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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

CHEK

DEVELOPMENT AGREEMENT

Recorder's Cover Sheet

Preparer Information: (name, address and phone number)

John E. Casper, 223 E. Court Avenue, P.O. Box 67, Winterset, Iowa 50273-0067
(515) 462-4912

Taxpayer Information: (name and complete address)

Birchwood Estates, L.L.C., c/o William E. Kline, 3501 Westown Parkway, West Des Moines, IA
50266

✓ **Return Document To:** (name and complete address)

John E. Casper, 223 E. Court Avenue, P.O. Box 67, Winterset, Iowa 50273-0067

Grantors:

City of Winterset, Iowa

Grantees:

Birchwood Estates, L.L.C.

Legal Description: See Page 2

Document or instrument number of previously recorded documents: N/A

DEVELOPMENT AGREEMENT

RE: Birchwood Estates Plat No. 1

This Development Agreement (the "Agreement") is made effective the 25th day of July, 2011, by and between the City of Winterset, Iowa, a political subdivision of the State of Iowa located in Madison County, Iowa (the "City") and Birchwood Estates, L.L.C., an Iowa limited liability company (the "Developer").

RECITALS:

WHEREAS, Developer has developed certain real property within the City of Winterset, Iowa, known as Birchwood Estates Plat No. 1 as evidenced by the Final Plat of Birchwood approved by the City by Resolution dated October 22, 2004 and filed for record on October 26, 2004 in the Madison County Recorder's Office in Book 2004 at Page 5025; and

WHEREAS, as a condition for approval of the Final Plat of Birchwood Estates Plat No. 1, Developer was required to file a subdivision bond with the City in the amount \$200,000.00 (the "Bond") for paving of a portion of Mills Street east of the easterly right-of-way line of 14th Avenue, and certain water main and sanitary sewer main improvements that had not been completed by Developer; and

WHEREAS, Developer has no plans in the foreseeable future to develop Lot 4 in Block 6 or Lot 11 in Block 5 of Birchwood Estates Plat No. 1, and desires to be relieved of the continued obligation and burden of paying for the Subdivision Bond; and

WHEREAS, the City is willing to release the Bond subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premise the parties hereto agree as follows:

1. MILLS STREET. As consideration to the City for releasing the Bond, Developer shall complete the construction of Mills Street from the existing street paving in 14th Avenue east to the southeast corner of Lot 2 in Block 6 of Birchwood Estates Plat No. 1. This construction shall include water main, sanitary sewer and storm sewer including subdrain lines and shall be completed no later than December 31, 2011.

2. RELEASE OF BOND. Upon the completion of the construction by Developer of the portion of Mills Street described in paragraph 1 above, and acceptance of said portion of Mills Street by the City, the City agrees to release the Bond in its entirety.

3. FUTURE DEVELOPMENT. Developer, on behalf of itself and its successors and/or assigns, hereby agrees that there can be no further development or improvements or City issuance of Building Permits for Lot 4 in Block 6 and Lot 11 in Block 5 of Birchwood Estates Plat No. 1 until such time the remaining portion of Mills Street and

any portions of the sanitary sewer main or water main or storm sewer including subdrains lying within said Mills Street are completed according to City's plans and said improvements are accepted by the City.

4. SUPERSEDING TERMS. The parties agree this Development Agreement, to the extent only that this Agreement conflicts with the Court Decree and Order entered on March 28, 2011 in the matter of the City of Winterset, Iowa as Plaintiff and Birchwood Estates, L.L.C., cause number LACV 033288, shall supersede and replace the terms of that Order and the parties agree, if necessary, to joint move the Court to modify that Court Order to be consistent with this Development Agreement.

5. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

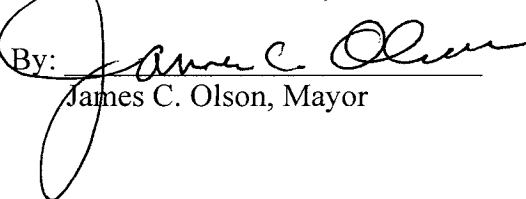
6. ENTIRE AGREEMENT. This Agreement reflects the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written.

7. SUCCESSORS AND ASSIGNS. This Agreement is intended to and shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns.


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 hereunder duly affixed and attested by its City Administrator, and Developer as caused this Agreement to be duly executed in its name and on its behalf by its duly authorized officer, all as of the day first above written.

(SEAL)


CITY OF WINTERSET, IOWA

By: 
James C. Olson, Mayor

ATTEST:

By: 
Mark J. Nitchals, City Administrator

Birchwood Estates, L.L.C.
an Iowa limited liability company

By: 
William E. Kline
Its: Manager