

DEVELOPMENT AGREEMENT
(APPLE VALLEY SHOPPING CENTER)

This **Development Agreement** is entered into between the City of Windsor Heights, Iowa (the “City”) and Colby’s Apple Valley, LLC, an Iowa limited liability company (the “Developer”) as of the ____ day of _____, 2015.

WHEREAS, the City has established the Windsor Heights Urban Renewal Area (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer intends to redevelop in two phases the Apple Valley Shopping Center with approximately _____ square feet of commercial retail space to be located within the area illustrated in Exhibit A on certain real property which is situated within the Urban Renewal Area, with a legal description shown on **Exhibit A** to this Agreement; and

WHEREAS, the Developer has requested economic development financing assistance in paying the costs of the redevelopment; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private person.;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer’s Covenants

1. The Developer intends to undertake the redevelopment in two phases. Phase I of the Project consists of demolishing the existing buildings and replacing them with a 17,825 +/- square feet anchor store and 12,600 +/- square feet multi-tenant building on total land area of 160,980 square feet. Phase I of the Project is located on Tax parcel 292/00079-006-003 (the “Phase I Property”). Phase II of the Project consists of demolishing existing buildings and replacing them with two multi-tenant buildings of 15,400 +/- square feet and 10,500 +/- square feet on total land area of 139,030 square feet. Phase II is located on Tax Parcel 292/00079-004-000, plus the west 28,759.2 square feet, more or less, of current Tax Parcel 292/00079-003-000 (the “Phase II Property”). The development of Phase I and Phase I will be in substantial conformance with the Site Plan approved by the City of Windsor Heights.

2. The Developer agrees to begin construction on Phase I of the Project (which may include equipment mobilization and on/off property material delivery) on or before _____, 2016, or as soon thereafter as is reasonably practicable if Developer is unable to commence demolition on or before _____, due to a “force majeure event”, including, but not limited to acts of God, acts of war, civil disturbance, governmental action (including the revocation or refusal to grant licenses, permits, certificates or approvals, where such revocation or refusal is not due to the fault of Developer, or the expiration of time periods required by law or regulations before necessary permits can be granted), strikes, lockouts, shortage or unavailability of materials, fire, unavoidable casualties or any other causes beyond the reasonable control of Developer (other than a lack of financing).

3. Developer shall have no obligations to commence or undertake Phase II of the Project except that if Developer does not commence Phase II on or before _____, 20____, then this Agreement shall terminate with respect to any obligations pertaining to Phase II.

4. The Developer agrees to make timely payment of all property taxes levied against the Phase I Property and Phase II Property, or to cause such timely payment to be made, as such payments come due throughout the term of this Agreement. The Developer agrees to file with the City Clerk a copy of a receipt showing the amount of property taxes paid for each semi-annual period.

B. City's Obligations

1. Phase I Obligations

a. In recognition of the Developer's undertakings set out above with respect to Phase I, the City agrees, subject to the terms and conditions hereinafter set forth, to make thirty semiannual economic development tax increment payments (the "Phase I Payments") to the Developer during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa.

b. This Agreement for the construction of Phase I assumes that a portion of the taxable value of Phase I will go on the property tax rolls as of January 1, _____. Accordingly, the Phase I Payments will be made on June 1 and December 1 of each fiscal year, beginning on December 1, 20__ and continuing through and including June 1, _____.

c. Each Phase I Payment shall be in an amount equal to 90% of the total ad-valorem taxes required to be paid in the preceding six months on the incremental taxable value of the Phase I Property above the base taxable value of the Property established for the January 1, 20____, valuation date.

d. The Phase I Payments shall not constitute general obligations of the City, but shall be made solely and only from incremental property taxes received by the City from the Polk County Treasurer which are attributable to the Phase I Property.

2. Phase II Obligations

a. In recognition of the Developer's undertakings set out above with respect to Phase II, the City agrees, subject to the terms and conditions hereinafter set forth, to make thirty semiannual economic development tax increment payments (the "Phase II Payments") to the Developer during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa; provided, however, that the total amount of the Phase I and Phase II Payments shall not exceed \$2,430,000.

b. This Agreement for the construction of Phase II assumes that a portion of the taxable value of Phase II will go on the property tax rolls as of January 1, _____. Accordingly, the Phase II Payments will be made on June 1 and December 1 of each

fiscal year, beginning on December 1, 20__ and continuing through and including June 1, _____.

c. Each Phase II Payment shall be in an amount equal to 90% of the total ad-valorem taxes required to be paid in the preceding six months on the incremental taxable value of the Phase II Property above the base taxable value of the Property established for the January 1, 20___, valuation date.

d. The Phase II Payments shall not constitute general obligations of the City, but shall be made solely and only from incremental property taxes received by the City from the Polk County Treasurer which are attributable to the Phase II Property.

C. Administrative Provisions

1. This Agreement may not be amended except by a written agreement approved by both the City and the Developer which approval shall not be unreasonably withheld or delayed. However, the City hereby gives its permission that the Developer's rights to receive the economic development payments hereunder may be assigned by the Developer to a lender, as security, without further action on the part of the City.

2. The obligations pertaining to Phase I and Phase II shall be distinct and separate and not be deemed cross-defaulted. In the event that the Developer fails to perform any of its covenants under this Agreement with respect to a particular Phase, then the City's sole remedy shall be the termination of the City's obligation to make the Phase I or Phase II Payments, as applicable, due the Developer after the date of such default, but thereafter the obligations shall remain in effect with respect to the other Phase unless default occurs with respect to such other Phase. The Developer may assign its rights under this Agreement to any person to whom it transfers the Property or it may, in its sole discretion, elect to treat the Payments due the Developer under this Agreement as personal property and retain them separate from the transfer of the Property, provided the Developer shall give the City written notice of the transfer of the Property and whether or not the Developer's rights under this Agreement were also transferred to the transferee of the Property or were retained by the Developer.

3. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

4. This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

5. The City's obligations to make the Phase I and Phase II Payments are subject to annual appropriation by the City Council, provided, however, that any denial of appropriations must be made proportionately across all properties entitled to receive economic development payments pursuant to the Urban Renewal Act in the City of Windsor Heights, it being the intent of this provision to prohibit the City from electing to not fully appropriate payments for this project but fully or disproportionately appropriate payments for other projects in the City.

The City and the Developer have caused this Agreement to be signed, in their names and on their behalf, by their duly authorized officers, all as of the day and date written above.

CITY OF WINDSOR HEIGHTS

By: _____
Mayor

Attest:

City Clerk

COLBY'S APPLE VALLEY, LLC

By: _____

Name: _____
Manager

(02226118)

DRAFT

EXHIBIT A
Legal Description of Property

Phase I

Phase II

DRAFT

Sources and Uses of Funds
Midtown Center Redevelopment
With Land Cost

8/27/2015

Sources of Funds

| | |
|---------------------|--------------------------|
| First Mortgage | 8,072,813 |
| Required Source Gap | <u>4,468,152</u> |
| TOTAL SOURCES | <u><u>12,540,965</u></u> |

Uses of Funds

Hard Costs

| | |
|----------------------------|-----------|
| Urban Renewal Improvements | |
| Demolition | 760,111 |
| Grading and Utilities | 672,492 |
| Stormwater Management | 607,520 |
| Streetscape Improvements | 344,806 |
| Private Roads and Parking | 1,020,692 |
| Building Costs | 4,743,000 |
| Land Costs | 2,026,161 |

Soft Costs

| | |
|-----------------------------------|--------------------------|
| Consultant Costs | 892,701 |
| Developer Costs | 371,959 |
| Financing Cost/ Construction Loan | |
| Loan fees | 148,783 |
| Construction Interest | 316,165 |
| Marketing and Overhead Expense | 363,400 |
| Relocation Costs | 50,000 |
| Construction Contingency | <u>223,175</u> |
| TOTAL USES | <u><u>12,540,965</u></u> |

Sources and Uses of Funds
Midtown Center Redevelopment
Without Land Costs

8/27/2015

Sources of Funds

| | |
|----------------------|--------------------------|
| First Mortgage | 8,072,813 |
| Required Sources Gap | <u>2,441,992</u> |
| TOTAL SOURCES | <u><u>10,514,804</u></u> |

Uses of Funds

Hard Costs

| | |
|----------------------------|-----------|
| Urban Renewal Improvements | |
| Demolition | 760,111 |
| Grading and Utilities | 672,492 |
| Stormwater Management | 607,520 |
| Streetscape Improvements | 344,806 |
| Private Roads and Parking | 1,020,692 |
| Building Costs | 4,743,000 |
| Land Costs | - |

Soft Costs

| | |
|-----------------------------------|--------------------------|
| Consultant Costs | 892,701 |
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| Loan fees | 148,783 |
| Construction Interest | 316,165 |
| Marketing and Overhead Expense | 363,400 |
| Relocation Costs | 50,000 |
| Construction Contingency | <u>223,175</u> |
| TOTAL USES | <u><u>10,514,804</u></u> |

MidTown Calculation of TIF

8/26/2015

| <u>Proposed Property Value Cost Approach</u> | | | | | | Taxes Mill Rate |
|--|------------------------------|------------------------|---------------------|-----|---------------------|--------------------|
| | Building Permit Valuation | Assessed Land Value | Value | | Taxable Value | 0.04119488 |
| 17825 Phase 1 Anchor | 2,071,443 | 520,918 | 2,592,361 | 90% | 2,333,125 | 96,113 |
| 12600 Phase 1(west) | 1,171,397 | 566,166 | 1,737,563 | 90% | 1,563,807 | 64,421 |
| 15,800 Phase 2 (west) | 1,468,894 | 493,090 | 1,961,984 | 90% | 1,765,786 | 72,741 |
| 10,500 Phase 2 (east) | 976,164 | 445,986 | 1,422,150 | 90% | 1,279,935 | 52,727 |
| 56725 Total | <u>\$ 5,687,898</u> | <u>\$ 2,026,161</u> | <u>\$ 7,714,059</u> | | <u>\$ 6,942,653</u> | <u>\$ 286,002</u> |
| psf | 110 | \$ 6.75 | \$ 135.99 | | \$ 122.39 | \$ 5.04 |

Base Property Value

| | Land | Buildings | Total | Existing Property Taxes | | |
|---------------|---------------------|-------------------|---------------------|-------------------------|------------------|-------------------|
| | AV 1 | AV 2 | Assessed Value | AV2 West | AV 1 East | Total |
| AV 2 (west) | 847,000 | 133,000 | 980,000 | | | |
| AV 1(east) | 1,003,000 | 697,000 | 1,700,000 | | | |
| Bankers Trust | 171,285 | | 171,285 | | | |
| Total | <u>\$ 2,021,285</u> | <u>\$ 830,000</u> | <u>\$ 2,851,285</u> | <u>\$ 65,898</u> | <u>\$ 37,988</u> | <u>\$ 103,886</u> |

Total Annual Tax Increment Available - Cost Approach \$ 4,862,774 \$ 94,636 \$ 87,480 \$ 182,116

Minimum Assessment

| | | <u>Total</u> |
|--------------------------------|-----|------------------|
| Annual Tax Increment Available | | 182,116 |
| Annual Tax Increment Requested | 90% | 163,904 |
| Excess Increment | | <u>\$ 18,212</u> |