

AGREEMENT FOR PRIVATE DEVELOPMENT

by and between

CITY OF BLOOMFIELD, IOWA

AND

KENNETH EDWIN FOWLER AND TERESA LYNN FOWLER REVOCABLE TRUST
DATED DECEMBER 18, 2020

AND

RYAN FOWLER LLC

_____, 2022

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT (the “Agreement”), is made on or as of the ____ day of _____, 2022, by and between the CITY OF BLOOMFIELD, IOWA, a municipality (the “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 (the “Urban Renewal Act”); KENNETH EDWIN FOWLER AND TERESA LYNN FOWLER REVOCABLE TRUST DATED DECEMBER 18, 2020, a revocable trust (“Developer”); and RYAN FOWLER LLC, an Iowa limited liability company doing business as RT AUTO (“Tenant”).

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Bloomfield Urban Renewal Area #1 Urban Renewal Area (the “Urban Renewal Area”), which is described in the Urban Renewal Plan approved for such area by Resolution No. 100 on March 18, 1991 and which has been amended several times, lastly by Amendment No. 5 as approved by Resolution No. 2021-35 on October 21, 2021 (the “Urban Renewal Plan”); and

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

WHEREAS, Developer is the owner of certain real property located in the foregoing Urban Renewal Area and 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, Developer will cause certain improvements to be constructed on the Development Property consisting of the construction of an approximately 2,700 to 2,800 square foot building located on the Development Property (the “Minimum Improvements”); and

WHEREAS, Developer will allow the Tenant to occupy the Minimum Improvements on the Development Property and to operate its business therein, including the creation of jobs; and

WHEREAS, Developer will allow Tenant to remain on the Development Property to operate its business until at least the Termination Date of this Agreement; and

WHEREAS, the City is willing to provide certain incentives in consideration for Developer’s and Tenant’s obligations all pursuant to the terms and conditions of this Agreement; 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 promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

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

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

Area or Urban Renewal Area means the area known as the Bloomfield Urban Renewal Area #1 Urban Renewal Area (as amended).

Base Value means the assessed value of the Development Property and improvements thereof as of January 1, 2022, which value is \$165,770.

Bloomfield Urban Renewal Area #1 Urban Renewal Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund 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.

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit C and hereby made a part of this Agreement.

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

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

Commencement Date means the date of this Agreement.

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

Developer means Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020, and its permitted successors and assigns.

Development Property means that portion of the Bloomfield Urban Renewal Area #1 Urban Renewal Area described in Exhibit A.

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

Event of Default means any of the events described in Section 10.1 of this Agreement.

Fowler Trust TIF Account means a separate account within the Bloomfield Urban Renewal Area #1 Urban Renewal Tax Increment Revenue Fund of the City, in which there shall be deposited Tax Increments received by the City with respect to the Minimum Improvements and the Development Property.

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

Job means a position filled by a natural person contracted to work in the Minimum Improvements.

Minimum Improvements means the construction of a commercial building as more particularly described in Exhibit B to this Agreement.

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

Net Proceeds means any proceeds paid by an insurer to Developer or Tenant under a policy or policies of insurance required to be provided and maintained by Developer or Tenant, pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means the ordinances 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 Bloomfield Urban Renewal Area#1 Urban Renewal Tax Increment Revenue Fund.

Project means the construction and operation of the Minimum Improvements on the Development Property and the creation and maintenance of jobs, as described in this Agreement.

State means the State of Iowa.

Tax Increments means the property tax revenues on the Minimum Improvements divided and made available to the City for deposit in the Fowler Trust TIF Account of the Bloomfield Urban Renewal Area #1 Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Tenant means Ryan Fowler LLC, and each assignee that assumes in writing all of the obligations of the Tenant under this Agreement with the written consent of the City to the extent required by Section 6.1 of this Agreement.

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

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

Urban Renewal Plan means the Urban Renewal Plan, as amended, approved with respect to the Bloomfield Urban Renewal Area #1 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 municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

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

c. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City 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. Developer makes the following representations and warranties:

a. Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020 is a revocable trust duly organized and validly existing under the laws of the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution, and delivery by the City and Tenant, 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. The Developer's attorney shall provide an enforceability opinion in substantially the a form attached as Exhibit F to be signed concurrently with this Agreement.

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

d. There are no actions, suits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective) or financial position 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 will cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

f. Developer will use its best efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

g. Developer has not received any notice from any local, State, or federal official that the activities of Developer or Tenant 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.

h. Developer has firm commitments for construction and acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the Construction Plans contemplated in this Agreement.

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

j. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed by December 31, 2022.

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

l. Developer will not seek to change the current land assessment category, or the zoning classification, of the Development Property or the Minimum Improvements prior to the Termination Date.

m. Developer agrees to permit the Tenant to occupy the Minimum Improvements on the Development Property and operate its business therein until at least the Termination Date.

Section 2.3. Representations and Warranties of Tenant. Tenant makes the following representations and warranties:

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

b. This Agreement has been duly and validly authorized, executed, and delivered by Tenant and, assuming due authorization, execution, and delivery by the City and Developer, is in full force and effect and is a valid and legally binding instrument of Tenant 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, nor will result in a violation or breach of the terms, conditions, or provisions of the governing documents of Tenant or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Tenant 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 Tenant in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position, or results of operations of Tenant or which in any manner raises any questions affecting the validity of the Agreement or Tenant's ability to perform its obligations under this Agreement.

e. Tenant will fulfill the employment obligations in Section 6.6 of this Agreement in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

f. Tenant has not received any notice from any local, State, or federal official that the activities of Developer or Tenant 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). Tenant 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 Tenant 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.

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

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

i. Tenant agrees to occupy the Development Property owned by Developer and do business therein until at least the Termination Date.

ARTICLE III. CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 3.1. Construction of Minimum Improvements. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to the City. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Construction Plans. All work with respect to the Minimum Improvements shall be in conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official. Developer and Tenant agree that they shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

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

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

and local laws, ordinances, and regulations, nor shall approval of the Construction Plans by the City be deemed to constitute a waiver of any Event of Default.

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

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be undertaken and completed: (i) by no later than December 31, 2022; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays.

Section 3.4. Certificate of Completion. Upon written request of Developer after issuance of a certificate of completion from the Community Development Department for the Minimum Improvements, the City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit C attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.4, the City shall, within twenty (20) days after written request by Developer provide a written statement indicating in adequate detail in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain such Certificate of Completion.

Issuance by the City of the Certificate of Completion pursuant to this Section 3.4 is solely for the purposes of this Agreement, and shall not constitute approval for any other City purpose nor shall it subject the City to any liability for the Development Property or the Minimum Improvements as constructed.

ARTICLE IV. PROPERTY TAXES

Section 4.1. Real Property Taxes. Developer, or their 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 and Minimum Improvements. 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 on the Development Property and Minimum Improvements.

Developer, and their permitted successors and assigns 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 V. INSURANCE

Section 5.1. Insurance Requirements.

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

i. Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least \$1,000,000 for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the project and arising out of any act, error, or omission of Developer, its directors, officers, shareholders, contractors, and subcontractors or anyone else for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to Developer and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

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

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

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than \$50,000 or self-insurance up to not more than \$1,000,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs

and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by Developer or Tenant and approved by the City.

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

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

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

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

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

ARTICLE VI. FURTHER COVENANTS OF DEVELOPER AND TENANT

Section 6.1. Maintenance of Properties. Developer and Tenant will maintain, preserve, and keep their respective properties within the City (whether owned in fee or a leasehold interest), including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Maintenance of Records. Developer and Tenant, each for themselves, will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to their business and affairs relating to this Project, and Developer and Tenant will provide reasonable protection against loss or damage to such books of record and account.

Section 6.3. Compliance with Laws. Developer and Tenant shall comply with all State, federal, and local laws, rules, and regulations relating to the Minimum Improvements, Development Property, and the Project.

Section 6.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Developer and Tenant, each for themselves, shall not discriminate against any applicant, employee or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer and Tenant, each for themselves, shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 6.5. Available Information. Upon request, Developer and Tenant shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that the City can determine compliance with the Agreement.

Section 6.6. Employment. By no later than December 31, 2023 and at least through the Termination Date, Tenant shall, and Developer shall ensure that Tenant, creates and retains at least 3 Jobs at the Development Property. Tenant shall retain all 3 Jobs in order to be eligible for Economic Development Grants. The Annual Certification submitted by Developer and Tenant pursuant to Section 6.7 shall show that a Monthly Average of at least 3 Jobs has been maintained at the Development Property from the date of this Agreement through the Termination Date of this Agreement.

“Monthly Average” means the average number of Jobs as of October 1 of each year and as of the first day of each of the preceding eleven (11) months, as shown in the Annual Certification in Section 6.7. Developer shall not receive any Economic Development Grants if the Monthly Average of Jobs on the Development Property does not meet the requirements of this Section 6.6. Developer shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

Section 6.7. Developer and Tenant Annual Certification. To assist the City in monitoring this Agreement and the performance of Developer and Tenant hereunder, duly authorized officers of Developer and Tenant shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been timely paid for the prior fiscal year (and for the current year, if due); (ii) the date of the first full assessment of the Minimum Improvements; (iii) the total number of Jobs employed by the Tenant at the Minimum Improvements as of each October 1 and the first day of each of the preceding eleven (11) months; and (iv) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and

during the preceding twelve (12) months, Developer and Tenant are not, or were not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

Such statement, proof and certificate shall be provided not later than October 15 of each year, commencing October 15, 2023 and ending on October 15, 2030, both dates inclusive. Developer and Tenant shall provide supporting information for the Annual Certifications upon request of the City. See Exhibit D for form required for the Annual Certification.

Section 6.8. Term of Operation. Tenant shall continue its operations in the Minimum Improvements on the Development Property and its other obligations contained in this Agreement, including the employee obligations in Section 6.6, until the Termination Date of this Agreement.

Section 6.9. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in accordance with the Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens, and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Status of Developer and Tenant; Transfer of Substantially All Assets; Assignment. As security for the obligations of the Developer and Tenant under this Agreement, the Developer and Tenant represent and agree that, prior to the Termination Date, they will maintain their respective existences, will not wind up or otherwise dispose of all or substantially all of their interests in Development Property, and will not assign, transfer, or otherwise convey any interest in this Agreement to any other party, unless (i) the transferee, partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the Developer or Tenant, as the case may be, under this Agreement and (ii) the City consents thereto in writing in advance thereof. Notwithstanding the foregoing, however, or any other provisions of this Agreement, the Developer may pledge any and/or all of its assets and real estate as security for any financing of the Minimum Improvements to a commercial lender.

Section 7.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Developer, or its successors, or assigns agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric

Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE VIII. ECONOMIC DEVELOPMENT GRANTS

Section 8.1. Economic Development Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement at the time of each payment (subject to all applicable cure periods), to make up to seven (7) consecutive annual payments of Economic Development Grants to Developer comprised of a percentage of each fiscal year's Tax Increments, up to a total aggregate amount not to exceed Twenty-Seven Thousand Dollars (\$27,000), under the following terms and conditions.

a. Formula and Schedule. Assuming the completion of the Minimum Improvements by December 31, 2022, first full assessment on January 1, 2023, and eligibility under the terms of this Agreement at the time of payment, then Economic Development Grants shall commence on June 1, 2025 and end (i) after the aggregate amount of the Economic Development Grants paid have totaled \$27,000, or (ii) on June 1, 2031, whichever is earlier, pursuant to the following formula and schedule:

<u>Date</u>	<u>Amount of Economic Development Grants</u>
June 1, 2025	75% of Tax Increments for the Fiscal Year 24 -25
June 1, 2026	75% of Tax Increments for the Fiscal Year 25 -26
June 1, 2027	75% of Tax Increments for the Fiscal Year 26 -27
June 1, 2028	75% of Tax Increments for the Fiscal Year 27 -28
June 1, 2029	75% of Tax Increments for the Fiscal Year 28 -29
June 1, 2030	75% of Tax Increments for the Fiscal Year 29 -30
June 1, 2031	75% of Tax Increments for the Fiscal Year 30 -31

Under no circumstances shall the failure by Developer to qualify for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the number of years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully complies with the provisions hereof and Developer becomes entitled thereto, up to the Maximum Aggregate Amount set forth in Section 8.1(c).

b. Calculation. Each annual payment shall be equal in amount to the above percentages of the applicable Tax Increments collected by City with respect to that portion of the assessed value of the Minimum Improvements and the Development Property above the Base Value under the terms of the Ordinance and deposited into the Bloomfield Urban Renewal Area #1 Urban Renewal Area Tax Increment Revenue Fund (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) during the preceding twelve-month period, but subject to limitation and adjustment as provided in this Article. The parties recognize that the amount of each Economic Development Grant will be determined after the valuation of the Development Property and Minimum Improvements has been established by the Davis County Assessor.

c. Aggregate Maximum for Economic Development Grants. The aggregate amount of Economic Development Grants that may be paid to Developer under this Section 8.1 shall in no event exceed \$27,000. It is further agreed and understood that each Economic Development Grant shall come solely and only from incremental taxes received by City under Iowa Code Section 403.19 from levies upon the Development Property, City makes no representation with respect to the amounts that may finally be paid to Developer, and in no event shall Developer be entitled to receive more than calculated under the formulas set forth in this Section 8.1, even if the aggregate maximum of \$27,000 is not met.

d. Limitation to Minimum Improvements. The Economic Development Grants are only for the Minimum Improvements described in this Agreement and not any expansions or improvements not included within the definition of the Minimum Improvements which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the governing body of City.

e. Conditions Precedent. Notwithstanding the provisions of this Section 8.1, the obligation of City to make an Economic Development Grant in any year shall be subject to and conditioned upon all of the following:

i. Developer's completion of construction of the Minimum Improvements, consistent with this Agreement;

ii. City's receipt of Tax Increment from the County pursuant to Iowa Code Section 403.19 generated by the Minimum Improvements;

iii. Timely filing by Developer and Tenant of the Annual Certifications required under Section 6.7 hereof and the Council's approval thereof; and

iv. Developer's and Tenant's compliance with the terms of this Agreement at the time of payment.

In the event that an Event of Default occurs and continues past applicable cure periods, 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 8.2. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts deposited and held in the Fowler Trust TIF Account of the Bloomfield Urban Renewal Area #1 Urban Renewal Area Tax Increment Revenue Fund of City. City hereby covenants and agrees to maintain the account with respect to the Development Property in force during the term hereof and to apply the Tax Increments collected in respect of the Development Property and the Minimum Improvements and allocated to the Fowler Trust 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. Any commercial and industrial property tax replacement monies that may be received under Chapter 441.21A of the Code shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under Chapter 426C

of the Code relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council. The right of non-appropriation reserved to City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness of 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 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 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 8.1 hereof, City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof City fails to appropriate funds for payment; the ability to collect Tax Increment is terminated by a change in law; or the City receives an opinion from any court having jurisdiction over the subject matter hereof to the effect that the use of Tax Increments resulting from the Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 8.1, is prohibited under the Urban Renewal Act or other applicable provisions of the Code, as then constituted. Upon receipt of any such legal opinion or non-appropriation, City shall promptly forward notice of the same to Developer. If the circumstances precluding the payment of Grants continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer under the terms of Section 8.1, City may terminate this Agreement, without penalty or other liability, by written notice to Developer.

d. City makes no representation with respect to the amounts that may finally be paid to Developer as the Economic Development Grants, and under no circumstances shall City in any manner be liable to Developer so long as City timely applies the Tax Increments actually collected and held in the Fowler Trust TIF Account (regardless of the amounts thereof) to the payment of the Economic Development Grants to the Developer, as and to the extent described in this Article.

Section 7.3. Use of Other Tax Increments. Subject to this Article VII, City shall be free to use any and all available Tax Increments in excess of the maximum amount in Section 8.1(c) or resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increments may lawfully be used pursuant to the provisions of the Urban Renewal Act, and City shall have no obligations to Developer with respect to the use thereof.

ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Developer and Tenant release the City and the governing body members, officers, agents, servants, and employees thereof (hereinafter, for purposes of this Article IX, the "Indemnified Parties")

from, covenant and agree that the Indemnified Parties shall not be liable for, and agree to indemnify, defend, and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements or Development Property.

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer and Tenant agree to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand, or other proceeding brought by Developer or Tenant against the City to enforce their 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 Developer or Tenant or their 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. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

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

ARTICLE X. EVENTS OF DEFAULT; REMEDIES

Section 10.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events during the term of this Agreement:

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

b. Transfer of Developer’s or Tenant’s interests in the Development Property, Minimum Improvements, or this Agreement or the assets of Developer or Tenant in violation of the provisions of this Agreement;

c. Failure by Developer to timely pay ad valorem taxes on the Development Property and Minimum Improvements;

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

e. 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;

f. Developer or Tenant:

i. files 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. makes an assignment for the benefit of its creditors; or

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

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

g. Any representation or warranty made by Developer or Tenant in this Agreement or in any written statement or certificate furnished by Developer or Tenant 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 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City may take any one or more of the following actions after giving thirty (30) days' written notice to Developer and Tenant of the Event of Default, but only if the Event of Default has not been cured to the satisfaction of the City within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and Developer and/or Tenant does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

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

b. The City may terminate this Agreement;

c. The City may withhold the Certificate of Completion;

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

e. The City shall have no obligation to make payment of Economic Development Grants to Developer subsequent to an Event of Default and shall be entitled to recover from the Developer, and the Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer under Article VIII hereof, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amount from Developer. The City may demand such payment at any time following its determination that Developer is in default under this Agreement.

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

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

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the negotiation, drafting and adoption of this Agreement, including, but not limited to, publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City. Payment of such costs will be made by the Developer to the City within 30 days of the date on which the City presents a statement to the Developer demonstrating such costs, or if not previously paid the costs shall be deducted from the first Economic Development Grant.

b. Whenever any Event of Default occurs and the City employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer or Tenant herein contained, Developer and Tenant agree that the defaulting party 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 XI. MISCELLANEOUS

Section 11.1. Conflict of Interest. Developer and Tenant represent and warrant that, to their 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 11.2. Notices and Demands. A notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- a. In the case of Developer, is addressed or delivered personally to Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020, at 23530 215th Street, Bloomfield, IA 52537, Attn: Kenneth Fowler;
- b. In the case of Tenant, is addressed or delivered personally to Ryan Fowler LLC, at 505 S. Washington Street, Bloomfield, IA 52537, Attn: Ryan Fowler;
- c. In the case of the City, is addressed to or delivered personally to the City at City Hall, 111 W. Franklin St, Bloomfield, IA 52537, Attn: City Administrator/Clerk;

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

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

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

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

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

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

Section 11.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2031, unless terminated earlier under the provisions of this Agreement.

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

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

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

[Remainder of page intentionally left blank; signature pages follow]

(SEAL)

CITY OF BLOOMFIELD, IOWA

By: _____
Chris Miller, Mayor

ATTEST:

By: _____
Kyle McClure, Deputy City Clerk

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 2022, before me a Notary Public in and for said State, personally appeared Chris Miller and Kyle McClure, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Bloomfield, 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 Deputy 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 Bloomfield]

DEVELOPER:
Kenneth Edwin Fowler and Teresa Lynn Fowler
Revocable Trust Dated December 18, 2020

By: _____
Kenneth Fowler, Trustee

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for said State, personally appeared Kenneth Fowler to me personally known, who, being by me duly sworn, did say that he is a Trustee of the Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020, and that said instrument was signed on behalf of said trust; and that the said Trustee acknowledged the execution of said instrument to be the voluntary act and deed of said revocable trust, by him voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Agreement for Private Development – Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020]

TENANT:
RYAN FOWLER LLC, an
Iowa limited liability company

By: _____
Ryan Fowler, Owner

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for said State, personally appeared Ryan Fowler to me personally known, who, being by me duly sworn, did say that they are the Owner of Ryan Fowler LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Member as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Agreement for Private Development – Ryan Fowler LLC]

EXHIBIT A
DEVELOPMENT PROPERTY

The Development Property is described as follows:

[LEGAL DESCRIPTION]

EXHIBIT B
MINIMUM IMPROVEMENTS

Minimum Improvements means the construction of an approximately 2,700-2,800 square foot commercial building, and all related site improvements, to be constructed by the Developer on the Development Property.

EXHIBIT C
CERTIFICATE OF COMPLETION

WHEREAS, the City of Bloomfield, Iowa, (“City”), Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020, a revocable trust (“Developer”), and Ryan Fowler LLC, an Iowa limited liability company (“Tenant”) did on or about the ____ day of _____, 2022, make, execute and deliver, each to the other, an Agreement for Private Development (the “Agreement”), wherein and whereby Developer and Tenant 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:

[LEGAL DESCRIPTION]

(the “Development Property”); and

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

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

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

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

[Remainder of page intentionally left blank; signature page follows]

(SEAL)

CITY OF BLOOMFIELD, IOWA

By: _____
Chris Miller, Mayor

ATTEST:

By: _____
Kyle McClure, Deputy City Clerk

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 20____, before me a Notary Public in and for said State, personally appeared Chris Miller and Kyle McClure, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Bloomfield, 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 Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Certificate of Completion – City of Bloomfield]

EXHIBIT D
DEVELOPER AND TENANT ANNUAL CERTIFICATION
(due annually before October 15th as required under terms of Development Agreement)

The Developer and Tenant certify that, during the time period covered by this Certification, the Developer and Tenant are and were in compliance with the Agreement as follows:

(i) All ad valorem taxes on the Development Property have been timely paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The Minimum Improvements (building only) were first fully assessed on January 1, 20___, at a full assessment value of \$ _____;

(iii) The total number of Jobs employed by the Tenant at the Minimum Improvements as of October 1, _____ and as of the first day of each of the preceding eleven (11) months were are follows:

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

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

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

Signed this _____ day of _____, 20__.

KENNETH EDWIN FOWLER AND
TERESA LYNN FOWLER REVOCABLE TRUST
DATED DECEMBER 18, 2020

RYAN FOWLER LLC,
an Iowa limited liability company

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Attachments: Proof of payment of taxes

Prepared by: Jenna H.B. Sabroske, Ahlers Cooney, 100 Court Ave, Ste 100, Des Moines, IA 50309 515-243-7611
Return to: City Clerk, City of Bloomfield, 111 W. Franklin St., Bloomfield, IA 52537

EXHIBIT E
MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Bloomfield, Iowa (“City”), Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020, a revocable trust, (“Developer”), and Ryan Fowler LLC (“Tenant”), an Iowa limited liability company, did on or about the ____ day of _____, 2022, make, execute and deliver, each to the other, an Agreement for Private Development (the “Agreement”), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Urban Renewal Plan (the “Plan”), to develop certain real property located within the City and within the Bloomfield Urban Renewal Area #1 Urban Renewal Area, which real property is legally described as follows:

[LEGAL DESCRIPTION]

(the “Development Property”); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2022 and terminates on December 31, 2031, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City, Developer, and Tenant 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, Bloomfield, Iowa.

IN WITNESS WHEREOF, the City, Developer, and Tenant have executed this Memorandum of Agreement for Private Development on the _____ day of _____, 2022.

[Remainder of page intentionally left blank; signature pages follow]

(SEAL)

CITY OF BLOOMFIELD, IOWA

By: _____
Chris Miller, Mayor

ATTEST:

By: _____
Kyle McClure, Deputy City Clerk

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 2022, before me a Notary Public in and for said State, personally appeared Chris Miller and Kyle McClure, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Bloomfield, 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 Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement for Private Development – City of Bloomfield]

DEVELOPER:
Kenneth Edwin Fowler and Teresa Lynn
Fowler Revocable Trust Dated December
18, 2020

By: _____
Kenneth Fowler, Trustee

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for said State, personally appeared Kenneth Fowler to me personally known, who, being by me duly sworn, did say that he is a Trustee of the Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020, and that said instrument was signed on behalf of said trust; and that the said Trustee acknowledged the execution of said instrument to be the voluntary act and deed of said revocable trust, by him voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Agreement for Private Development – Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020]

TENANT:
RYAN FOWLER LLC, an
Iowa limited liability company

By: _____
Ryan Fowler, Owner

STATE OF IOWA)
) SS
COUNTY OF DAVIS)

On this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for said State, personally appeared Ryan Fowler to me personally known, who, being by me duly sworn, did say that they are the Owner of Ryan Fowler LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Member as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Memorandum of Agreement for Private Development –Ryan Fowler LLC]

EXHIBIT F
FORM OF LEGAL OPINION

City of Bloomfield
Bloomfield, Iowa

Re: Development Agreement between the City of Bloomfield, Iowa (“City”), Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020 (“Developer”), and Ryan Fowler LLC (“Tenant”).

As counsel for Kenneth Edwin Fowler and Teresa Lynn Fowler Revocable Trust Dated December 18, 2020 (the “Entity” in this letter) in connection with the execution and delivery of a certain Development Agreement (the “Development Agreement”) between the Entity, the City of Bloomfield, Iowa (the “City”), and Ryan Fowler LLC (the “Tenant”) dated as of _____ 2022 and referenced above, we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following:

- a. The governing/formational documents of the Entity;
- b. The Development Agreement (the term “Development Agreement” includes all Exhibits to the “Development Agreement”); and
- c. Such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. The Entity is duly organized and validly exists as a revocable trust under the laws of the State of Iowa. The Entity, through its Trustee, has full power and authority to execute, deliver and perform in full the Development Agreement; and the Development Agreement has been duly and validly authorized, executed and delivered by the Entity, and, assuming due authorization, execution and delivery by the other parties thereto, is in full force and effect and is valid and legally binding instrument of the Entity 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.

2. The consummation of the transaction contemplated by the Development Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the operating agreement or any other governing documents of the Entity, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which the Entity is a party or by which it or its property is bound or subject.

Very truly yours,

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