at their March 11, 2019 City Council Meeting. The applicant has requested to purchase this lot so that they can obtain ownership of the land they are currently leasing from the City for truck parking, and to have additional land area available for a future warehouse expansion, should the need arise. The applicant has submitted a down payment of \$26,100.00 to purchase the property.</p> <p>As is stated in the adopted Inventory and Disposal Policy for Surplus City Policy, the property should be valued at the last assessed value, or last appraised value if one is available. The subject property is part of the River Road Subdivision, which is comprised of 48.479 acres of industrial zoned land. In February 2017, the City received an appraisal of the property from Mitchell & Associates, Inc., which estimated the entire subdivision to be valued at \$2,630,000.00 (or \$1.25 square foot). The applicant has submitted an offer of \$261,000.00 (or 0.67 cents/square foot) for the subject nine acres. This offer was received after discussions were held between the applicant, Community Development Department, Legal Department, and Advance Southwest Iowa on the size and existing conditions (e.g., easements and potential wetlands) of the subject nine acres, as well as, their intent to use to it for truck parking. All parties involved this conversation agreed that \$261,000.00 was a fair offer after taking into consideration the development challenges on lot, even though it was less than the \$1.25 per square foot quoted in the appraisal.</p> <p>With the sale of this property to Warren Distribution, the City intends to transfer their share of the ongoing levee maintenance costs in a manner that is equitable to the size of property being purchased. Based on the configuration of the River Road subdivision, the future owner of Lot 1, River Road Subdivision (39.479 acres) will be responsible for 13.1819% of the levee maintenance cost; and Warren Distribution, as the owner of Lot 2, River Road Subdivision (9.0 acres) will responsible for 3.006% of the maintenance costs.</p>		

Additionally, the final plat of the River Road Subdivision (Resolution #19-203) included a condition that the purchasing entity submit a payment to the City of Council Bluffs in lieu of constructing a sidewalk that would normally be required at the time of development of the parcel. The total cost of extending a 4-foot wide sidewalk along the frontage of Lots 1 and 2, River Road Subdivision is \$51,444.00, with Warren Distribution's share with the purchase of Lot 2, River Road Subdivision being \$8,184.27. In accepting a fee from each property owner, the City will have greater flexibility to install a wider bike trail than what is required by ordinance, while accepting the higher cost per linear foot of a wider bike trail. Warren Distribution shall pay for their portion of said sidewalk at the time of closing of the property.

Recommendation

The Community Development Department recommends disposing of the property described as Lot 2, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, for the purchase price of \$261,000.00, subject to the following conditions:

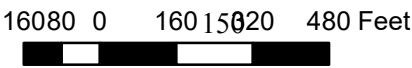
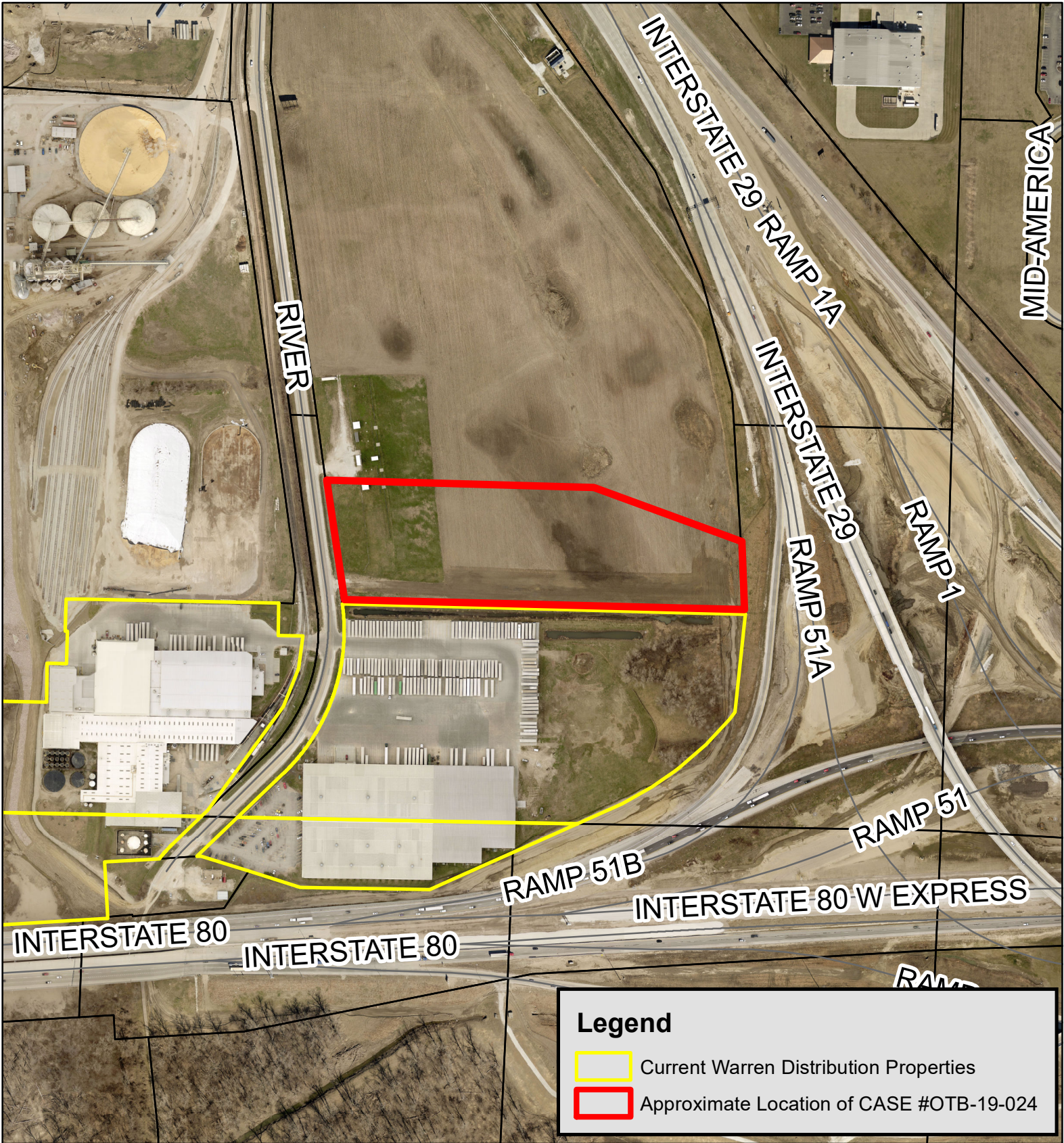
1. The applicant shall have 60 days from the date of approval to pay the remaining fee to purchase the property, a total of \$234,900.00.
2. Upon taking ownership of the parcel, Warren Distribution will be responsible for the increased levee maintenance costs, an addition of 3.006% of the total costs.
3. Warren Distribution shall submit a fee of \$8,184.27 for the improvement of the bike trail network along River Road in lieu of installing a sidewalk. The fee shall be due at the time of closing on the subject property.

Attachment A: Case Map

Attachment B: River Road Subdivision Final Plat (Page 2)

Prepared By: Chris Meeks, Planner, Community Development Department

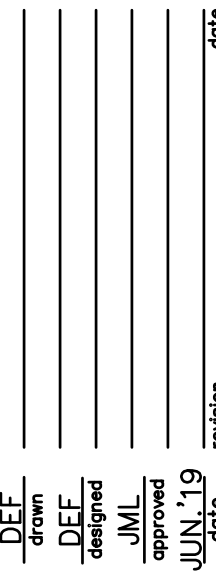
CASE #OTB-19-024



this drawing is being made available by hgm associates inc. for use on this project in accordance with hgm associates inc. agreement for professional services. hgm associates inc. assumes no liability for any use of this drawing or any part thereof except in accordance with the terms of the above agreement.

hgm

A S S O C I A T E S I N C .
ENGINEERING ARCHITECTURE SURVEYING



4-44
WA 51503

- ON
NS THERETO 04-7
L BLUFFS, IO
S, IOWA 51502

RIVER ROAD SUBDIVISION
GOV. LOTS 2, 3 AND 4 AND ACCRETION

209 PEARL STREET, COUNCIL
149 WEST BROADWAY, COUNCIL BLUFFS

project no.
150719
sheet
2 OF 2

project no.
150719
sheet
2 OF 2



Return to: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503 - Phone: (712) 890-5261
Prepared by: Community Development Dept., Council Bluffs, IA 51503 – Phone: (712) 328-4629

RESOLUTION NO. 19-212

A RESOLUTION TO DISPOSE OF CITY PROPERTY DESCRIBED LOT 2, RIVER ROAD SUBDIVISION, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, the City has previously expressed its intent to dispose of owned property described as Lot 2, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa; and

WHEREAS, a public hearing has been held in this matter on September 9, 2019 at 7:00 p.m.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the Mayor and City Clerk be and are hereby authorized, empowered and directed to execute a quit claim deed conveying the City's interest in the above-described property as follows:

Warren Distribution, and all successors in interest: Lot 2, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa; and

BE IT FURTHER RESOLVED

That the purchase price be \$261,000.00, with costs beyond the \$26,100.00 down payment due at closing. Closing and the property closing must occur within 60 days of the date of approval.

BE IT FURTHER RESOLVED

Upon taking ownership of the parcel, Warren Distribution will be responsible for the increased levee maintenance costs, an addition of 3.006% of the total costs.

BE IT FURTHER RESOLVED

Warren Distribution shall submit a fee of \$8,184.27 for the improvement of the bike trail network along River Road in lieu of installing a sidewalk. The fee shall be due at the time of closing on the subject property.

ADOPTED
AND
APPROVED:

September 9, 2019.

Matthew J. Walsh Mayor

ATTEST: _____
Jodi Quakenbush City Clerk

Council Communication

Department: City Clerk
Case/Project No.:
Submitted by: Legal Dept.

Ordinance 6401
ITEM 5.A.

Council Action: 9/9/2019

Description

An Ordinance to amend Title 5, Public Safety and Morals of the 2015 Municipal Code of Council Bluffs, Iowa, by amending Section 8.85.026 "Providing Alcohol to Minor".

Background/Discussion

It has come to our attention that Iowa Code Section 123.47 indicates that persons of all ages are prohibited from selling, giving or otherwise supplying alcohol to minors. In order to remain consistent with the the Iowa Code, we've removed the age requirement from Section 8.85.026.

Recommendation

It is my recommendation that this Ordinance be adopted.

ATTACHMENTS:

Description	Type	Upload Date
Ordinance with amendments highlighted	Other	8/16/2019
Ordinance 6401	Ordinance	8/20/2019

ORDINANCE NO. _____

AN ORDINANCE TO AMEND TITLE 8, PUBLIC SAFETY AND MORALS OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING SECTION 8.85.026 “PROVIDING ALCOHOL TO MINORS”.

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Title 5, Public Safety and Morals of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended by amending Section 8.85.026 “Providing Alcohol to Minor” to read as follows:

8.85.026-Providing alcohol to minor.

- (a) No person shall sell, give or otherwise supply alcoholic liquor, wine or beer to any person knowing or having reasonable cause to believe that person to be under the legal age. No person shall allow, permit, or tolerate any other person, knowing or having reasonable cause to believe him or her to be under the legal age, to possess (individually or jointly), consume, or drink alcoholic liquor, wine or beer on premises or property, either real or personal, owned, leased, rented, inhabited, or otherwise controlled by such person.
- (b) Exception. It is not illegal for alcoholic liquor, wine, or beer to be given to, possessed or consumed by a person under the legal age, provided it is within a private residence and with the knowledge, presence and consent of the minor's parent or guardian. Further, a person under legal age may handle alcoholic beverages, wine and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee, under the laws of the state of Iowa or the ordinances of the city of Council Bluffs.
- (c) Prompt notification of law enforcement officials, and prior to the arrival of law enforcement officers, of the occurrence of a person under legal age possessing, consuming, or drinking alcoholic liquor, wine, or beer on the premises or property owned, leased, rented, inhabited, or otherwise controlled by him or her shall be sufficient to show lack of authorization or permission.
- (d) A person who violates any provision of this section shall be guilty of a simple misdemeanor. Each minor who is sold, given, provided, permitted, allowed or tolerated to possess, consume, or drink alcoholic liquor, wine, or beer shall constitute a separate offense.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from

said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND _____, 2019.
APPROVED

MATTHEW J. WALSH Mayor

Attest:

JODI QUAKENBUSH City Clerk

First Consideration: _____
Second Consideration: _____
Public Hearing: _____
Third Consideration: _____

ORDINANCE NO. 6401

AN ORDINANCE TO AMEND TITLE 8, PUBLIC SAFETY AND MORALS OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING SECTION 8.85.026 “PROVIDING ALCOHOL TO MINORS”.

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Title 5, Public Safety and Morals of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended by amending Section 8.85.026 “Providing Alcohol to Minor” to read as follows:

8.85.026-Providing alcohol to minor.

- (a) No person shall sell, give or otherwise supply alcoholic liquor, wine or beer to any person knowing or having reasonable cause to believe that person to be under the legal age. No person shall allow, permit, or tolerate any other person, knowing or having reasonable cause to believe him or her to be under the legal age, to possess (individually or jointly), consume, or drink alcoholic liquor, wine or beer on premises or property, either real or personal, owned, leased, rented, inhabited, or otherwise controlled by such person.
- (b) Exception. It is not illegal for alcoholic liquor, wine, or beer to be given to, possessed or consumed by a person under the legal age, provided it is within a private residence and with the knowledge, presence and consent of the minor's parent or guardian. Further, a person under legal age may handle alcoholic beverages, wine and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee, under the laws of the state of Iowa or the ordinances of the city of Council Bluffs.
- (c) Prompt notification of law enforcement officials, and prior to the arrival of law enforcement officers, of the occurrence of a person under legal age possessing, consuming, or drinking alcoholic liquor, wine, or beer on the premises or property owned, leased, rented, inhabited, or otherwise controlled by him or her shall be sufficient to show lack of authorization or permission.
- (d) A person who violates any provision of this section shall be guilty of a simple misdemeanor. Each minor who is sold, given, provided, permitted, allowed or tolerated to possess, consume, or drink alcoholic liquor, wine, or beer shall constitute a separate offense.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said

unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest:

JODI QUAKENBUSH

City Clerk

First Consideration: 8-26-19
Second Consideration: 9-9-19
Public Hearing: N/A
Third Consideration: _____

Council Communication

Department: Legal
Case/Project No.:
Submitted by: Legal Department

Resolution 19-213
ITEM 6.A.

Council Action: 9/9/2019

Description

Resolution authorizing the mayor to execute and accept the deed of dedication for right-a-way purposes from the Edward L. and Frances M. Morris Trust.

Background/Discussion

The Trust is dedicating this currently private road to the City to help facilitate development on the surrounding properties.

Recommendation

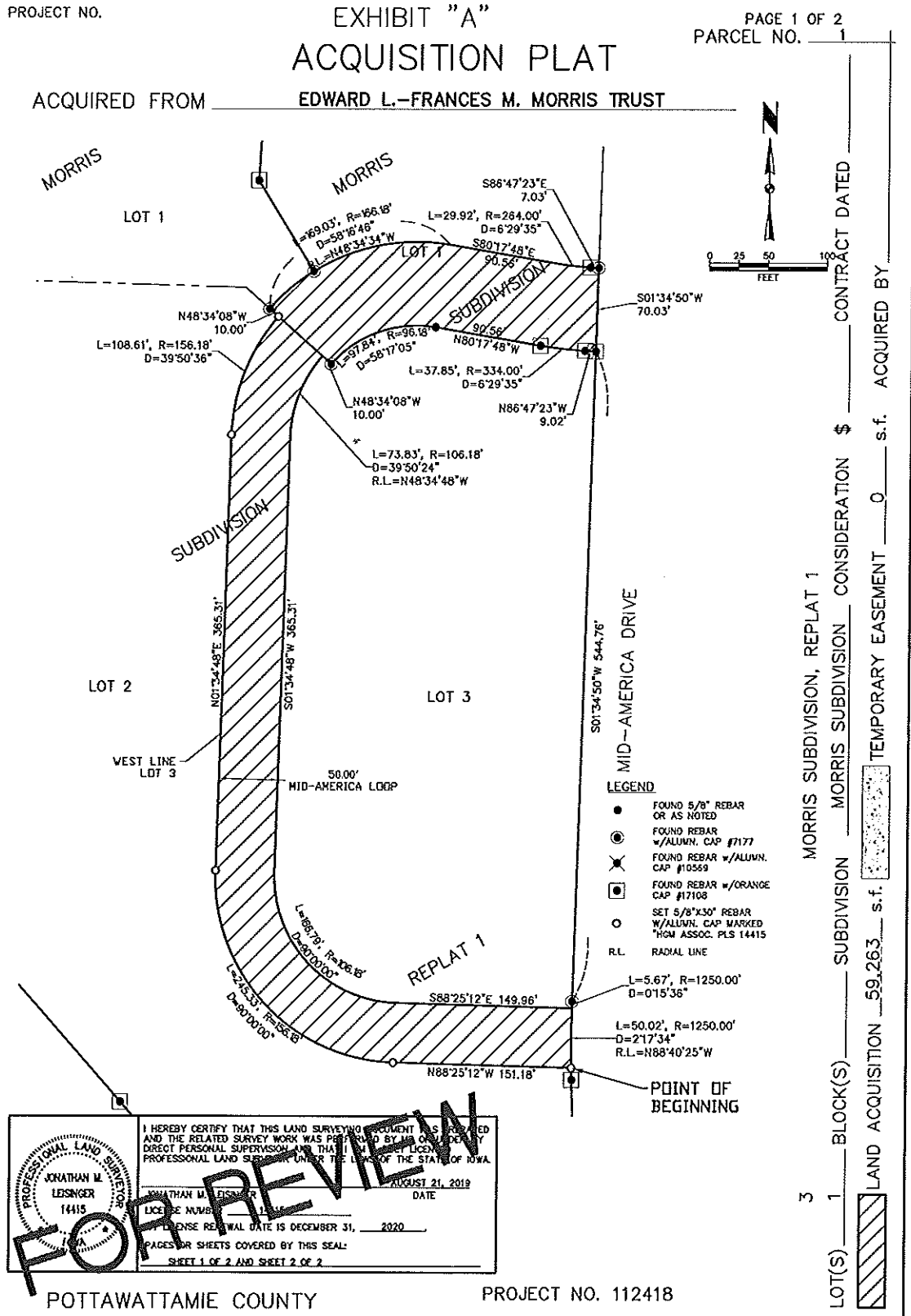
Approval of this Resolution.

ATTACHMENTS:

Description	Type	Upload Date
Exhibit A-Acquisition Plat	Legal Description	8/29/2019
Deed	Other	8/29/2019
Resolution 19-213	Resolution	9/4/2019

RECORDER'S INDEX	
LOT: 1 - MORRIS SUB. ; LOT 3 - MORRIS SUB., REPLAT 1	
BLOCK:	
SUBDIVISION: MORRIS SUBDIVISION	
MORRIS SUBDIVISION, REPLAT 1	
CITY: COUNCIL BLUFFS	
COUNTY: POTTAWATTAMIE	
PROPRIETOR: EDWARD L.-FRANCES M. MORRIS TRUST	
REQUESTED BY: COUNCIL BLUFFS INDUSTRIAL FOUNDATION	
DATE OF FIELD SURVEY: NOVEMBER 21, 2018	

PREPARED BY: JONATHAN M. LEISINGER, P.L.S., HGM ASSOCIATES INC., 840 5th AVE., COUNCIL BLUFFS, IOWA 51502 (712)323-0530



S:\Survey\Drafting\112418_CBF Indoor Soccer\Engineering\Draws\Survey\112418_MidAm-Loop.dwg

EXHIBIT "A"
ACQUISITION PLAT

ACQUIRED FROM EDWARD L.-FRANCES M. MORRIS TRUST

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOT 1, MORRIS SUBDIVISION AND A PORTION OF LOT 3, MORRIS SUBDIVISION, REPLAT 1, ALL IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3;

THENCE ON THE BOUNDARY OF SAID LOT 3 THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 88 DEGREES 25 MINUTES 12 SECONDS WEST, 151.18 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY HAVING A RADIUS OF 156.18 FEET;
- 2) NORTHWESTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, 245.33 FEET;
- 3) NORTH 01 DEGREE 34 MINUTES 48 SECONDS EAST, 365.31 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY HAVING A RADIUS OF 156.18 FEET;
- 4) NORTHERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 39 DEGREES 50 MINUTES 36 SECONDS, 108.61 FEET TO A POINT ON A WESTERLY LINE OF SAID LOT 1;

THENCE ON SAID WESTERLY LINE, NORTH 48 DEGREES 34 MINUTES 08 SECONDS WEST, 10.00 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY TO WHICH POINT A RADIAL LINE BEARS NORTH 48 DEGREES 34 MINUTES 34 SECONDS WEST, 166.18 FEET;

THENCE NORTHEASTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 58 DEGREES 16 MINUTES 48 SECONDS WEST, 169.03 FEET;

THENCE SOUTH 80 DEGREES 17 MINUTES 48 SECONDS EAST, 90.56 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHERLY HAVING A RADIUS OF 264.00 FEET;

THENCE EASTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 06 DEGREES 29 MINUTES 35 SECONDS, 29.92 FEET;

THENCE SOUTH 86 DEGREES 47 MINUTES 23 SECONDS EAST, 7.03 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1;

THENCE ON SAID EAST LINE, SOUTH 01 DEGREE 34 MINUTES 50 SECONDS WEST, 70.03 FEET TO THE NORTHEAST CORNER OF SAID LOT 3;

THENCE ON THE BOUNDARY OF SAID LOT 3 THE FOLLOWING FIVE (5) COURSES:

- 1) NORTH 86 DEGREES 47 MINUTES 23 SECONDS WEST, 9.02 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHERLY HAVING A RADIUS OF 334.00 FEET;
- 2) WESTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 06 DEGREES 29 MINUTES 35 SECONDS, 37.85 FEET;
- 3) NORTH 80 DEGREES 17 MINUTES 48 SECONDS WEST, 90.56 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 96.18 FEET;
- 4) SOUTHWESTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 58 DEGREES 17 MINUTES 05 SECONDS, 97.84 FEET;
- 5) NORTH 48 DEGREES 34 MINUTES 08 SECONDS WEST, 10.00 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY TO WHICH POINT A RADIAL LINE BEARS NORTH 48 DEGREES 34 MINUTES 48 SECONDS WEST, 106.18 FEET;

THENCE SOUTHWESTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 39 DEGREES 50 MINUTES 24 SECONDS, 73.83 FEET;

THENCE SOUTH 01 DEGREE 34 MINUTES 48 SECONDS WEST, 365.31 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY HAVING A RADIUS OF 106.18 FEET;

THENCE SOUTHEASTERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, 166.79 FEET;

THENCE SOUTH 88 DEGREES 25 MINUTES 12 SECONDS EAST, 149.96 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3, SAID POINT ALSO BEING ON A NON-TANGENT CURVE CONCAVE EASTERLY TO WHICH POINT A RADIAL LINE BEARS NORTH 88 DEGREES 40 MINUTES 25 SECONDS WEST, 1250.00 FEET;

THENCE ON SAID EAST LINE AND SOUTHERLY ON SAID CURVE THROUGH A CENTRAL ANGLE OF 02 DEGREES 17 MINUTES 34 SECONDS, 50.02 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 59,263 s.f.(1.360 ACRES), MORE OR LESS.

FOR REVIEW

Prepared by: City Legal Dept., 209 Pearl Street, Co. Bluffs, Iowa 51503-Phone: (712) 890-5317
Return to: City Legal Dept., 209 Pearl Street, Co. Bluffs, Iowa 51503-Phone: (712) 890-5317

DEED OF DEDICATION FOR RIGHT-OF-WAY PURPOSES

KNOW ALL BY THESE PRESENTS, THAT the Edward L. and Frances M. Morris Trust hereinafter called the GRANTOR, does hereby grant unto the City of Council Bluffs, Iowa, hereinafter called the CITY, its successors in interest and assigns, all the following real property in the County of Pottawattamie County, State of Iowa, to be used and held by the CITY for street, road, right-of-way, and public utility purposes, bounded and described as follows, to wit:

See attached EXHIBIT "A" Legal description

TO HAVE AND TO HOLD, the above described and granted premises unto the said CITY, its successors in interest and assigns forever.

The true consideration of this conveyance is for other value given, the receipt of which is hereby acknowledged by GRANTOR.

And the GRANTOR above named hereby covenants to and with the CITY, and the CITY's successors in interest and assigns that GRANTOR is lawfully seized in fee simple of the above named premises, free from all encumbrances (no exceptions) and that GRANTOR and their heirs and personal representatives shall warrant and forever defend the said premises against the lawful claims and demands of all persons claiming by, through, or under the GRANTOR.

This deed of dedication is executed under and by virtue of the authority vested in the Mayor of Council Bluffs, Iowa, by Resolution No. 19-_____ dated September ____, 2019, under the provisions of which and in accordance herewith this deed is executed and delivered.

IN WITNESS WHEREOF, the City of Council Bluffs, Iowa, has caused these presents to be signed by its Mayor and the seal of said City duly attested by the City Clerk hereunto affixed this _____ day of September, 2019.

Edward L. Morris

Frances M. Morris

STATE OF IOWA)
COUNTY OF) ss.
POTTAWATTAMIE)

This record was acknowledged before me on the _____ day of September, 2019 by Edward L. Morris and Frances M. Morris.

Notary Public in and for said State

CITY OF COUNCIL BLUFFS, IOWA

By: MATTHEW J. WALSH Mayor

Attest: JODI QUAKENBUSH City Clerk

STATE OF IOWA)
COUNTY OF) ss.
POTTAWATTAMIE)

On this _____ day of September, 2019, before me the undersigned, a Notary Public in and for said County and State, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the said City of Council Bluffs, Iowa, a municipal corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Matthew J. Walsh and Jodi Quakenbush, as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

RESOLUTION NO. 19-213

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AND ACCEPT THE DEED OF DEDICATION FOR RIGHT-OF-WAY PURPOSES FROM THE EDWARD L. AND FRANCES M. MORRIS TRUST.

WHEREAS, the Edward L. and Frances M. Trust by its authorized representatives, have provided a Deed of Dedication for Right-of-Way purposes for the subject property; and

WHEREAS, the subject property is shown on Exhibit “A” attached hereto; and

WHEREAS, it is in the best interest of the City of Council Bluffs to execute and accept this Deed of Dedication.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the Mayor is hereby authorized to accept and execute the Deed of Dedication for Right-of-Way Purposes from the Edward L. and Frances M. Morris Trust legally described on Exhibit A.

ADOPTED
AND
APPROVED

September 9, 2019.

MATTHEW J. WALSH

Mayor

Attest:

JODI QUAKENBUSH

City Clerk

Council Communication

Department: Finance
Case/Project No.:
Submitted by: Danielle Bemis

Resolution 19-214
ITEM 6.B.

Council Action: 9/9/2019

Description

Resolution certifying the FY2019 Water, Sewer, and Refuse collection lien schedule for nonpayment to the County Treasurer to be assessed against the owner's property.

Background/Discussion

Per the Code of Iowa and City Ordinance, a resolution has been prepared authorizing the Pottawattamie County Treasurer to certify an amount of approximately **\$269,793.05** as liens against various properties serviced by the city refuse collections service, an amount of approximately **\$4,657.00** as liens against various properties serviced by the sewer system, and an amount of approximately **\$7,501.00** as liens against various properties serviced by the water system. All accounts to be liened are in excess of sixty days delinquent. Any payments made on a delinquent account prior to the time of delivery to the County Treasurer will be adjusted accordingly. The Landlord Agreement Report is included for Council review.

Recommendation

The City Treasurer apply liens for unpaid garbage, sewer, and water on the appropriate accounts.

ATTACHMENTS:

Description	Type	Upload Date
LLA Past Due as of 8-30-2019	Resolution	8/30/2019
Resolution 19-214	Resolution	9/4/2019

City of Council Bluffs

LLA Balances through Bill Date 4/1/2019

Owner Number	Customer Address	Landlord Name	Days Past Due			Total Past Due Amount
			Current Past Due	91 To 120 Days Past Due	Over 120 Days Past Due	
19216	805 1ST AVE	J S P REAL ESTATE LLC	\$20.00	\$0.00	\$0.00	\$20.00
19216	1028 5TH AVE UPPR	J S P REAL ESTATE LLC	\$74.00	\$0.00	\$148.00	\$222.00
19216	1028 5TH AVE DOWN	J S P REAL ESTATE LLC	\$148.00	\$0.00	\$148.00	\$296.00
19655	2005 AVENUE F	ARNDT, VANESSA	\$0.00	\$0.00	\$148.00	\$148.00
19655	2003 AVENUE F	ARNDT, VANESSA	\$108.00	\$0.00	\$54.00	\$162.00
21751	243 15TH AVE	LAMMERT, JORDAN T-ALEXANDRA C	\$148.00	\$0.00	\$20.00	\$168.00
27673	125 HUNTER AVE	LIMMER, CARLA	\$0.00	\$0.00	\$502.40	\$502.40
27673	508 N 9TH ST	LIMMER, CARLA	\$148.00	\$0.00	\$574.00	\$722.00
27673	912 AVENUE I	LIMMER, CARLA	\$0.00	\$0.00	\$94.00	\$94.00
27673	904 AVENUE I	LIMMER, CARLA	\$148.00	\$0.00	\$567.00	\$715.00
27673	2025 AVENUE B	LIMMER, CARLA	\$148.00	\$0.00	\$515.00	\$663.00
27673	1302 AVENUE B	LIMMER, CARLA	\$74.00	\$0.00	\$0.00	\$74.00
27673	3013 AVENUE K	LIMMER, CARLA	\$0.00	\$0.00	\$350.00	\$350.00
106882	912 AVENUE I	LIMMER, CARLA M TRUST	\$0.00	\$0.00	\$74.00	\$74.00
400386	2735 MCBRIDE AVE	PEACOCK VILLAS LLC	\$148.00	\$0.00	\$0.00	\$148.00
400525	1528 AVENUE A	R C R PROPERTIES LLC	\$0.00	\$0.00	\$370.00	\$370.00
400525	2126 7TH AVE	R C R PROPERTIES LLC	\$148.00	\$0.00	\$814.00	\$962.00
400525	923 AVENUE D	R C R PROPERTIES LLC	\$148.00	\$0.00	\$942.00	\$1,090.00
400527	3507 1/2 7TH AVE	MCCONNELL, CRAIG A-TINA M	\$0.00	\$0.00	\$128.00	\$128.00
400596	2132 AVENUE B	RICHARDS, RANDY	\$148.00	\$0.00	\$460.00	\$608.00
400596	3028 AVENUE B	RICHARDS, RANDY	\$148.00	\$0.00	\$444.00	\$592.00
400596	2534 AVENUE B	RICHARDS, RANDY	\$92.00	\$0.00	\$498.00	\$590.00
400596	2541 AVENUE E	RICHARDS, RANDY	\$148.00	\$0.00	\$518.00	\$666.00
400596	3238 6TH AVE	RICHARDS, RANDY	\$148.00	\$0.00	\$296.00	\$444.00
400596	3307 9TH AVE	RICHARDS, RANDY	\$148.00	\$0.00	\$834.00	\$982.00
400601	602 N 17TH ST	MAC INVESTMENTS INC	\$0.00	\$0.00	\$38.00	\$38.00
400601	721 STUTSMAN ST	MAC INVESTMENTS INC	\$0.00	\$0.00	\$128.00	\$128.00
400694	101 FRANK ST APT B	PHILLIPS, ANTHONY W-PENNY S	\$0.00	\$0.00	\$18.00	\$18.00
400702	328 LINCOLN AVE	R C R ENTERPRISES INC	\$0.00	\$0.00	\$148.00	\$148.00
400702	324 LINCOLN AVE	R C R ENTERPRISES INC	\$0.00	\$0.00	\$294.00	\$294.00
400702	328 1/2 LINCOLN AVE	R C R ENTERPRISES INC	\$0.00	\$0.00	\$868.00	\$868.00
400786	1211 PLEASANT ST	LAUBENTHAL, NICHOLAS JAMES	\$148.00	\$0.00	\$0.00	\$148.00
400882	2702 7TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$518.00	\$666.00
400883	1731 7TH AVE	LIMMER, MICHAEL K TRUST	\$0.00	\$0.00	\$684.00	\$684.00
400883	1735 7TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$814.00	\$962.00
400883	1614 7TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$18.00	\$166.00
400883	2534 6TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$148.00	\$296.00
400883	2532 6TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$740.00	\$888.00
400883	1030 5TH AVE	LIMMER, MICHAEL K TRUST	\$74.00	\$0.00	\$0.00	\$74.00
400883	2324 3RD AVE	LIMMER, MICHAEL K TRUST	\$74.00	\$0.00	\$666.00	\$740.00
400883	827 16TH AVE	LIMMER, MICHAEL K TRUST	\$0.00	\$0.00	\$592.00	\$592.00
400883	1612 7TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$356.00	\$504.00

City of Council Bluffs

LLA Balances through Bill Date 4/1/2019

Owner Number	Customer Address	Landlord Name	Days Past Due			Total Past Due Amount
			Current Past Due	91 To 120 Days Past Due	Over 120 Days Past Due	
400883	3113 12TH AVE	LIMMER, MICHAEL K TRUST	\$148.00	\$0.00	\$54.00	\$202.00
400908	2610 AVENUE B	COATS REALTY LLC	\$148.00	\$0.00	\$148.00	\$296.00
400908	3422 AVENUE E	COATS REALTY LLC	\$0.00	\$0.00	\$168.00	\$168.00
400908	500 E PIERCE ST	COATS REALTY LLC	\$101.00	\$0.00	\$444.00	\$545.00
400908	1108 8TH AVE	COATS REALTY LLC	\$74.00	\$0.00	\$868.00	\$942.00
400908	1006 5TH AVE	COATS REALTY LLC	\$0.00	\$0.00	\$18.00	\$18.00
400908	1019 5TH AVE	COATS REALTY LLC	\$148.00	\$0.00	\$68.00	\$216.00
400908	3514 5TH AVE	COATS REALTY LLC	\$148.00	\$0.00	\$518.00	\$666.00
400908	1920 7TH AVE	COATS REALTY LLC	\$148.00	\$0.00	\$278.00	\$426.00
400908	710 25TH AVE	COATS REALTY LLC	\$148.00	\$0.00	\$323.00	\$471.00
401274	2010 6TH AVE	L T STANDING LTD	\$0.00	\$0.00	\$220.00	\$220.00
402872	1412 S 7TH ST	ROSTERMUNDT, KENNETH J-VIVIAN A TRUSTS	\$74.00	\$0.00	\$0.00	\$74.00
402884	128 VINE ST	ROSTERMUNDT, STEPHANIE	\$74.00	\$0.00	\$0.00	\$74.00
402970	518 DAMON ST	HUNTER, ROBERT G	\$148.00	\$0.00	\$814.00	\$962.00
403374	2203 AVENUE A	ACME REAL ESTATE INC	\$74.00	\$0.00	\$166.00	\$240.00
403374	3448 AVENUE A	ACME REAL ESTATE INC	\$148.00	\$0.00	\$740.00	\$888.00
403374	2745 4TH AVE	ACME REAL ESTATE INC	\$148.00	\$0.00	\$128.00	\$276.00
403374	1210 WEDGEWOOD DR	ACME REAL ESTATE INC	\$0.00	\$0.00	\$54.00	\$54.00
403375	2724 AVENUE A	ACME REAL ESTATE INC	\$74.00	\$0.00	\$0.00	\$74.00
403375	716 S 9TH ST	ACME REAL ESTATE INC	\$0.00	\$0.00	\$166.00	\$166.00
403375	3231 11TH AVE	ACME REAL ESTATE INC	\$0.00	\$0.00	\$100.00	\$100.00
403375	55 PICKARD LN	ACME REAL ESTATE INC	\$0.00	\$0.00	\$18.00	\$18.00
403375	417 WENDY HEIGHTS RD	ACME REAL ESTATE INC	\$148.00	\$0.00	\$75.00	\$223.00
404813	135 HARRISON ST	YOUNGBLOOD, MEGHANN	\$74.00	\$0.00	\$0.00	\$74.00
404813	1500 AVENUE D	YOUNGBLOOD, MEGHANN	\$0.00	\$0.00	\$176.00	\$176.00
404867	1033 E WASHINGTON AVE	ACME REAL ESTATE INC	\$148.00	\$0.00	\$222.00	\$370.00
404867	1632 3RD AVE	ACME REAL ESTATE INC	\$148.00	\$0.00	\$148.00	\$296.00
405029	400 N 6TH ST	COATS REALTY	\$0.00	\$0.00	\$278.00	\$278.00
405185	2027 AVENUE D	R C R PROPERTIES LLC	\$0.00	\$0.00	\$14.00	\$14.00
405186	2210 AVENUE A	SERIES A-COATS INVESTMENTS LLC	\$74.00	\$0.00	\$0.00	\$74.00
405852	618 N 9TH ST	TRACY, MATTHEW G	\$0.00	\$0.00	\$202.00	\$202.00
405878	618 N 9TH ST	TURN RED INC	\$0.00	\$0.00	\$498.00	\$498.00
406415	2418 AVENUE A	S L A J LLC	\$148.00	\$0.00	\$592.00	\$740.00
406415	429 25TH AVE	S L A J LLC	\$148.00	\$0.00	\$148.00	\$296.00
406574	2728 AVENUE G	MURPHY, PATRICIA F	\$18.00	\$0.00	\$0.00	\$18.00
406574	2612 AVENUE H	MURPHY, PATRICIA F	\$73.00	\$0.00	\$0.00	\$73.00
406835	2009 AVENUE D	ROSTERMUNDT, KENNETH J-VIVIAN A TRUSTS	\$0.00	\$0.00	\$74.00	\$74.00
407291	916 AVENUE C	MAC INVESTMENT INC	\$0.00	\$0.00	\$36.00	\$36.00
407913	2519 5TH AVE	MCCONNELL, CRAIG A - TINA M	\$148.00	\$0.00	\$720.00	\$868.00
407972	2526 AVENUE C	MURRAY, MICHAEL T	\$148.00	\$0.00	\$74.00	\$222.00
414512	1220 MADISON AVE	CONLEY, KELLY F	\$0.00	\$0.00	\$186.00	\$186.00

City of Council Bluffs

LLA Balances through Bill Date 4/1/2019

Owner Number	Customer Address	Landlord Name	Days Past Due			Total Past Due Amount
			Current Past Due	91 To 120 Days Past Due	Over 120 Days Past Due	
414775	5408 HARDINGS LANDING RD	S L A J LLC	\$0.00	\$0.00	\$592.00	\$592.00
414775	5412 HARDINGS LANDING RD	S L A J LLC	\$74.00	\$0.00	\$70.00	\$144.00
416373	830 1ST AVE	COATS REALTY LLC	\$148.00	\$0.00	\$0.00	\$148.00
416373	3445 4TH AVE	COATS REALTY LLC	\$0.00	\$0.00	\$402.00	\$402.00
416389	831 1ST AVE	COATS REALTY LLC	\$0.00	\$0.00	\$296.00	\$296.00
416630	1302 6TH AVE	STARKEY, TERRI - LEROY L	\$0.00	\$0.00	\$265.00	\$265.00
417782	827 6TH AVE	JERUSALEM PETROLEUM LLC	\$74.00	\$0.00	\$0.00	\$74.00
417823	4017 WAKEMAN DR	ACME	\$148.00	\$0.00	\$296.00	\$444.00
418991	812 20TH AVE	MILLER, DOUGLAS E-MARSHA J	\$20.00	\$0.00	\$222.00	\$242.00
419239	1400 AVENUE B	TURN RED INC	\$0.00	\$0.00	\$572.00	\$572.00
421001	1123 S 32ND ST	OVERLAND MOBILE HOMES L C	\$74.00	\$0.00	\$122.00	\$196.00
421001	3131 12TH AVE	OVERLAND MOBILE HOMES L C	\$0.00	\$0.00	\$259.00	\$259.00
421001	3019 11TH AVE	OVERLAND MOBILE HOMES L C	\$0.00	\$0.00	\$202.00	\$202.00
421634	2015 S 8TH ST	MENDENHALL, RICHARD N	\$56.00	\$0.00	\$0.00	\$56.00
			\$7,148.00	\$0.00	\$26,562.40	\$33,710.40

Resolution 19-214

Certifying the FY2019 water, sewer, and refuse collection lien schedule for nonpayment of residential refuse collection charges, nonpayment to the county treasurer to be assessed against the owner's property

WHEREAS, the City of Council Bluffs, Iowa has established a municipal system for the collection of residential refuse In the City of Council Bluffs, Iowa and has established a schedule of rates thereof, and;

WHEREAS, the City of Council Bluffs, Iowa has established a municipal system for the treatment of water and sewage In the City of Council Bluffs, Iowa and has established a schedule of rates thereof, and;

WHEREAS, Section 384.84 of the 2007 Code of Iowa provides that all rates or charges for the above named services, if not paid as provided by ordinance, shall constitute a lien upon the premises served by such service, and same may be certified to the County Treasurer and collected in the same manner as taxes, and;

WHEREAS, the premises listed on the FY2019 Water, Sewer and Refuse Collection Lien Schedule on file with the Sanitation Billing Office and by this reference made a part hereof, have failed to pay the rates and charges heretofore established for service to said premises pursuant to said ordinances, and;

WHEREAS, it is in the best interest of the City of Council Bluffs, Iowa, to cause said unpaid rates and charges to be certified to the Pottawattamie County Treasurer and collected in the same manner as taxes:

Now, therefore, be it resolved by the City Council of the City of Council Bluffs, Iowa:

That the premises and charges identified against same on the FY2019 Water, Sewer and Refuse Collection Lien Schedule for nonpayment of residential refuse collection charges in the amount of approximately **\$269,793.05**, nonpayment of sewer rental fees in the amount of approximately **\$4,657.00**, and the nonpayment of water fees In the amount of approximately **\$7,501.00** is hereby approved, and the City Clerk is hereby authorized, empowered and directed to certify said 2019 Refuse Collection Lien Schedule to the Pottawattamie County Treasurer to be collected in the same manner as taxes. An Authorized Officer of Finance is hereby authorized, empowered and directed to make the necessary adjustments to the accounts for payments received prior to the delivery of said liens to the Pottawattamie County Treasurer.

Adopted and Approved: September 9, 2019

Matthew J. Walsh, Mayor

Jodi Quakenbush, City Clerk

Council Communication

Department: Public Works Admin
Case/Project No.: PW20-14
Submitted by: Matthew Cox, City
Engineer

Resolution 19-215
ITEM 6.C.

Council Action: 9/9/2019

Description

Resolution authorizing the Mayor to execute an agreement with Snyder & Associates for engineering services in connection with the 6th Avenue Pump Station Trash Rack Rehab. Project PW20-14

Background/Discussion

The 6th Avenue sanitary sewer pump station is the third largest station in the sanitary collection system with nearly 35% of the City's sewage passing through this station.

The wastewater entering the pump station is screened for solids and debris. This removal process protects the pumps from clogging and limits the potential for damage. Larger stations, like 6th Avenue, utilize a mechanically operated trash rack to clean the screens.

The pump station still has the original bar screen units constructed in 1992. This project will replace the trash rack system which has reached its service life limit. The newer technology of a modern trash rack will provide reliable removal, handling, storage, and disposal of the screenings.

The project will include the necessary modifications to the screenings room and electrical controls to accommodate the new system.

Supervisory and process control panels modified in 1992, with portions dating back to the early 1980's, will be removed and replaced.

This project is included in the FY20 CIP and includes a budget of \$600,000 in sales tax funds.

The Engineer was selected based on the ability to provide the necessary services utilizing the selection criteria outlined in the Professional Services Policy. Statements of qualifications were solicited from four engineering firms on the pre-qualified list. Two submittals were received and each was reviewed and individually scored by the selection team with the following members: Dave Vermillion (PW), Mark Augustine (PW), and Jeff Krist (PW). The evaluation criteria included team qualifications (30%); past experience on similar projects (45%); project approach and understanding (20%); and clarity and conciseness of the proposal (5%). Snyder & Associates was selected as the most qualified consultant team for this particular project. The other firm that submitted a proposal was Veenestra & Kimm, Inc.

Recommendation

Approval of this resolution.

ATTACHMENTS:

Description	Type	Upload Date
Agreement	Agreement	8/30/2019
Resolution 19-215	Resolution	9/4/2019

**PROFESSIONAL SERVICES AGREEMENT
6th AVENUE PUMP STATION TRASH RACK REHAB
CITY PROJECT NUMBER PW 20-14
CITY OF COUNCIL BLUFFS, IOWA**

I. NAME OF PARTIES OF THE AGREEMENT

This Agreement, made and entered into this ____ day of _____, 2019 by and between,
The City of Council Bluffs, Iowa, a Municipal Corporation, hereinafter called "OWNER" and
Snyder & Associates, Inc., a corporation, hereinafter called "ENGINEER" as follows:

II. NAME OF PROFESSIONAL SERVICE

The OWNER shall retain the ENGINEER to complete Professional Services for the preparation of engineering surveys, preliminary design, final design, construction plans and specifications, contract documents, and construction services for 6th Ave Pump Station Trash Rack Rehab, hereinafter called the "PROJECT"

III. SCOPE OF WORK

A. GENERAL

The ENGINEER shall provide Professional Services as required to complete the preparation and assembly of the PROJECT as named in Article II and as described hereinafter as follows:

1. The PROJECT includes, but is not limited to, design services for rehabilitation of mechanical trash rack and electrical controls for the 6th Avenue Pump Station
2. The ENGINEER will complete engineering surveys, design plans and specifications, construction documents, bid letting assistance, construction staking, administration and observation, and final project acceptance for the proposed PROJECT.

B. ENGINEERING SERVICES

The ENGINEER will provide the Engineering Services as follows. Payment shall be made as specified in Article VI of this Agreement.

1. Definition & Scope of Project
2. Survey
3. Design
 - a. Preliminary
 - b. Final
4. Bid Phase

5. Construction
 - a. Observation
 - b. Management
 - c. Staking
6. Outside Consultants/Testing
7. R.O.W., Easements, Outside Permits, Assessments

IV. RESPONSIBILITY OF THE OWNER

At its own expense, the OWNER shall have the following responsibilities regarding the execution of the Contract by the ENGINEER.

A. PROJECT OFFICER

The OWNER shall name a Project Officer to act as the OWNER's representative with respect to the work performed under this Agreement. All correspondence with OWNER relating to PROJECT shall be directed to the Project Officer and the Project Officer shall be invited to all progress meetings and other meetings called during the PROJECT.

B. PROMPT RESPONSE

To prevent an unreasonable delay in the ENGINEER's work, the OWNER will examine all reports, drawings, specifications, and other documents and will provide authorizations in writing to the ENGINEER to proceed with work within a reasonable time period.

V. WORK SCHEDULE

The PROJECT, from design through construction completion, shall be performed by the ENGINEER in accordance with a schedule mutually developed by the OWNER and ENGINEER. Generally, the schedule for the PROJECT is described as follows:

- A. (See attached preliminary schedule)
- B. The ENGINEER shall not be responsible for delays in the schedule which are beyond the ENGINEER's control.

VI. COMPENSATION AND TERMS OF PAYMENT

The OWNER shall pay the ENGINEER in accordance with the terms and conditions of this Agreement.

A. ENGINEERING SERVICES

As set forth in Article III (B) the engineering fee shall be on the following basis:

SCOPE OF SERVICES	FEE BASIS
1. Definition of Problem scope of Project	Hourly not to exceed negotiated maximum.
2. Survey	Lump Sum
3. Design a. Preliminary b. Final	Lump Sum
4. Bid Phase	Lump Sum
5. Construction a. Observation b. Management c. Staking	Hourly not to exceed negotiated % of con- struction (average of two low bidders).
6. Outside Consultants/Testing	Billed as per invoice.
7. ROW, Easements, Outside permits, Assessment	Hourly

Actual project fees will be determined at a later date and approved by a supplemental agreement.

B. ADDITIONAL SERVICES

Additional Services shall be performed as requested in writing by the OWNER and shall be in accordance with the current fiscal year Snyder & Associates, Inc. Standard Fee Schedule in affect at the time of actual performance. All services quoted on a lump sum basis shall be valid for one year from the contract date.

VII. METHOD OF PAYMENT

- A. The ENGINEER shall submit billings for Basic, Construction and Additional Services to the OWNER on a thirty (30) day basis under separate cover and shall be paid by the OWNER within fourteen (14) days after approval by the City Council. The OWNER shall pay the ENGINEER a percentage of the total fee for each phase or a cost not to exceed the amount shown in accordance with the schedule shown below.
- B. Billings shall include sufficient documentation to explain the charges. All billing shall be accompanied by a Billings Information Report on a form provided to the ENGINEER by the OWNER.

VIII. TERMINATION OF AGREEMENT

The ENGINEER or OWNER may, after giving seven (7) days written notice to the other party, terminate this agreement and the ENGINEER shall be paid for services provided to the termination notice date, including reimbursable expenses due, plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributed to the termination.

IX. CONFLICT OF INTEREST

No elected official or employee of the OWNER who exercises any responsibilities in review, approval, or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects his or her direct or indirect personal or financial interest.

X. ASSIGNABILITY

The ENGINEER shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the OWNER.

XI. TITLE TRANSFER

All drawings, specifications and other work products of the PROJECT are instruments of services for this PROJECT only and shall remain the property of the ENGINEER. The ENGINEER may deliver to the OWNER, at the OWNER's request, paper or electronic media copies of documents prepared in accordance with this Agreement. The OWNER may make hard copies or electronic copies of these documents for purposes supporting the intended use of the project. Any reuse or modification of the documents supplied by ENGINEER for purposes of the PROJECT, including electronic media will be at the recipient's risk and responsibility. Electronic media will be provided as is without warranty, and it shall be the OWNER'S responsibility to reconcile this electronic data with the paper plans, and that the paper plans shall be regarded as legal documents for this PROJECT.

XII. CONFIDENTIALITY

No reports, information, and/or data given to or prepared or assembled by the ENGINEER under this Agreement shall be made available to any individual or organization by the ENGINEER without prior written approval of the OWNER.

XIII. INDEMNIFICATION

The ENGINEER agrees to indemnify and save harmless the City, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs arising out of the negligent acts, errors, or omissions of the ENGINEER, its officers, agents, and employees in the execution of the services specified in this Agreement.

In recognition of the relative risks and benefits of the project to both the City and ENGINEER, the risks have been allocated such that the City agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER and their sub-consultants to the OWNER and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the ENGINEER and their sub-consultants to all those named shall not exceed \$2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

XIV. INSURANCE

The ENGINEER shall maintain insurance to protect the ENGINEER from claims under Workmen's Compensation Acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which the ENGINEER is legally liable. The amounts and extent of such insurance is as follows:

- | | |
|-----------------------------|--|
| 1. Professional Liability - | \$ 2,000,000 each claim; 2,000,000 aggregate |
| 2. Vehicle Coverage - | |
| Bodily Injury | \$ 1,000,000 combined single limit (each accident) |
| 3. Worker's Compensation - | \$ 100,000 each accident |
| 4. General Liability - | \$ 1,000,000 each occurrence and 2,000,000 aggregate |

XV. ARBITRATION

Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The cost of the arbitration, if any, will be divided equally between the OWNER and the ENGINEER.

XVI. ENGINEER'S RESPONSIBILITY

The ENGINEER shall be responsible for the professional quality and technical accuracy of all services furnished by the ENGINEER under this Agreement, except for that work provided by OWNER. The ENGINEER shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the OWNER of any such work shall not in any way relieve the ENGINEER of responsibility for the technical accuracy and adequacy of said services. The OWNER's review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

XVII. COMPLETENESS OF THE AGREEMENT

This document contains all terms and conditions of this Agreement and any alteration shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement. There are no understandings, representations, or agreements, written or oral, other than those incorporated herein.

XVIII. ENGINEER'S CERTIFICATION OF REPORT

The ENGINEER shall place his certification on the Contract Documents, all in conformity with Chapter 114, Code of Iowa.

XIX. COMPLIANCE & REGULATIONS

During the performance of the contract, the engineer, for itself, its assignees and successors in interest (hereinafter referred to as the "Engineer") agrees as follows:

1. Compliance with Regulations: The Engineer shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by referenced and made a part of this contract.

2. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases or equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, The Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, order and instructions. Where any information required of an engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the Engineer under the contract until the Engineer complies; and/or,
- b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Engineer shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event an engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interest of the City of Council Bluffs or the Iowa Department of Transportation; and , in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and the year first above written.

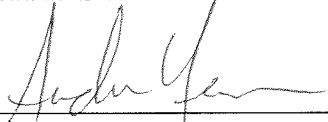
ATTEST:

Jodi Quakenbush, City Clerk

OWNER

By _____
Matthew J. Walsh, Mayor

ATTEST:



Andrea Yeoman

ENGINEER

SNYDER & ASSOCIATES, INC.

By 

Michael G. Geier, Regional Manager

Preliminary Schedule
City of Council Bluffs
6th Ave Pump Station Trash Rack Rehab
City Project Number PW 20-14
Process & Schedule

1. 08/30/19 Prepare "Agreement to Provide Services" (Council Approval 09/09/19)
2. 09/16/19 Meet with staff to discuss project scope
6. 10/28/19 30% Concept Preliminary Design
7. 12/13/19 95% Progress Submittal
8. 12/16/19 95-98% Plans – Set Public Hearing.
9. 1/13/20 100% Plans – Hold Public Hearing
10. 2/13/20 Letting
11. 2/24/20 Award

SNYDER & ASSOCIATES, INC.
2019-20
STANDARD FEE SCHEDULE

Billing Classification/Level		Billing Rate	
Professional			
Engineer, Landscape Architect, Land Surveyor, GIS, Environmental Scientist Project Manager, Planner, Right-of-Way, Graphic Designer			
Principal II		\$208.00	/hour
Principal I		\$197.00	/hour
Senior		\$177.00	/hour
VIII		\$163.00	/hour
VII		\$155.00	/hour
VI		\$148.00	/hour
V		\$138.00	/hour
IV		\$128.00	/hour
III		\$116.00	/hour
II		\$106.00	/hour
I		\$93.00	/hour
Technical			
Technicians--CADD, Survey, Construction Observation			
Lead		\$125.00	/hour
Senior		\$119.00	/hour
VIII		\$111.00	/hour
VII		\$103.00	/hour
VI		\$92.00	/hour
V		\$82.00	/hour
IV		\$76.00	/hour
III		\$64.00	/hour
II		\$56.00	/hour
I		\$48.00	/hour
Administrative			
II		\$64.00	/hour
I		\$52.00	/hour
Reimbursables			
Mileage		Current IRS standard rate	
Outside Services		As Invoiced	

R E S O L U T I O N
NO 19-215

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
AN AGREEMENT WITH SNYDER & ASSOCIATES
FOR ENGINEERING SERVICES IN CONNECTION WITH
6TH AVENUE PUMP STATION TRASH RACK REHAB
PROJECT #PW20-14**

WHEREAS, the city wishes to make improvements known as the
6th Avenue Pump Station Trash Rack Rehab project,
within the city as therein described; and

WHEREAS, Snyder & Associates has submitted an agreement to
provide engineering services for the work necessary
for said improvements; and

WHEREAS, the city council deems approval of said agreement to
be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with
Snyder & Associates for engineering services relative to the 6th Avenue Pump Station Trash
Rack Rehab project.

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the 1989 Local Option Sales
Tax Ballot and as such this is an appropriate expenditure of the Local Option Sales Tax
Revenues.

ADOPTED
AND
APPROVED

September 9, 2019

Matthew J. Walsh, Mayor

ATTEST:

Jodi Quakenbush, City Clerk

Council Communication

Department: City Clerk
Case/Project No.:
Submitted by:

Liquor Licenses
ITEM 7.A.

Council Action: 9/9/2019

Description

1. Brewski's Beverage, 726 Creek Top
2. The Dock Bar & Grill, 401 Veterans Memorial Hwy (Special Event)
3. Family Dollar Store #24414, 2801 W Broadway (New Application)
4. Golden Q Billiards and Sports Lounge, 807 S 21st Street
5. Jonesy's Taco House, 1117 16 Avenue
6. Lincoln's Pub, 157 W Broadway

Background/Discussion

The Dock Bar and Grill:
01-01-19—At 11:50 pm, Officers were dispatched for a disturbance inside the bar. Officers arrived and handled the problem, with no arrests or reports.

Recommendation

ATTACHMENTS:

Description	Type	Upload Date
Liquor License Applications, 9.9.19	Resolution	9/4/2019



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Home
About
Alcohol
Tobacco
Links
Contact

<input checked="" type="checkbox"/> RENEWAL	<input type="checkbox"/> NEW	<input type="checkbox"/> SPECIAL EVENT
POLICE <u>PR</u>	Local Amt _____	
FIRE <u>AR</u>	Endorsed _____	
BUILDING <u>PR</u>	Issued _____	
ZONING <u>US</u>	Expires _____	
Council _____		

Help	License Search	License List	On-Demand Reporting	Keg Registration Search	User Profile	Logoff
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Applicant LE0001109, Brewski's Beverage, Council Bluffs

After completion click on the NEXT link to continue to the next screen, or the BACK link to return to the previous screen.
The navigation links on the top may also be used to move around the application.

- License
- Privileges
- **Applicant**
- Status Of Business
- Ownership
- Criminal History
- Premises
- General Premises
- Applicant Signature
- Bond Cert
- Local Endorse
- History

Corporation Name/Sole Proprietor Name/Partnership Name(s): Brewski Enterprises, Inc. (Sole Proprietorship, Partnership, Corporation, etc.)

Name of Business (D/B/A): Brewski's Beverage

Address of Premise: 726 Creek Top

Address Line 2:

City: Council Bluffs

County: Pottawattamie

Zip: 51503

Business Phone: (712) 323-3800

Cell / Home Phone: (402) 598-3248

Same Address

Mailing Address: 726 Creek Top

Mailing Address Line 2:

City: Council Bluffs

State: Iowa

Zip: 51503

Contact Name: mike schlueter

Phone: (402) 598-3248

Email Address: mikescoun6@aol.com

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Links
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POLICE <u>RR</u>	Local Amt _____	
FIRE <u>AP</u>	Endorsed _____	
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ZONING <u>Q</u>	Expires _____	
Council _____		

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Search

User Profile

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➤ **Privilege Outdoor Service**

➤ Applicant Signature

➤ Dram Cert

➤ Local Endorse

Outdoor Service Privilege LC0045123, The Dock Bar & Grill , Council Bluffs

After completion click on the NEXT link to continue to the next screen, or the BACK link to return to the previous screen. The navigation links on the top may also be used to move around the application.

An Outdoor Service Area is a designated area that is adjacent to the licensed premises. The Application is to be used only if adding Outdoor Service Area Privilege after the original license has been issued. If Outdoor Service Area Privilege is requested at license renewal, mark the appropriate box on the renewal Privileges screen.

After approval the Iowa Alcoholic Beverages Division, an amended license will be mailed to the Local Official.

Outdoor Service area dates (must fall within license period)

From: 09/21/2019

MM/DD/YYYY

To: 09/23/2019

MM/DD/YYYY

Submit to the Local Authority the Outdoor Service Area Dram Shop Endorsement. Endorsement dates must correspond with the requested outdoor service dates. (Accord certificates are not accepted).

Explain how the boundaries of the Outdoor Service Area are designated (fence, barricades, etc.)

Extending outdoor service into the parking lot. Area will be fenced in.

Submit a sketch to the Local Authority on 8 1/2 x 11" white paper of the outdoor service area showing its relationship to the licensed premises. If a taper wagon, beer truck etc. is being used, attach a copy of the rental receipt.

Prev

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Links
Contact

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POLICE <u>Can</u>	Local Amt	
FIRE <u>AF</u>	Endorsed	
BUILDING <u>2</u>	Issued	
ZONING <u>19</u>	Expires	
	Council	

Help	License Search	License List	On-Demand Reporting	Keg Registration Search	User Profile	Logoff
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- License
- Privileges
- Applicant
- Status Of Business
- Ownership
- Criminal History
- Premises
- General Premises
- Applicant Signature
- Local Endorse
- History

Applicant BC_V_87594, Family Dollar Store #24414, Council Bluffs

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Corporation Name/Sole Proprietor Name/Partnership Name(s): Family Dollar Stores of Iowa, LLC (Sole Proprietorship, Partnership, Corporation, etc.)

Name of Business (D/B/A): Family Dollar Store #24414

Address of Premise: 2801 W. Broadway

Address Line 2:

City: Council Bluffs

County: Pottawattamie

Zip: 51501

Business Phone: (712) 388-9736

Cell / Home Phone:

Same Address

Mailing Address: 500 Volvo Parkway

Mailing Address Line 2: Suite 1400

City: Chesapeake

Zip: 23320

State: Virginia

Contact Name: Alyssa Dickinson

Phone: (850) 577-6962

Email Address: alyssa.dickinson@gray-robinson.com

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About
Alcohol
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Links
Contact

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POLICE <i>FL</i>	Local Amt _____	
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Council _____		

Help	License Search	License List	On-Demand Reporting	Keg Registration Search	User Profile	Logoff
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Applicant LC0042824, Golden Q Billiards and Sports Lounge, Council Bluffs

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- License
- Privileges
- Applicant
- Status Of Business
- Ownership
- Criminal History
- Premises
- General Premises
- Applicant Signature
- Dram Cert
- Local Endorse
- History

Corporation Name/Sole Proprietor Name/Partnership Name(s): GOLDEN Q BILLIARDS AND SPO (Sole Proprietorship, Partnership, Corporation, etc.)

Name of Business (D/B/A): Golden Q Billiards and Sports Lounge

Address of Premise: 807 south 21st street

Address Line 2:

City: Council Bluffs

County: Pottawattamie

Zip: 51501

Business Phone: (712) 347-6769

Cell / Home Phone: (402) 917-1009

Same Address

Mailing Address: 807 S 21st Street

Mailing Address Line 2:

City: Council Bluffs

State: Iowa

Zip: 51501

Contact Name: john l stewart

Phone: (402) 917-1009

Email Address: stewartjohn@aol.com

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POLICE <u>RR</u>	Local Amt _____	
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- ▶ Privileges
- ▶ **Applicant**
- ▶ Status Of Business
- ▶ Ownership
- ▶ Criminal History
- ▶ Premises
- ▶ General Premises
- ▶ Applicant Signature
- ▶ Dram Cert
- ▶ Local Endorse
- ▶ History

Applicant LC0035603, Jonesy's Taco House, Council Bluffs

After completion click on the NEXT link to continue to the next screen, or the BACK link to return to the previous screen. The navigation links on the top may also be used to move around the application.

Corporation Name/Sole Proprietor M. J. Abel Inc

(Sole Proprietorship, Partnership, Corporation, etc.)

Name/Partnership Name(s):
Name of Business (D/B/A): Jonesy's Taco House

Address of Premise: 1117 16 Ave

Address Line 2:

City: Council Bluffs

County: Pottawattamie

Zip: 51503

Business Phone: (712) 322-8747

Cell / Home Phone: (712) 323-6838

Same Address

Mailing Address: 1117 16 Ave

Mailing Address Line 2:

City: Council Bluffs

State: Iowa

Zip: 51503

Contact Name: Mary Abel

Phone: (712) 322-5747

Email Address: steven.petty@rocketmail.com

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Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road, Ankeny, IA 50021
Toll Free 866.IowaABD (866.469.2223)
Local 515.281.7400

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State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

Home
About
Alcohol
Tobacco
Links
Contact

<input checked="" type="checkbox"/> RENEWAL	<input type="checkbox"/> NEW	<input type="checkbox"/> SPECIAL EVENT
POLICE <u>CR</u>	Local Amt _____	
FIRE <u>AF</u>	Endorsed _____	
BUILDING <u>SC</u>	Issued _____	
ZONING <u>C2</u>	Expires _____	
	Council _____	

- | | | | | | | |
|------|----------------|---------------------|---------------------|-------------------------|--------------|--------|
| Help | License Search | License List | On-Demand Reporting | Keg Registration Search | User Profile | Logoff |
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Applicant LC0044727, Lincoln's Pub, Council Bluffs

After completion click on the NEXT link to continue to the next screen, or the BACK link to return to the previous screen.
The navigation links on the top may also be used to move around the application.

Corporation Name/Sole Proprietor: Lincoln's Inc (Sole Proprietorship, Partnership, Corporation, etc.)

Name/Partnership Name(s): Lincoln's Inc

Name of Business (D/B/A): Lincoln's Pub

Address of Premise: 157 W. Broadway

Address Line 2:

City: Council Bluffs

County: Pottawattamie

Zip: 51503

Business Phone: (712) 256-4956

Cell / Home Phone:

Same Address

Mailing Address: 157 W. Broadway

Mailing Address Line 2:

City: Council Bluffs

State: Iowa

Zip: 51503

Contact Name: Jon Nelson

Phone: (402) 321-3337

Email Address: Info@jonsnaturals.com

Prev

Next

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Contact Us

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NOISE VARIANCE REQUEST

APPLICATION DATE: 8-29-19
REQUESTING PERSON:
NAME: Joe Disala
MAILING ADDRESS: 208 Nestrol Ct
Council Bluffs
PHONE NUMBER: 402 917 0115
EMAIL: The Dock CB@gmail.com
ORGANIZATION/EVENT: Red Silvano Benefit
EVENT LOCATION: 401 Veterans Memorial Hwy
EVENT DATE: 9-21-19
EVENT TIME: 6-11pm

EXPLAIN SOURCE OF NOISE AND SPECIFIC HOURS OF NOISE:

outdoor band until 11pm in parking lot

Please return to the City Clerk's Office, 209 Pearl Street, Ste 102, Council Bluffs, IA 51503
Phone Number: 712-890-5261

Please Note: This application is approved/disapproved by the City Council. Applications **MUST** be received 15 days before the event, to ensure enough time to be reviewed by City Council.

City Council met on _____, 20____, regarding this application requesting noise variance as described above.

APPROVED ()

DISAPPROVED ()

APPROVED WITH STIPULATION ()

The Police have the authority to cease music or require reduction of volume for the remainder of event if complaints are received.

City Clerk

Date

NOISE VARIANCE REQUEST

APPLICATION DATE: 8/5 8/19 RECEIVED 9.5.19
REQUESTING PERSON:
NAME: Jackie Keller
MAILING ADDRESS: 2114 S 9th St
PHONE NUMBER: 402 306 1174
EMAIL: patandjackie999@gmail.com
ORGANIZATION/EVENT: Renewal Ceremony
EVENT LOCATION: 2114 S 9th St, CB 51501
EVENT DATE: 2114 S 9th St
EVENT TIME: 1500-0000

EXPLAIN SOURCE OF NOISE AND SPECIFIC HOURS OF NOISE:

we will have a DJ as well as lots of people and noise.

Please return to the City Clerk's Office, 209 Pearl Street, Ste 102, Council Bluffs, IA 51503
Phone Number: 712-890-5261

Please Note: This application is approved/disapproved by the City Council. Applications **MUST** be received 15 days before the event, to ensure enough time to be reviewed by City Council.

City Council met on _____, 20____, regarding this application requesting noise variance as described above.

APPROVED ()

DISAPPROVED ()

APPROVED WITH STIPULATION ()

The Police have the authority to cease music or require reduction of volume for the remainder of event if complaints are received.

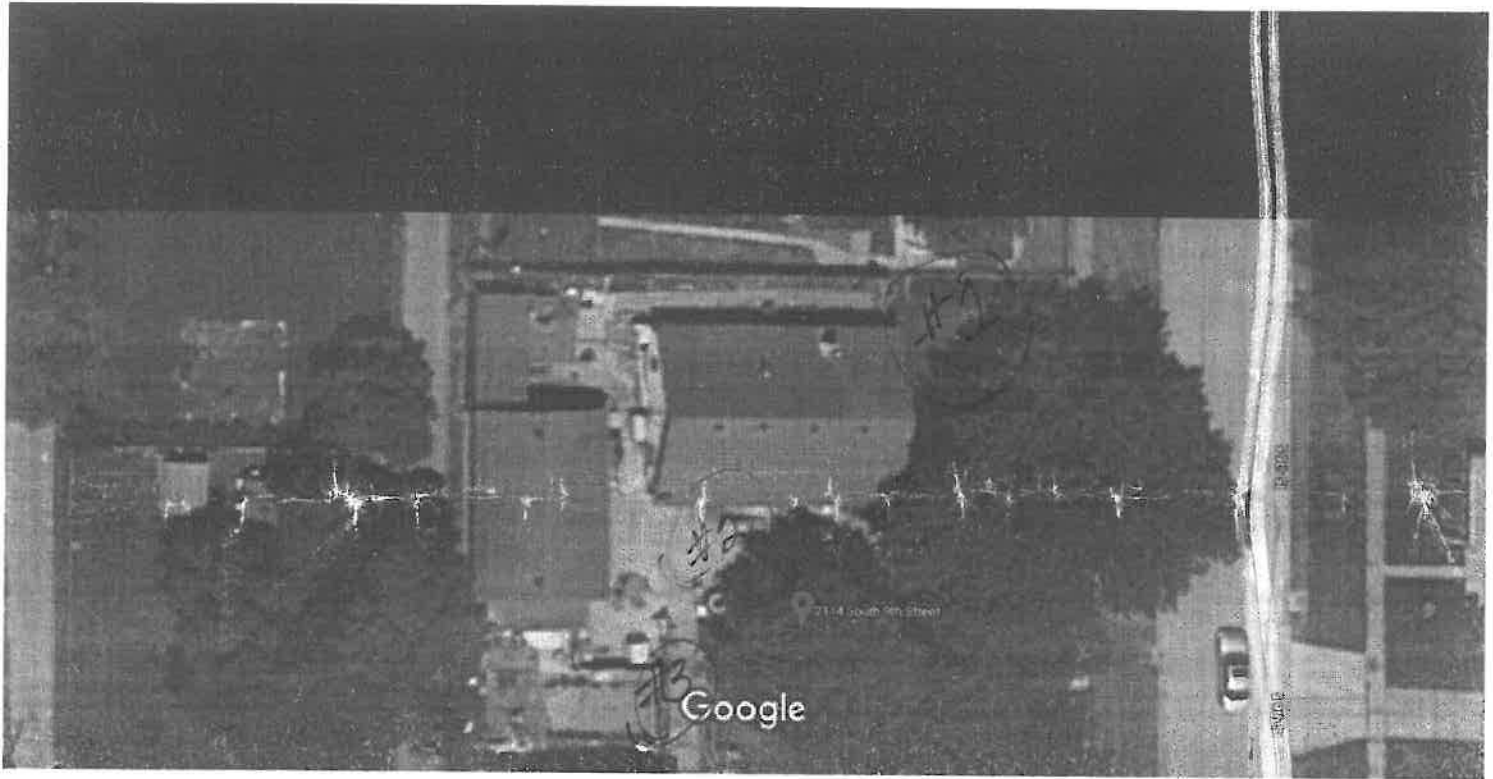
City Clerk

Date

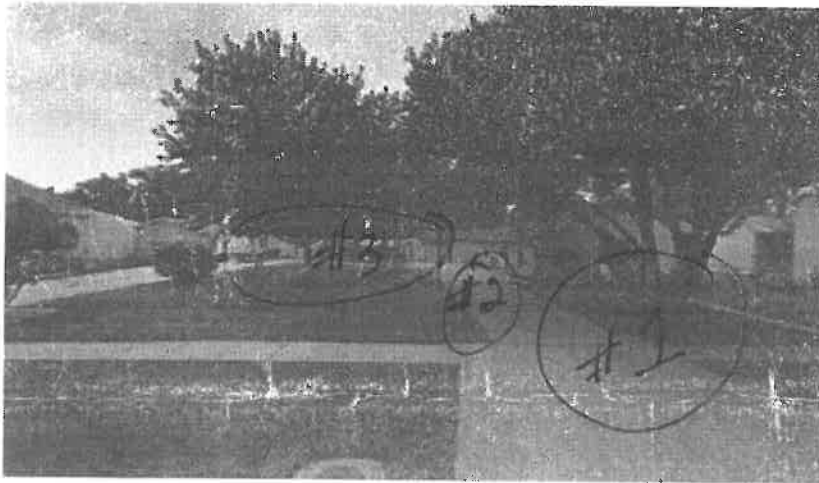
Google Maps

2114 S 9th St

Renewal Ceremony 9/21/19



Map data ©2019 Google 20 ft



2114 S 9th St

Council Bluffs, IA 51501



Directions



Save



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You visited today



64RR+9R Council Bluffs, Kane, IA

#1 - front yard -
30-50 chairs set up
for renewal ceremony

#2 - driveway
tables & food
Caterer serving &
drinks served

#3 - DJ setup
(music until
midnight)

Google Maps 2114 S 9th St



Imagery ©2019 Google, Imagery ©2019 Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2019 100 ft



2114 S 9th St

Council Bluffs, IA 51501



Directions



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64RR+9R Council Bluffs, Kane, IA

Photos

