Attachment 1

AGREEMENT FOR PRIVATE DEVELOPMENT

By and Between

THE CITY OF COUNCIL BLUFFS, IOWA

AND

ROBERT MCCARTHY

_____, 2021

Draft Version (5/4/21)

AGREEMENT FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2021, by and between the CITY OF COUNCIL BLUFFS, IOWA, a municipality ("City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2021, as amended ("Urban Renewal Act"), and ROBERT MCCARTHY, an individual ("Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for economic development in a residential area in the City and, in this connection, on _____, 2021, adopted the New Horizon Urban Renewal Plan (the "Urban Renewal Plan") for purposes of carrying out urban renewal project activities in an area known as the New Horizon Urban Renewal Area (the "Urban Renewal Area"); and

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

WHEREAS, the Developer owns certain real property located in the foregoing Urban Renewal Area as more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, the Developer intends to cause certain Infrastructure Improvements and Housing Units to be constructed on the Development Property in the Urban Renewal Area, and otherwise prepare the Development Property for the construction of the Housing Units thereon; and

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

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

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

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

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

Code means the Code of Iowa, 2021, as amended.

County means the County of Pottawattamie, Iowa.

Developer means Robert McCarthy and its permitted successors and assigns.

Development Property means that portion of the New Horizon Urban Renewal Area of the City described in Exhibit A hereto.

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

Event of Default means any of the events described in Section 8.1 of this Agreement.

Homebuyer means the person or persons who purchase a Housing Unit.

Housing Unit means single-family dwelling units to be constructed on the Development Property.

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

Infrastructure Improvements means that portion of the Minimum Improvements that Developer intends to construct in order to make development of the Housing Units possible by providing necessary access and public services to the Housing Units, and then to dedicate said improvements to the City, which improvements include streets, sanitary sewer, storm sewer, water, and electrical infrastructure.

Low or Moderate Income Families or LMI Families means those families, including single person households, earning no more than eighty percent (80%) of the higher of the median family income of Pottawattamie County or the State-wide non-metropolitan area as determined by the latest United States Department of Housing and Urban Development, Section 8 income guidelines.

Minimum Improvements means the Infrastructure Improvements and Housing Units to be constructed by the Developer on the Development Property, as more particularly described in Exhibits B and B-1 to this Agreement.

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

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

Ordinance means the Ordinance of the City under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the New Horizon Urban Renewal Area Tax Increment Revenue Fund.

Project shall mean the construction of the Minimum Improvements and the other obligations of the Developer described in this Agreement.

Qualified Costs means the costs and expenses incurred by Developer necessary to construct the Infrastructure Improvements, including interest during construction and for not more than six months thereafter, costs for acquisition of right of way, easements, landscaping, grading, drainage, paving, underground utility connections for private property located in the streets, engineering, plans and specifications, labor, materials, supplies, equipment use and rental, delivery charges, overhead, mobilization, and legal expenses related to those improvements. To be Qualified Costs, they must be incurred by the Developer with respect to those Infrastructure Improvements that are dedicated to and accepted by the City.

Robert McCarthy TIF Account means a separate account within the New Horizon Urban Renewal Area Tax Increment Revenue Fund of the City in which there shall be deposited Tax Increment received by the City with respect to the Housing Units and Development Property.

State means the State of Iowa.

Tax Increment means the property tax revenues on the taxable portions of the Housing Units and Development Property divided and made available to the City for deposit in the Robert McCarthy Account of the New Horizon Urban Renewal Area Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code and the Ordinance.

Termination Date means the date this Agreement terminates, as established in Section 10.9 of this Agreement.

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

Urban Renewal Area shall mean the area known as the New Horizon Urban Renewal Area, which is designated in the Urban Renewal Plan as an economic development area that is appropriate for the provision of public improvements related to housing and residential development.

Urban Renewal Plan means the New Horizon Urban Renewal Plan, as amended, approved in respect of the New Horizon Urban Renewal Area, described in the preambles hereof.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

a. Robert McCarthy is an individual, and has all requisite capacity and authority to enter into this Agreement, to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

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

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

d. There are no actions, suits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results or operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State, or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been

notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

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

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

h. Developer expects that construction of the Infrastructure Improvements will cost approximately $600,000.

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

j. Developer will not seek to change the current land assessment category, or the zoning classification, of the Development Property or the Minimum Improvements during the term of this Agreement.

ARTICLE III. CONSTRUCTION OF MINIMUM IMPROVEMENTS, TAXES

Section 3.1. Construction of Minimum Improvements. The Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with all applicable federal, State, and local laws, ordinances, and regulations, including any City permit and/or building requirements. All work with respect to the Minimum Improvements shall be in conformity with any plans approved and/or permits issued by the building official(s) of the City, which approvals and issuances shall be made according to normal City processes for such plans and permits. The Developer agrees that the scope and scale of the Minimum Improvements shall not be significantly less than the scope and scale as described in this Agreement. The Developer agrees that it shall permit designated representatives of the City, upon reasonable notice to the Developer (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

Section 3.2. Completion of Infrastructure Improvements. Subject to Unavoidable Delays, the Developer shall cause construction of the Infrastructure Improvements to be undertaken and completed by October 31, 2021. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays.

Section 3.3. Dedication of Infrastructure Improvements, Qualified Costs.

a. Upon completion of the Infrastructure Improvements, Developer shall notify City of such completion and the City shall inspect the Infrastructure Improvements. If (i) the Infrastructure Improvements have been completed in conformance with all applicable federal, State, and local laws and regulations, including all City ordinances and land use requirements, and (ii) the City is in receipt of copies of the maintenance bonds required by Section 3.4 for such improvements, then the City shall accept dedication of the conforming Infrastructure Improvements from the Developer.

Developer recognizes and agrees, with respect to any portion of the Infrastructure Improvements which Developer dedicates to the City and the City accepts, the Infrastructure Improvements thereafter shall be owned by the City and that Developer shall not retain any special legal entitlements or other rights not held by members of the general public with respect to ownership, sufficiency for any particular purpose, or use of the Infrastructure Improvements.

b. The Developer shall certify to the City the amount of those expenses which are Qualified Costs for those Infrastructure Improvements dedicated to and accepted by the City, and that such amounts are true and correct, which certification shall be in the form of Exhibit D. Along with the certification, Developer shall attach invoices for and other documentation showing substantiation of Qualified Costs incurred for construction of the Infrastructure Improvements. The City shall review Developer's certification and, upon certification from an Iowa engineer as to what expenses were reasonable and necessary, such verify such expenses as Qualified Costs and determine the aggregate amount of the verified Qualified Costs for those Infrastructure Improvements dedicated to and accepted by the City, up to $600,000 of which shall be the "Aggregate Qualified Costs" of the Project.

Section 3.4. Bonding Requirements. Developer shall obtain, or require each of its general contractors to obtain, one or more bonds that guarantee the faithful performance of the construction of, in the aggregate, the anticipated full value of the completed Infrastructure Improvements and that further guarantee the prompt payment of all materials and labor. The performance bond(s) for the Infrastructure Improvements shall remain in effect until construction of such improvements are completed, at which time a four-year maintenance bond shall be substituted for each performance bond. The bonds shall clearly specify the Developer and City as joint obligees.

Section 3.5. Completion of Housing Units. Subject to Unavoidable Delays, the Developer shall cause construction of at least 36 Housing Units to be undertaken and completed by December 31, 2026. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays.

Section 3.6. Real Property Taxes. Developer or its successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property acquired and owned by them and pursuant to the provisions of this Agreement. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer shall be solely responsible for all assessments and taxes.

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

a. They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development

Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; and

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

ARTICLE IV. COVENANTS OF THE DEVELOPER

Section 4.1. Maintenance of Properties. Developer will maintain, preserve, and keep its properties (whether owned in fee or a leasehold interest), including but not limited to the Development Property (expect with respect to any portion conveyed to a third-party or dedicated to and accepted by the City), in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 4.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to its business and affairs relating to this Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and the Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 4.3. Compliance with Laws. Developer will comply with all State, federal, and local laws, rules, and regulations relating to the Project, Development Property, and Minimum Improvements.

Section 4.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, the Developer shall not discriminate against any applicant, employee, Homebuyer, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, employees, Homebuyers, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 4.5. Available Information. Upon request, Developer shall promptly provide the City with copies of information requested by City that are related to this Agreement and the Project so that City can determine compliance with the Agreement.

Section 4.6. No Abatement. Homebuyers who purchase Housing Units within the Development Property are not eligible for tax abatement under any Urban Revitalization Plan or any other State, federal or local law, and Developer shall inform Homebuyers and prospective contractors/builders who purchase lots in the Development Property of this limitation and direct said contractors/builders to share this limitation with any prospective Homebuyer. A provision to such effect contained in any recorded restrictive covenants, deed, or purchase contract shall satisfy this requirement. Developer shall secure a receipt from all Homebuyers and purchasers of lots that they received such information prior to the sale or lease in the form of Exhibit F. Further, Developer shall require any purchasers of lots acting as developers to secure such a receipt from all Homebuyers that such Homebuyers received such information.

Section 4.7. LMI Assistance. The City and Developer acknowledge the statutory requirements of Chapter 403, Code of Iowa, specifically with respect to the Low and Moderate Income (LMI) housing assistance. The current applicable percentage for Pottawattamie County is 46.14%. The City will set aside a portion of the tax increment collected from the Development Property in each year that an Economic Development Grant is made to Developer in order to comply with Iowa Code Section 403.22. The statutory requirements with respect to LMI assistance may be met by the construction of LMI-affordable housing units as part of the Housing Units constructed under this Agreement, which would decrease the required set aside funds.

Section 4.8. Insurance. Until the Termination Date, except with respect to any portion of the Development Property conveyed to a third-party, or dedicated to and accepted by the City, Developer will provide and maintain with respect to the Development Property and Minimum Improvements such insurance as is statutorily required and Developer shall maintain any additional insurance customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

ARTICLE V. INDEMNIFICATION

Section 5.1. Release and Indemnification Covenants.

a. Developer releases the Indemnified Parties from, covenant, and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend, and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about, or resulting from any defect in, the Development Property or the Minimum Improvements (excepting any portion of the Infrastructure Improvements for which a maintenance bond has been issued and the City has accepted dedication).

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by the Developer against the City to enforce its rights under this Agreement), (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements, or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

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

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

ARTICLE VI. ASSIGNMENT AND TRANSFER

Section 6.1. Status of the Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that, prior to the Termination Date, the Developer will not transfer, convey, or assign its interests in this Agreement to any other party unless (i) the transferee partnership, corporation or individual assumes in writing all of the obligations of the Developer under this Agreement in its entirety, and (ii) the City consents thereto in writing in advance thereof, which consent shall not be unreasonably withheld.

Section 6.2. Prohibition Against Use as Non-Taxable or Centrally-Assessed Property. During the term of this Agreement, the Developer agrees that no portion of the Development Property or Minimum Improvements shall be transferred or sold to a non-profit entity or used for a purpose that would exempt said portion of the Development Property from property tax liability. Notwithstanding the prior sentence, Developer may convey portions of the Development Property to the City to be used by the City for public infrastructure, parks, trails or other public purposes. During the term of this Agreement, Developer agrees not to allow any portion of the Development Property or Minimum Improvements to be used as centrally-assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE VII. ECONOMIC DEVELOPMENT GRANTS

Section 7.1. Economic Development Grants. For and in consideration of the obligations being assumed by Developer for the Project hereunder, subject to Developer being and remaining in compliance with this Agreement, the City agrees to make up to ten (10) consecutive annual payments of Economic Development Grants (also referred to herein as the "Grants") to the Developer beginning on June 1 of the first fiscal year that the City receives Tax Increment from the County for the Urban Renewal Area, and on each June 1 thereafter until the earliest of the following: (i) ten (10) Grants have been paid to Developer; (ii) the maximum aggregate amount of Grants as described in Section 7.1(a) has been paid to Developer; or (iii) this Agreement has been terminated pursuant to its terms. The payment of the Economic Development Grants shall be subject to satisfaction of the Conditions Precedent in Section 7.2 and the terms and conditions of this Article VII and shall be according to the following terms and conditions:

a. Annual Grant Amount. Each annual Grant shall be equal in amount to 100% of the Tax Increments deposited into the Robert McCarthy TIF Account during the preceding twelve-month period that remains after the LMI assistance requirements of Chapter 403 are satisfied, as further described in Section 4.7 (without regard to any averaging that may otherwise be utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer), but subject to limitation and adjustment as provided in this Article.

b. Maximum Amount of Economic Development Grants. The aggregate amount of the Economic Development Grants that may be paid to the Developer under this Agreement shall not exceed the lesser of: (i) the amount of available Tax Increments under the terms set forth in Section 7.1(a); (ii) $600,000; or (iii) the aggregate amount of the Qualified Costs submitted to and approved by the City as a part of Developer's completion of the Infrastructure Improvements. It is further agreed and understood

that each Economic Development Grant shall come solely and only from incremental taxes received by the City under Iowa Code Section 403.19 from levies upon the Development Property and in no event shall Developer be entitled to receive more than calculated under the formula set forth in Section 7.1(a), even if the aggregate amount is less than $600,000 or the amount of Qualified Costs paid by the Developer.

c. Certification of Infrastructure Improvement Costs. The obligation of the City to make any Economic Development Grants to the Developer shall be subject to and conditioned upon, among other things, the timely filing by the Developer of the certification of Qualified Costs required under Section 3.3(b) hereof and the City's approval thereof.

d. City Certification, Timing. It is the responsibility of the Developer to inform the City in writing when it wishes that the City first certify debt by submitting the form attached as Exhibit E by October 1 of the year the Developer wishes the City to first certify to the County for Tax Increment in the Urban Renewal Area. After the Developer requests that the City first certify for Tax Increment, and if the conditions precedent in Section 7.2 are satisfied, then the City shall certify to the appropriate County office prior to December 1 of that year its request for the available Tax Increments resulting from the assessments imposed by the County as of January 1 of that year, to be collected by the County and paid to the City as taxes are paid during the following fiscal year and a portion of which shall thereafter be disbursed to the Developer on June 1 of that fiscal year, provided that Developer remains in compliance with the terms of this Agreement at the time of payment.

As an example, if the first Housing Units are built and fully assessed by January 1, 2023, and if the Developer requests the City to first certify by October 1, 2023; then the City would then review the Developer's request, and if approved and all other terms of this Agreement are satisfied, would certify for the Tax Increment generated by the Minimum Improvements by December 1, 2023, for collection by the County and payment to the City in fiscal year 2024-2025, allowing for the initial Grant to be paid to Developer on June 1, 2025, all subject to the terms of this Article and this Agreement.

If Developer fails to submit a written request that the City first certify debt under this Section 7.1(d) by October 1, 2025, then this Agreement shall automatically terminate with no further action required by the City.

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

a. Developer's dedication of the Infrastructure Improvements to the City and the City's acceptance thereof, pursuant to Section 3.3, including provision of the maintenance bonds required by Section 3.4;

b. Developer's completion of at least 5 Housing Units on the Development Property;

c. Developer's compliance with the terms of this Agreement at the time of payment; and

d. No Event of Default has occurred and is continuing; if an Event of Default occurs, then the City shall have no obligation thereafter to make any payments to Developer in respect of the Economic Development Grants and the provisions of this Article shall terminate and be of no further force or effect.

Section 7.3. TIF Ordinance and Annual Appropriation.

a. The City hereby covenants and agrees to maintain the Ordinance with respect to the Development Property in force during the term of this Agreement and to apply the incremental taxes collected in respect of the Development Property and the Housing Units and allocated to the Robert McCarthy TIF Account to pay the Economic Development Grants, as and to the extent set forth in this Article. The Economic Development Grants shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds.

b. Each Economic Development Grant is subject to annual appropriation by the City Council. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

c. Notwithstanding the provisions of Section 7.1 hereof, the City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment; the City receives an opinion from its legal counsel to the effect that the use of Tax Increments resulting from the Development Property and Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 7.1, is not, based on a change in applicable law or its interpretation since the date of this Agreement, authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof; or the City's ability to collect Tax Increment from the Minimum Improvements and Development Property is precluded or terminated by legislative changes to Iowa Code chapter 403. Upon occurrence of any of the foregoing circumstances, the City shall promptly forward notice of the same to Developer. If the circumstances continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer under the terms of Section 7.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

Section 7.4. Use of Other Tax Increments. Subject to the terms of this Article, the City shall be free to use any and all available Tax Increments in excess of the stated maximum or resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increment may lawfully be used pursuant to the provisions of the Urban Renewal Act, and the City shall have no obligations to the Developer with respect to the use thereof.

ARTICLE VIII. DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

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

b. Transfer of Developer's interests in this Agreement in violation of the provisions of this Agreement;

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

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

e. The Developer shall:

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

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

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

iv. be adjudicated bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment; or

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

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections 8.1(d) or 8.1(e) of said Section 8.1) the giving of thirty (30) days' written notice by the City to Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default

cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

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

b. The City may terminate this Agreement;

c. The City shall have no obligation thereafter to make any payments to Developer in respect of the Economic Development Grants; and

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

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 8.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 8.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE IX. MISCELLANEOUS

Section 9.1. Conflict of Interest. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 9.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of the Developer, is addressed to or delivered personally to Robert McCarthy at _____, P.O. Box 683, Avoca, Iowa 51521; and

b. In the case of the City, is addressed to or delivered personally to the City of Council Bluffs at City Hall, 209 Pearl Street, Council Bluffs, IA 51503; Attn: _____;

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

Section 9.3. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit C, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for the costs of recording.

Section 9.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.6. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 9.7. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 9.8. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 9.9. Termination Date. This Agreement shall terminate and be of no further force or effect on and after the earlier of: (i) December 31, 2036 or (ii) the December 31st immediately following the City's payment of a 10th Economic Development Grant to Developer under this Agreement, unless terminated earlier under the provisions of this Agreement.

Section 9.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, Homebuyer, contractor, subcontractor, material supplier, or any other person or entity, and no such landowner, Homebuyer, contractor, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

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

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

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

By: _____
Matt Walsh, Mayor

ATTEST:

By: _____
Jodi Quackenbush, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2021, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quackenbush, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Council Bluffs, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Agreement for Private Development – City of Council Bluffs, Iowa]

ROBERT MCCARTHY

By: _____
Robert McCarthy

STATE OF IOWA)
) SS
COUNTY OF _____)

On this _____ day of _____, 2021, before me the undersigned, a Notary Public in and for said State, personally appeared Robert McCarthy, who acknowledged the execution of said instrument to be his voluntary act and deed.

_____
Notary Public in and for the State of Iowa

[Signature page to Agreement for Private Development – Developer]

EXHIBIT A

DEVELOPMENT PROPERTY

The Development Property is described as consisting of all that certain parcel or parcels of land located in the City of Council Bluffs, County of Pottawattamie, State of Iowa, more particularly described as follows:

A PARCEL OF LAND BEING ALL LOT 5, NEW HORIZON SUBDIVISION REPLAT 2 AND A PORTION OF THE SW¼ NW¼ AND PART OF THE NW¼ SW¼ SECTION 28, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5th P.M., POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST ¼ CORNER OF SECTION 28, TOWNSHIP 75, RANGE 43, THENCE ALONG THE WEST LINE NW¼ SECTION 28 N 01 DEGREES 42' 52"W 161.68 FEET TO THE CENTERLINE OF COLLEGE ROAD, THENCE ALONG SAID CENTERLINE N 89 DEGREES 05'05"E 171.06 FEET, THENCE N 87 DEGREES 23'24"E 369.82 FEET TO A POINT OF CURVATURE, THENCE ON A 532.30 FOOT RADIUS CURVE TO THE LEFT AN ARC LENGTH OF 240.45 FEET, THENCE N 61 DEGREES 30'30"E 33.00 FEET TO THE POINT OF BEGINNING, THENCE N 61 DEGREES 30'30"E 36.47 FEET TO A POINT OF CURVATURE, THENCE ON A 870.13 FOOT RADIUS CURVE TO THE RIGHT AN ARC LENGTH OF 141.00 FEET (CHORD BEARS N 66 DEGREES 09'02"E 140.85 FEET), THENCE S 17 DEGREES 06'28"E 272.07 FEET, THENCE S56 DEGREES 00'42"W 156.87 FEET, THENCE N28 DEGREES 29'30"W 43.14 FEET, THENCE N 61 DEGREES 30'30"E 33.00 FEET THENCE, N 28 DEGREES 29'30"W 250.00 FEET TO THE POINT OF BEGINNING, INCLUDING COLLEGE ROAD RIGHT OF WAY, ALL IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

EXHIBIT B

MINIMUM IMPROVEMENTS

The Minimum Improvements shall consist of at least 36 Housing Units (but no more than 40 Housing Units) and the Infrastructure Improvements, to be constructed by the Developer on the Development Property.

The Housing Units are expected to include 36 to 40 single-family residential dwellings together with related site improvements on separate lots, to be constructed on the Development Property consistent with approved plats and plans. The Housing Units may be constructed as attached structures. Each Housing Units shall include 1,000 to 1,900 square feet, with a minimum of two bedrooms and a minimum two-car garage. The Housing Units must be sprinkled, consistent with the City Code's requirements of a one-entry road with more than 30 units.

The Infrastructure Improvements include the construction and installation of streets, sanitary sewer, storm sewer, water, and electrical infrastructure that the Developer will complete on the Development Property, consistent with all City standard requirements for such infrastructure, in order to allow for the development of the Housing Units. The Developer intends to dedicate the Infrastructure Improvements to the City upon completion by Developer and acceptance by the City. The Infrastructure Improvements will be completed by October 31, 2021 and will require an investment of approximately $600,000 by the Developer.

See Exhibit B-1 for diagrams of the Housing Units.

EXHIBIT B-1

DIAGRAMS OF HOUSING UNITS

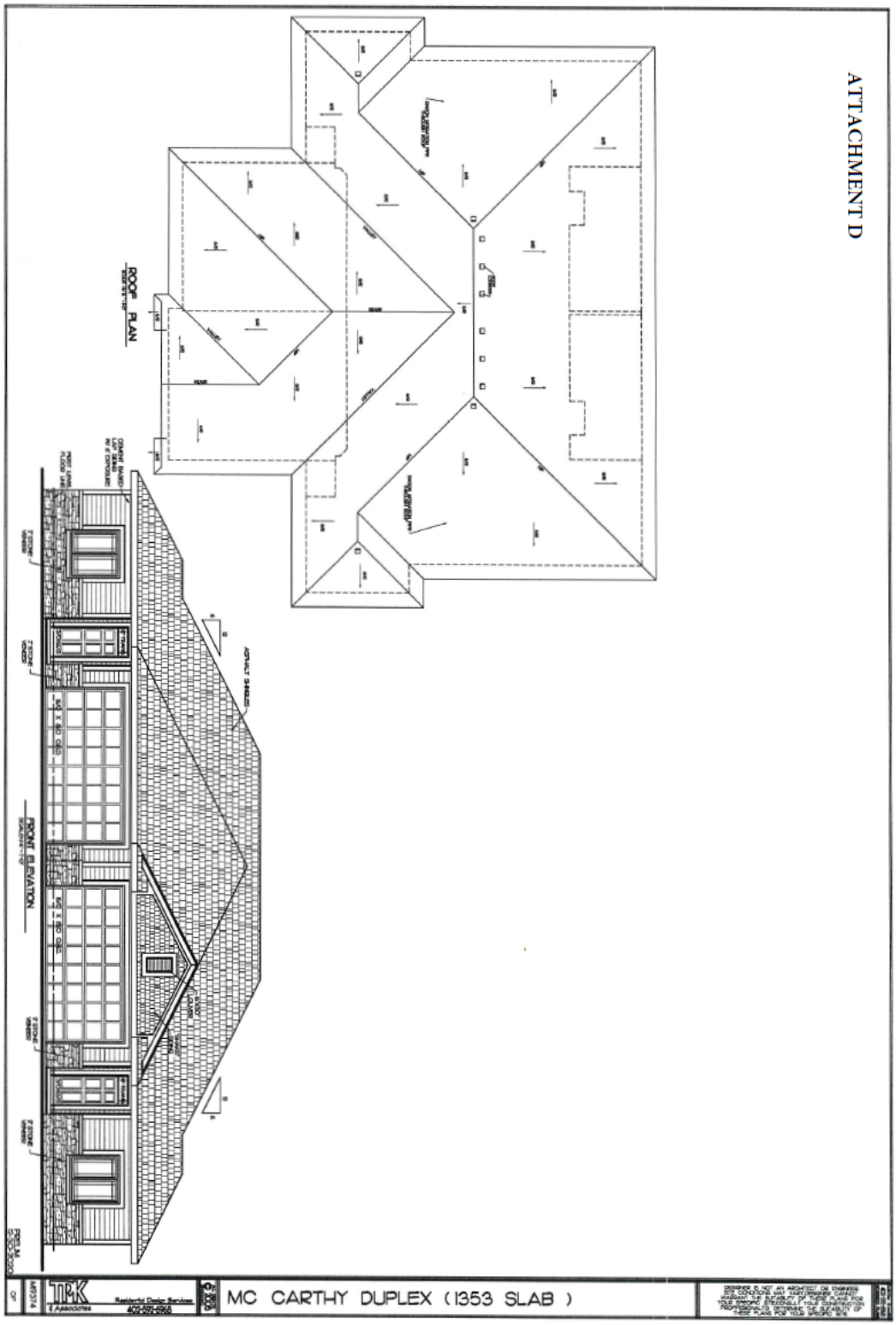


EXHIBIT B-1

DIAGRAMS OF HOUSING UNITS

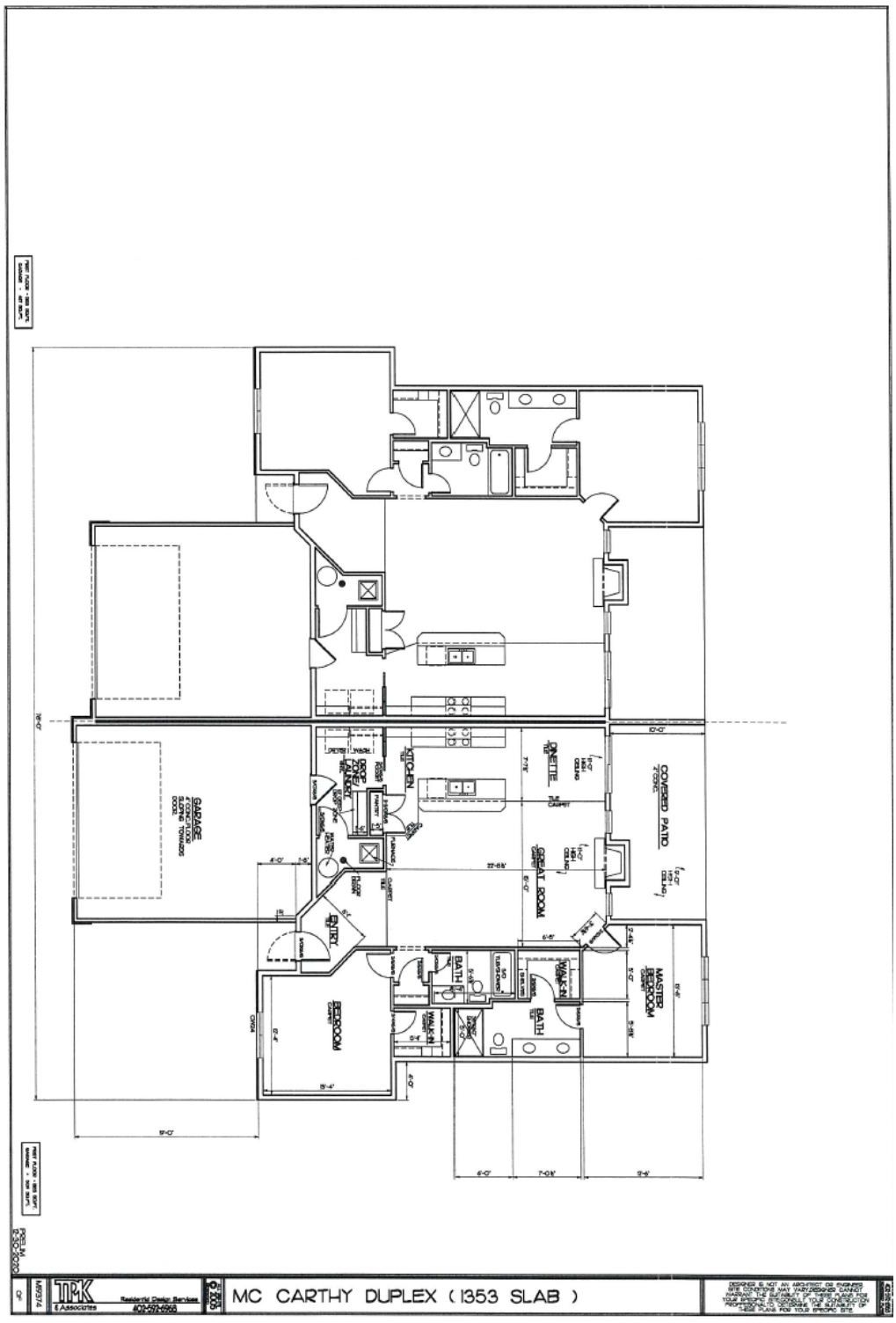


EXHIBIT B-1

DIAGRAMS OF HOUSING UNITS

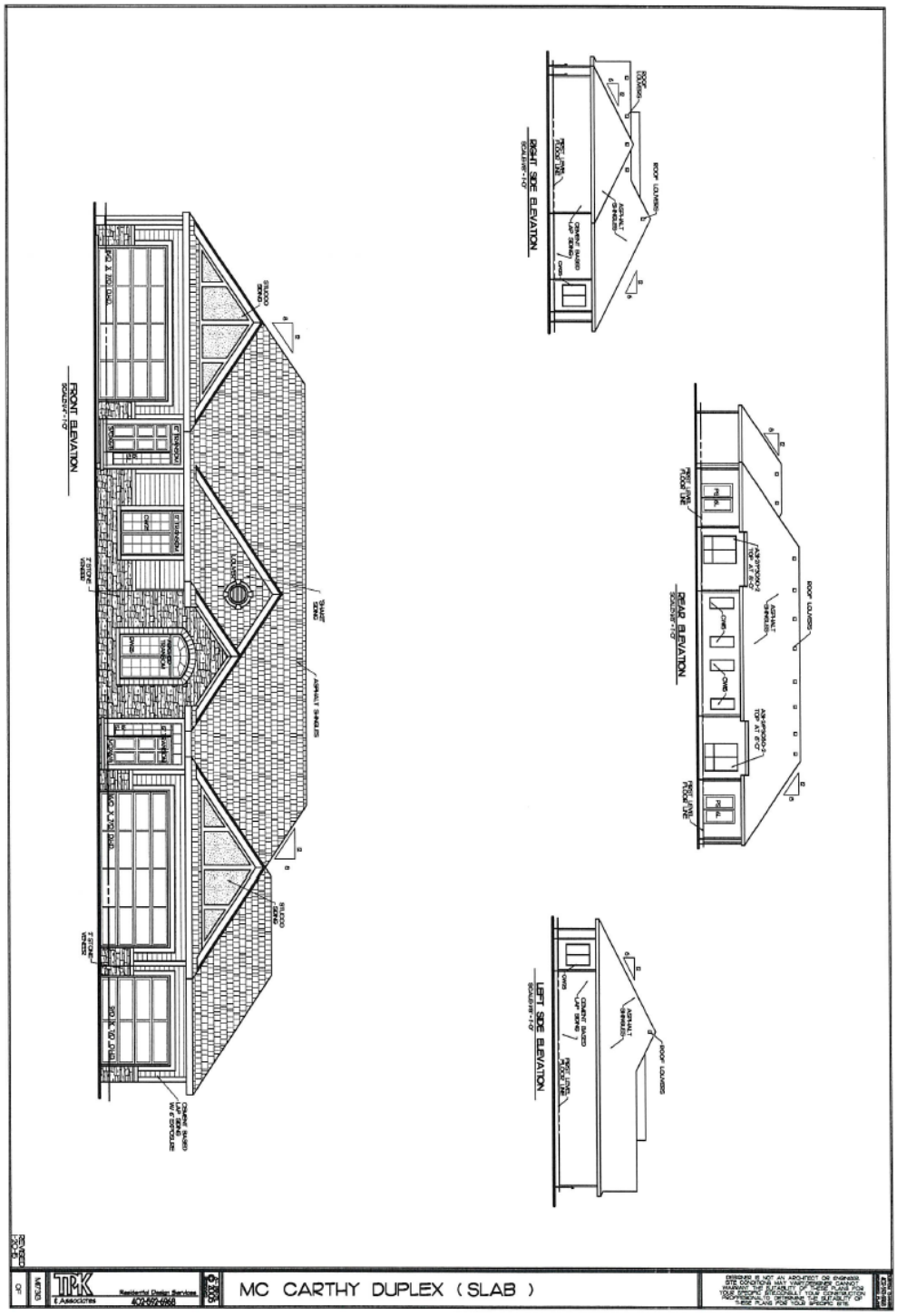


EXHIBIT B-1

DIAGRAMS OF HOUSING UNITS

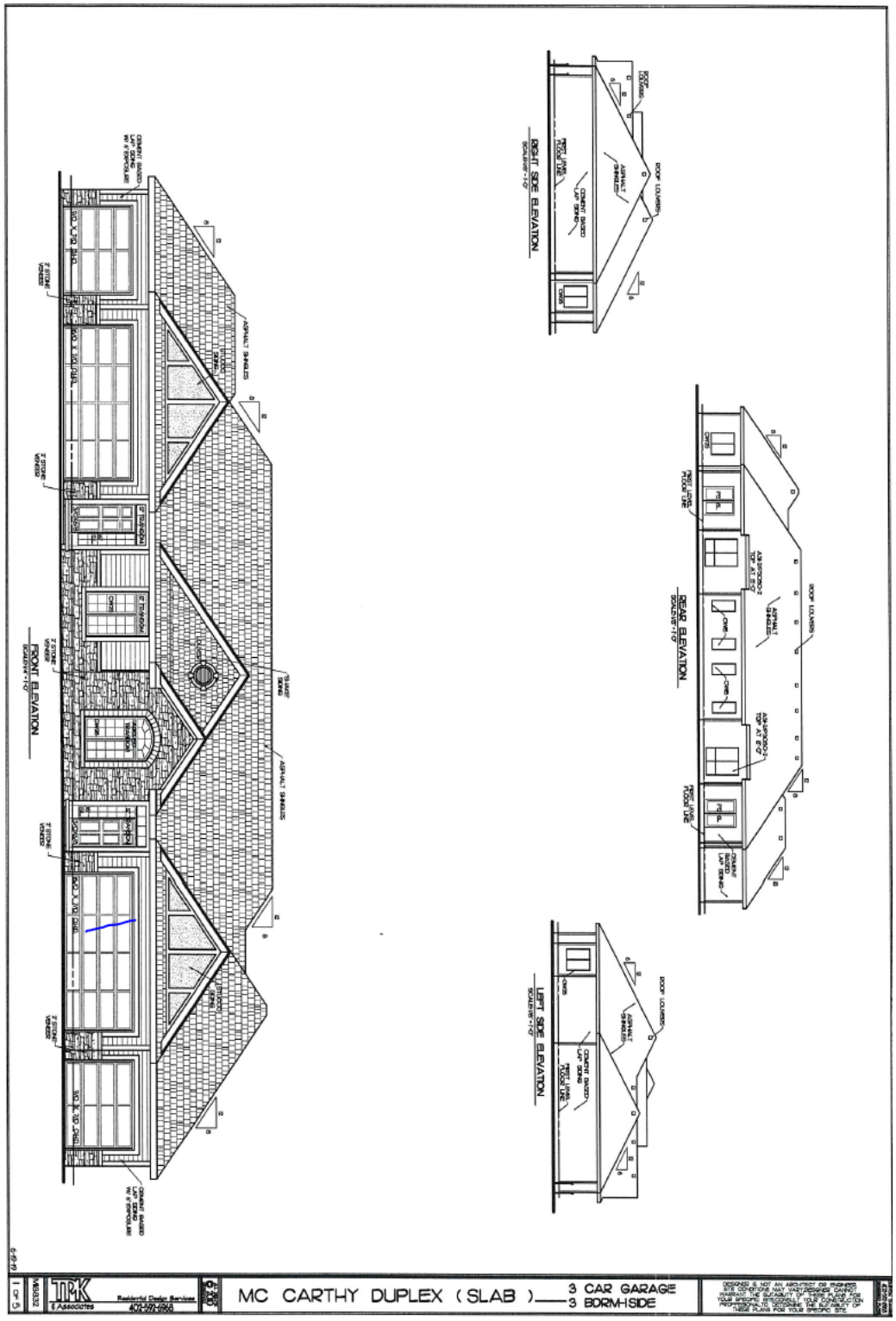


EXHIBIT B-1

DIAGRAMS OF HOUSING UNITS

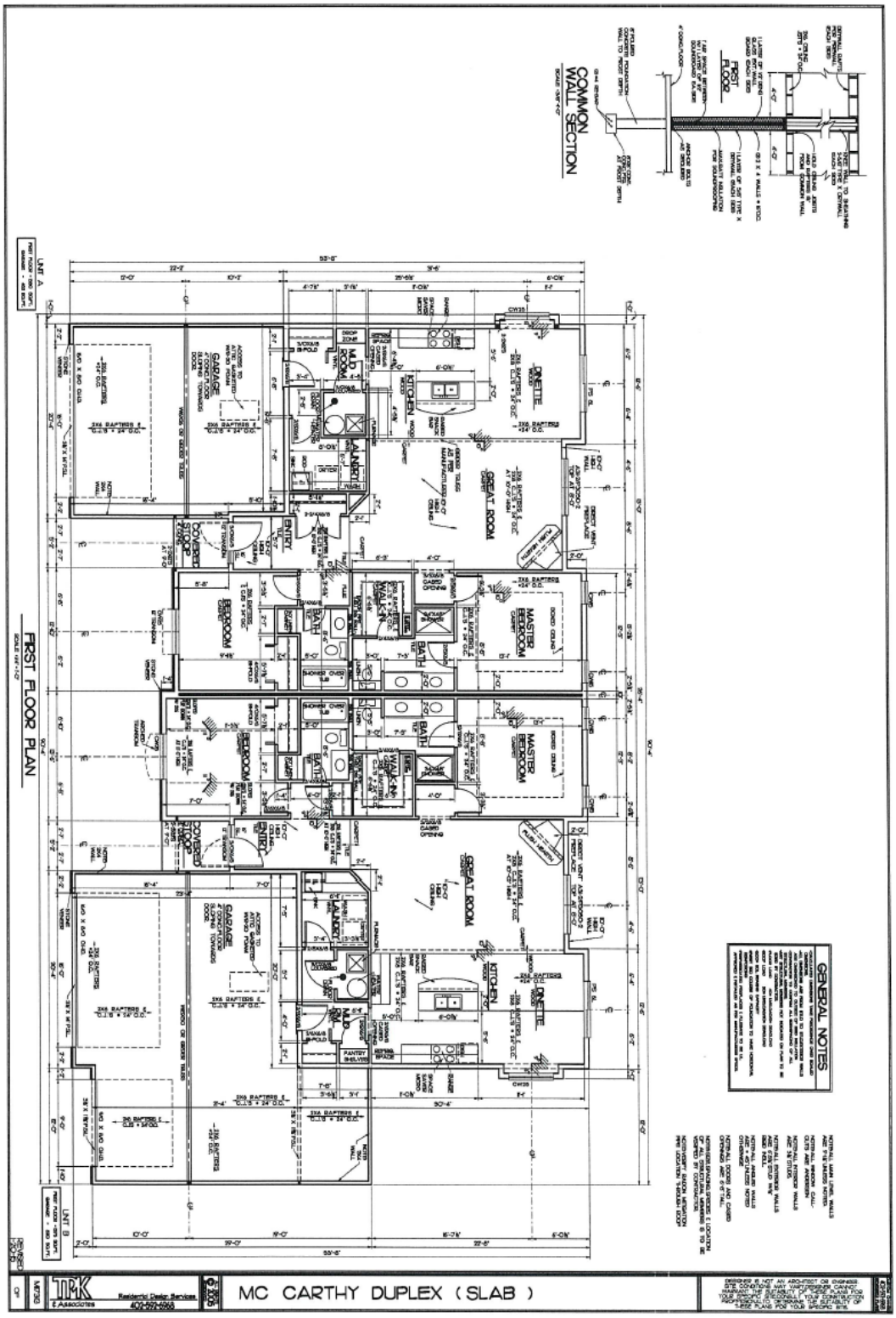


EXHIBIT B-1

DIAGRAMS OF HOUSING UNITS

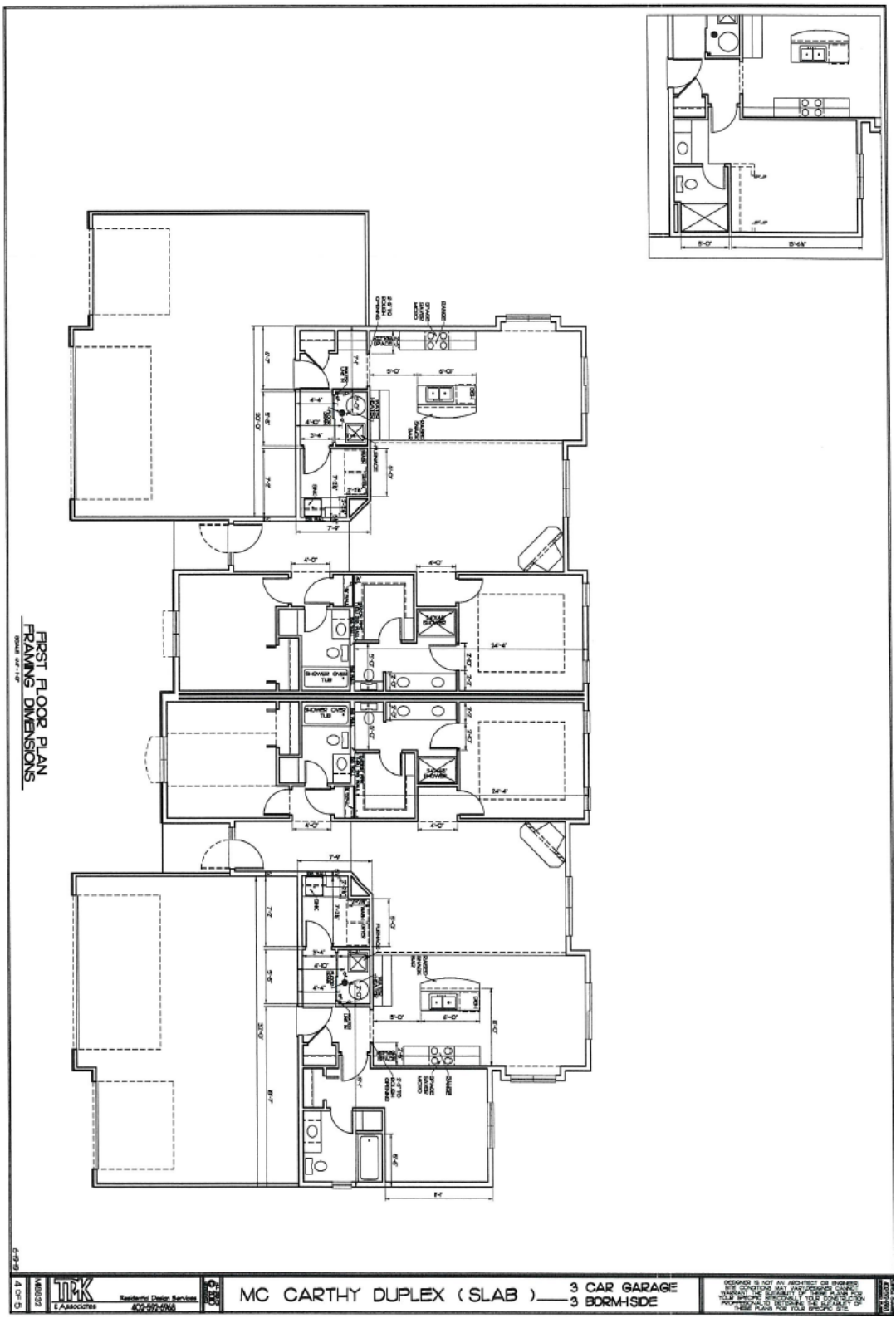


EXHIBIT C

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Council Bluffs, Iowa (the "City") and Robert McCarthy (the "Developer"), did on or about the _____ day of _____, 2021, make, execute, and deliver an Agreement for Private Development (the "Agreement"), wherein and whereby the Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

A PARCEL OF LAND BEING ALL LOT 5, NEW HORIZON SUBDIVISION REPLAT 2 AND A PORTION OF THE SW¼ NW¼ AND PART OF THE NW¼ SW¼ SECTION 28, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5th P.M., POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST ¼ CORNER OF SECTION 28, TOWNSHIP 75, RANGE 43, THENCE ALONG THE WEST LINE NW¼ SECTION 28 N 01 DEGREES 42' 52"W 161.68 FEET TO THE CENTERLINE OF COLLEGE ROAD, THENCE ALONG SAID CENTERLINE N 89 DEGREES 05'05"E 171.06 FEET, THENCE N 87 DEGREES 23'24"E 369.82 FEET TO A POINT OF CURVATURE, THENCE ON A 532.30 FOOT RADIUS CURVE TO THE LEFT AN ARC LENGTH OF 240.45 FEET, THENCE N 61 DEGREES 30'30"E 33.00 FEET TO THE POINT OF BEGINNING, THENCE N 61 DEGREES 30'30"E 36.47 FEET TO A POINT OF CURVATURE, THENCE ON A 870.13 FOOT RADIUS CURVE TO THE RIGHT AN ARC LENGTH OF 141.00 FEET (CHORD BEARS N 66 DEGREES 09'02"E 140.85 FEET), THENCE S 17 DEGREES 06'28"E 272.07 FEET, THENCE S56 DEGREES 00'42"W 156.87 FEET, THENCE N28 DEGREES 29'30"W 43.14 FEET, THENCE N 61 DEGREES 30'30"E 33.00 FEET THENCE, N 28 DEGREES 29'30"W 250.00 FEET TO THE POINT OF BEGINNING, INCLUDING COLLEGE ROAD RIGHT OF WAY, ALL IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

(the "Development Property"); and

WHEREAS, the term of this Agreement shall commence on the ____ day of _____, 2021 and terminate on the Termination Date, as set forth in the Agreement; and

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

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

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

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

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

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

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement for Private Development as of the ____ day of _____, 2021.

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

By: _____
Matt Walsh, Mayor

ATTEST:

By: _____
Jodi Quackenbush, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2021, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quackenbush, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Council Bluffs, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement – City of Council Bluffs, Iowa]

ROBERT MCCARTHY

By: _____
Robert McCarthy

STATE OF IOWA)
) SS
COUNTY OF _____)

On this _____ day of _____, 2021, before me the undersigned, a Notary Public in and for said State, personally appeared Robert McCarthy, who acknowledged the execution of said instrument to be his voluntary act and deed.

_____
Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement – Developer]

EXHIBIT D

DEVELOPER CERTIFICATION OF COSTS OF INFRASTRUCTURE IMPROVEMENTS DEDICATED TO AND ACCEPTED BY THE CITY

Robert McCarthy (the "Developer") certifies that the expenses shown on the table below were/are the actual expenses incurred by the Developer for the Infrastructure Improvements dedicated to and accepted by the City which were constructed to facilitate the development of Housing Units that are the subject of a Development Agreement entered into the _____ day of _____, 2021 between the City of Council Bluffs, Iowa and the Developer (the "Agreement").

Qualified Costs of Those Infrastructure Improvements Dedicated to and Accepted by the City							
Project Cost Category	**Engineering, Plans, Specifications**	**Construction Costs**	**Legal Costs**	**Drainage, Landscaping, Grading**	**Cost for acquisition of land within the ROW**	**Interest during construction and for not more than six months thereafter**	**Miscellaneous**
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Invoice description and cost							
Total Cost per category							

If you need additional space please attach another table.

Attach actual receipts and invoices

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

ROBERT MCCARTHY

By: _____

STATE OF IOWA)
) SS
COUNTY OF _____)

On this _____ day of _____, 20___, before me the undersigned, a Notary Public in and for said State, personally appeared Robert McCarthy, who acknowledged the execution of said instrument to be his voluntary act and deed.

_____
Notary Public in and for the State of Iowa

EXHIBIT E
DEVELOPER'S REQUEST FOR CITY CERTIFICATION
FOR TAX INCREMENT

Developer must file this Request for City Certification of Debt by October 1 of the year in which it requests that the City first certify its request for Tax Increment to the County by December 1.

Please note, the City will certify in the year Developer submits this form. **The City's certification will set the base year and start the time for expiration of the ability to collect Tax Increment from the Development Property.**

If Developer has any questions regarding the timing of the submission of this form, it should seek legal counsel of its choosing.

The Developer requests that the City certify its request for Tax Increment to the County by December 1, 20_____:

(check yes or no): yes _____ no _____.

Signed this _____ day of _____, 20____.

ROBERT MCCARTHY

By: _____

STATE OF IOWA)
) SS
COUNTY OF _____)

On this _____ day of _____, 20___, before me the undersigned, a Notary Public in and for said State, personally appeared Robert McCarthy, who acknowledged the execution of said instrument to be his voluntary act and deed.

_____
Notary Public in and for the State of Iowa

EXHIBIT F

RECEIPT OF HOMEBUYER REGARDING NON-ELIGIBILITY FOR TAX ABATEMENT

To:

_____
_____
_____

By signing this form, you (the homebuyer) acknowledge receipt of this document, which informs you that as a homeowner purchasing the below-described property, you will not be eligible for tax abatement under the City of Council Bluffs' Urban Revitalization Plan, if any, or any other state, federal, or local law.

[legal description, property address]

Signature: _____

Print Name: _____

Date: _____

Address: _____

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