Recorded: 12/22/2020 at 1:17:04.0 PM
County Recording Fee: $72.00
Iowa E-Filing Fee: $4.34
Combined Fee: $76.34
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2020 PG: 4788

Prepared by: Joseph E. Schmall of Bradley & Riley PC, P.O. Box 2804, Cedar Rapids, IA 52406-2804 (319) 363-0101
Return to: Credit Administration, Cedar Rapids Bank and Trust Company, 500 1st Avenue NE, Suite 100, Cedar Rapids, IA 52401

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT ("Assignment") is made and entered into as of December 9, 2020, by and among BR DEVELOPMENT LLC, an Iowa limited liability company ("Developer"), and CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state bank ("CRBT").

Recitals

A. The City of Manchester, Iowa ("City") and Developer entered into that certain Agreement for Private Development dated as of November 9, 2020, ("Development Agreement"), pertaining to the real property owned by Developer located in Manchester, Iowa, legally described on **Exhibit A** attached hereto and hereby made a part hereof (the "Development Property"), a copy of which Development Agreement is attached hereto as **Exhibit B**.

B. Pursuant to the Development Agreement and subject to the terms and conditions of the Development Agreement, the City established the Manchester Urban Renewal Area ("Urban Renewal Area") that will allow for the redevelopment of the Development Property and the construction of certain improvements (the "Project") on the Development Property and for the Developer to receive an exemption of taxation on the actual value added by the construction of the improvements.

C. Developer and CRBT have entered into that certain Loan Agreement (the "Loan Agreement") for the purpose of funding loans (the "Loans") to be made by CRBT to Developer to finance the Project.

D. CRBT has required, as an express condition to extending the Loans, that Developer assign all of its rights under the Development Agreement to CRBT as security for the obligations of Developer under the Loans.

NOW THEREFORE, in consideration of the foregoing recitals and for other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Developer hereby assigns to CRBT all of its right, title and interest under and pursuant to the Development Agreement to secure Developer's obligations under the terms of the Loans and the documents related thereto. Developer consents to CRBT filing such UCC financing statements or other documents as CRBT may deem necessary or appropriate for CRBT to perfect its security interest in all of Developer's rights under the Development Agreement.

2. Developer hereby represents and warrants that: (a) there have been no prior assignments of the Development Agreement; (b) the Development Agreement is valid and enforceable; (c) neither the City nor the Developer are in default under the Development Agreement; and (d) to date, all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. Developer agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Assignment is in effect. Upon a default under the Loans or Loan Agreement, Developer hereby irrevocably constitutes and appoints CRBT as its attorney-in-fact to demand, receive and enforce their rights with respect to the Development Agreement for and on behalf of and in the name of Developer or, at the option of CRBT, in the name of CRBT, with the same force and effect as Developer could do if this Assignment had not been made.

3. This Assignment shall constitute a perfected, absolute and present assignment, provided that CRBT shall have no right under this Assignment to enforce the provisions of the Development Agreement, or to exercise any rights or remedies under this Assignment until a default or event of default under the Loans or any other documents related thereto shall occur or be continuing.

4. Upon the occurrence of a default or event of default under the Loans or any other documents related thereto, CRBT may (but without obligation), without affecting any of its rights or remedies against Developer under any other instrument, document or agreement, exercise its rights under this Assignment as Developer's attorney-in-fact in any manner permitted by law and in addition CRBT shall have the right to exercise and enforce any and all rights and remedies available after default to a secured party under the Uniform Commercial Code as adopted in the State of Iowa. If notice to Developer of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the intended disposition or other action.

5. Developer agrees that no change or amendment shall be made to the terms of the Development Agreement without the prior written consent of CRBT.

6. Developer agrees that CRBT shall have the right, but not the obligation, to cure any default or breach by Developer under the Development Agreement.

7. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by CRBT. A waiver by CRBT shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of CRBT's rights or remedies hereunder. All rights and remedies of CRBT shall be cumulative and shall be exercised singularly or concurrently, at CRBT's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

8. This Assignment shall be governed by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the parties have caused this Assignment to be duly executed as of the date set forth above.

DEVELOPER:
BR DEVELOPMENT

By: _____
Brian Ridge, Manager

CEDAR RAPIDS BANK AND TRUST COMPANY

By: _____
Sue Lowder, Vice President

STATE OF IOWA)
) ss
COUNTY OF LINN)

The foregoing instrument was acknowledged before me this 9th day of December, 2020 by Brian Ridge as the Manager of BR Development LLC, an Iowa limited liability company, for and on behalf of said company.

RUSSELL VONG
Commission Number 812511
My Commission Expires
September 6, 2021

_____
Notary Public in and for said State

STATE OF IOWA)
) ss
COUNTY OF LINN)

The foregoing instrument was acknowledged before me this 9th day of December, 2020, by Sue Lowder as the Vice President of Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation, for and on behalf of said banking corporation.

RUSSELL VONG
Commission Number 812511
My Commission Expires
September 6, 2021

_____
Notary Public in and for said State

EXHIBIT "A"

Lot One (1) of Karusco South 2nd Subdivision, Subdivision of Lot A of Karusco South Subdivision of Part of the E 1/2 NE 1/4 of Section 31 and Part of the NW 1/4 of Section 32, all in T89N, R5W of the Fifth P.M., City of Manchester, Delaware County, Iowa, according to plat recorded in Book 2010, Page 1751

EXHIBIT B
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Manchester, Iowa (the "City") and BR Development LLC (the "Company") as of the 9th day of November, 2020 (the "Commencement Date").

WHEREAS, the City has established the Manchester Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company owns certain real property which is situated in the City, lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the Company has proposed to undertake the construction of a commercial retail facility (the "Project") on the Property for leasing as part of the Company's business operations; and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in paying the costs of constructing and maintaining the Project; and

WHEREAS, the taxable base valuation of the Property for purposes of calculations under this Agreement and Section 403.19 of the Code of Iowa is $10,600.00 (the "Base Valuation"); 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 persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Company's Covenants

1. Project Construction. The Company agrees to construct the Project on the Property and to maintain and use the completed Project as part of its business operations throughout the Term, as hereinafter defined. Furthermore, the Company expects to invest approximately $5,500,000 into capital improvements for the Project, including construction work, equipment, furnishings and other capital improvements.

The Company has submitted a detailed site plan (the "Site Plan") for the development of the Project to the City which was approved by the City Council on October 26, 2020. The Site Plan is attached hereto as Exhibit B. The Company agrees to construct the Project in accordance with the Site Plan and to substantially complete such construction by no later than December 31, 2021. Further, the Company agrees to maintain compliance with local zoning, land use, building and safety codes and regulations.

2. **Property Taxes.** The Company agrees to make or ensure timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

3. **Company's Certifications.** The Company agrees to submit documentation to the satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, commencing October 15, 2022, demonstrating that the completed Project is being used as part of the Company's business operations. As used in this Agreement, the Project is being maintained and used as part of the Company's business operations if the Project: (i) is being used as part of the ongoing business operations of commercial retail enterprises, or (ii) is actively available for lease and use in the ongoing business operations of commercial retail enterprises.

4. **Property Tax Payment Certification.** Furthermore, the Company agrees to certify to the City by no later than October 15 of each year during the Term, as hereinafter defined, commencing October 15, 2021, an amount (the "Company's Estimate") equal to eighty percent (80%) (the "Annual Percentage") of the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. In submitting each such Company's Estimate, the Company will complete and submit the worksheet attached hereto as Exhibit C. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted.

For purposes of this Agreement, Incremental Property Tax Revenues are calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Delaware County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Property.

Upon request, the City staff shall provide reasonable assistance to the Company in completing the worksheet required under this Section A.4.

5. **Default Provisions.**

Events of Default. 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 (unless otherwise provided), any one or more of the following events:

a) Failure by the Company to complete construction of the Project pursuant to the terms and conditions of this Agreement.

b) Failure by the Company to fully and timely remit payment of property taxes when due and owing.

c) Failure by the Company to comply with Sections A.3 and A.4 of this Agreement.

d) Failure by the Company to observe or perform any other material covenant on its part, to be observed or performed hereunder.

Notice and Remedies. Whenever any event of default described in this Agreement occurs, the City shall provide written notice to the Company describing the cause of the default and the steps that must be taken by the Company in order to cure the default. The Company shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Company fails to cure the default or provide assurances, the City shall then have the right to:

a) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.

b) Withhold the Payments provided for under Section B.1 below.

B. City's Obligations

1. Payments. In recognition of the Company's obligations set out above, the City agrees to make twenty-four (24) semiannual economic development tax increment payments (the "Payments" and each, individually a "Payment") to the Company during the Term, as hereinafter defined, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed $1,200,000 (the "Maximum Payment Total"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Delaware County Treasurer attributable to the taxable valuation of the Property.

Each Payment shall not exceed an amount which represents the Annual Percentage of the Incremental Property Tax Revenues available to the City with respect to the Property during the six (6) months immediately preceding each Payment date.

This Agreement assumes that full taxable valuation resulting from the Project will go on the property tax rolls as of January 1, 2022. Accordingly, Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2023, and continuing through and including June 1, 2035, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

2. Annual Appropriation. The Payments shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term, as hereinafter defined, of this Agreement, commencing in calendar year 2022, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company's Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2035.

3. **Payment Amounts.** The aggregate Payments to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2023 and on June 1, 2024, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2022). Furthermore, the amount of each such Payment shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of "back-fill" or "make-up" payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Delaware County Treasurer attributable to the taxable incremental valuation of the Property in the six months immediately preceding the extant Payment due date.

4. **Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Delaware County Auditor an amount equal to the most recently obligated Appropriated Amount.

5. **Water and Sewer Connection Fees.** The City agrees to waive the requirements that the Company pay water and sewer connection fees in connection with the Project.

C. **Administrative Provisions**

1. **Amendment and Assignment.** Neither party may cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the City hereby gives its permission that the Company's rights to receive the Payments hereunder may be assigned by the Company to a private lender, as security on a credit facility taken with respect to the Project, without further action on the part of the City.

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

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2035 or on such earlier date upon which the aggregate sum of Payments made to the Company equals the Maximum Payment Total.

4. **Choice of Law.** 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.

The City and the Company 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 MANCHESTER, IOWA

By: _____
Mayor

Attest:

_____
City Clerk

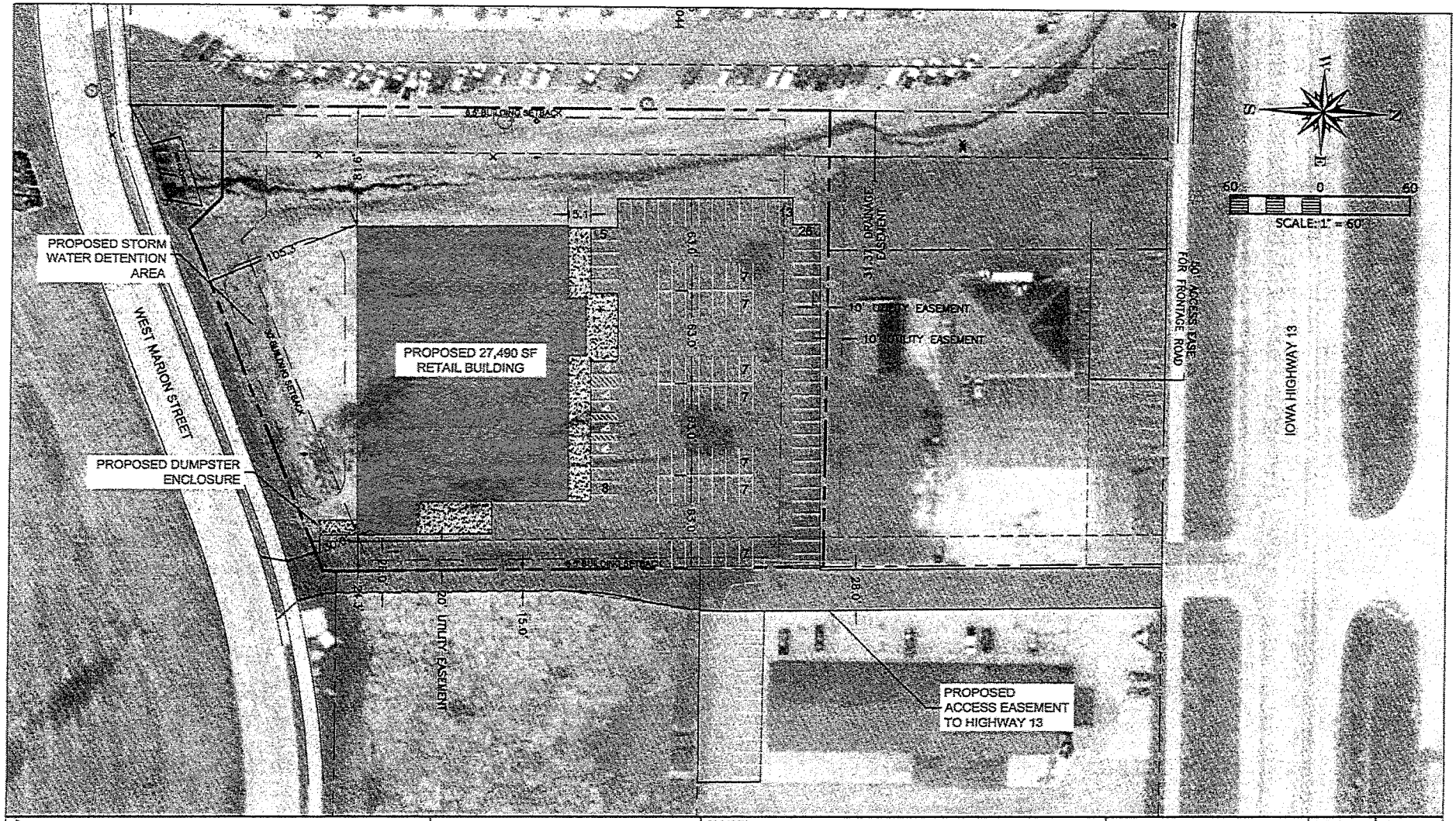
BR DEVELOPMENT LLC

By: _____

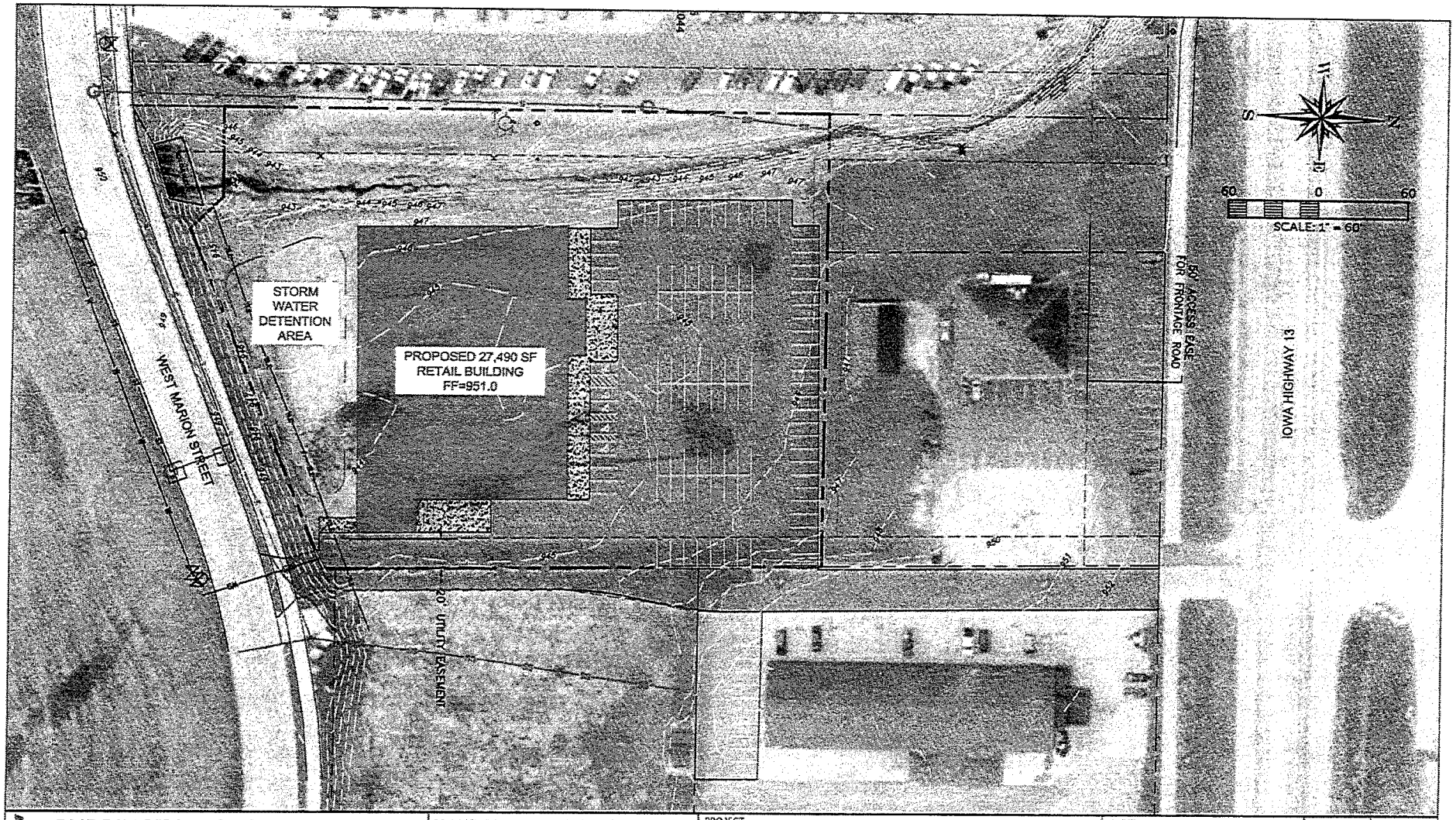
EXHIBIT A
DESCRIPTION OF THE PROPERTY

Lot 1 of Karusco South Second Subdivision, City of Manchester, Delaware County, Iowa.

EXHIBIT B - SITE PLAN



BURRINGTON GROUP, INC. Civil Engineering ǀ Land Surveying 105 W. Main Street Manchester, Iowa 52057 Phone 563-927-2434 burringtongroup.com	DRAWN BY: JAW APPROVED BY: JAW DATE: 9/23/2020 PROJECT NO: 10/202020 SITE PLAN REVISION	PROJECT PROPOSED RETAIL DEVELOPMENT RIDGE DEVELOPMENT MANCHESTER, IOWA	SHEET NAME CONCEPT SITE PLAN	SHEET NO. 1	OF 2



BURRINGTON GROUP, INC.
Civil Engineering | Land Surveying
105 W. Main Street Manchester, Iowa 52057
Phone 563-927-2434 burringtongroup.com

DRAWN BY: JAW	APPROVED BY: JAW
DATE: 9/23/2020	PROJECT NO:
10/20/2020 SITE PLAN REVISION	

PROJECT: PROPOSED RETAIL DEVELOPMENT
RIDGE DEVELOPMENT
MANCHESTER, IOWA

SHEET NAME: CONCEPT SITE PLAN

SHEET NO. 2 OF 2

EXHIBIT C
COMPANY'S ESTIMATE WORKSHEET

(1) Date of Preparation: October _____, 20____.

(2) Assessed Valuation of Property as of January 1, 20_____:

$_____.

(3) Base Taxable Valuation of Property:

$_____.

(4) Incremental Taxable Valuation of Property (2 minus 3):

$_____ (the "TIF Value").

(5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):

$_____ per thousand of value.

(6) The TIF Value (4) factored by the Adjusted Levy Rate (5).

$_____ x $_____/1000 = $_____ (the "TIF Estimate")

(7) Subtract anticipated property tax credits from the TIF Estimate (6 minus 7) = $_____ (the "Available TIF Estimate")

(8) Factor the Available TIF Estimate (7) by the Annual Percentage = Company's Estimate = $_____ x .80 = _____