

DEVELOPMENT AGREEMENT

This Development Agreement is entered into between the City of Marshalltown, Iowa (the “City”) and Karl of Marshalltown, LLC (the “Company”) as of the ___ day of _____, 2022 (the “Commencement Date”).

WHEREAS, the City has established the Marshalltown Urban Renewal Area No. 7 (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 (i) the remodeling of an existing building on the Property (the “Remodel Project”), and (ii) the construction of a new building on the Property (the “New Building Project”) for use in the Company’s business operations (collectively, the Remodel Project and the New Building Project are hereinafter referred to as the “Projects”); 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 Projects; and

WHEREAS, the base valuation (the “Base Valuation”) of the Property for purposes of calculating Incremental Property Tax Revenues, as herein defined, under this Agreement and Section 403.19 of the Code of Iowa shall be the assessed taxable valuation of the Property as of January 1 of the year prior to the year in which the Triggering Certification (as herein defined) is filed; 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 and Operation. The Company agrees to construct the Projects on the Property. Furthermore, the Company agrees to invest not less than \$20,000,000 into capital improvements for the Projects, including construction work and other furnishings. The Company agrees to submit a detailed site plan (the “Site Plan”) for the development of the Projects to the City. Upon its approval by the City, the Site Plan shall be attached hereto as Exhibit B.. The Company agrees to complete the Remodel Project by no later than December 31, 2022. The Company agrees complete the New Building Project by no later than December 31, 2024.

The Company agrees to ensure that the completed Projects are being used in its business operations throughout the Term, as hereinafter defined, of this Agreement (the “Business Operations Requirement”).

The Company further agrees to maintain, preserve, and keep the Property, including but not limited to the Projects, useful and 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. 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 that portion of the Property with the completed Projects thereon throughout the Term and to submit a receipt or cancelled check in evidence of each such payment.

3. Triggering Certification; TIF Estimate Review.

Triggering Certification: The Company agrees to provide written notification (the “Triggering Certification”) to the City of its intent for the Payments (as hereinafter defined) to commence in a particular fiscal year. Such Triggering Certification shall be due by no later than October 1 of the calendar year immediately preceding the start of the fiscal year in which the Payments are intended to begin. In any event, the Triggering Certification shall be made by no later than October 1, 2025. (It is hereby acknowledged that the City’s fiscal years begin on July 1 and end on the following June 30.) In submitting each such Company’s Triggering Certification, the Company will complete and submit the worksheet attached hereto as Exhibit C.

Review of TIF Estimate: The Company shall review each TIF Estimate (as hereinafter defined) and request any changes thereto within ten (10) days of receipt of each TIF Estimate from the City. The Company acknowledges that failure to request changes to any TIF Estimate within ten (10) days of receipt thereof will constitute an acceptance by the Company of such TIF Estimate, and the Company shall have no right after such ten-day period to request changes or challenge the City’s calculation of the TIF Estimate.

4. Default Provisions.

a. 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:

- (i) Failure by the Company to complete construction of the Projects pursuant to the terms and conditions of this Agreement.
- (ii) Failure by the Company to comply with the Business Operations Requirement pursuant to the terms and conditions of this Agreement.
- (iii) Failure by the Company to fully and timely remit payment of property taxes when due and owing.
- (iv) Failure by the Company to comply with Section A.3 of this Agreement.

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

b. 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:

- (i) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- (ii) 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 (20) semiannual economic development tax increment payments (the "Payments" and each, individually a "Payment") to the Company during the Term pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments (the "Maximum Payment Total") shall not exceed \$1,800,000. 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 Marshall County Treasurer attributable to the taxable valuation of the Property.

Prior to funding any Payments under this Agreement, the City will first withhold from the Incremental Property Tax Revenues an amount equal to the Admin Withholding Amount. Once an amount equal to the Admin Withholding Amount has been withheld by the City, the Payments shall be made as hereinafter set forth.

The Payments will be made on December 1 and June 1 of each fiscal year following an affirmative appropriation decision as provided for under Section B.3 below, beginning on December 1 of the fiscal year immediately succeeding the year in which the Triggering Certification is made, and continuing through the expiration of the Term.

For example, assuming the Triggering Certification is made on October 15, 2025 and all appropriation determinations are approved affirmatively by the City Council under Section B.2 below, then Payments will be made on December 1 and June 1, beginning in the City's 2026-2027 fiscal year, and continuing for a period of nine (9) additional fiscal years thereafter, provided, however, that no Payments shall be made after the sooner of June 1, 2036 or the date on which aggregate Payments equal to the Maximum Payment Total have been made.

2. TIF Estimate: For purposes of this Agreement, “Annual Percentage” shall mean the annual percentage in effect from time to time as set forth in the following table:

<u>Fiscal Year of City</u>	<u>Annual Percentage</u>
First Payment Year	90%
Second Payment Year	80%
Third Payment Year	65%
Fourth Payment Year	50%
Fifth Payment Year	40%
Sixth through Tenth Payment Years	30%

The City agrees to certify to the Company by no later than October 15 of each year, commencing October 15 of the year in which the Triggering Certification is filed, an amount (the “TIF Estimate”) equal to the Annual Percentage of the estimated Incremental Property Tax Revenues (as hereinafter defined) 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 TIF Estimate, the City will complete and submit the worksheet attached hereto as Exhibit D. The City agrees that the Company will have right to review each such TIF Estimate and request revisions thereto.

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 Marshall County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to the Property.

3. 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, beginning in the calendar year in which the Triggering Certification is filed, 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, 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, provided however that no Payment shall be made after June 1, 2036.

4. 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, 2026 and on June 1, 2027, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2025). Furthermore, the amount of each such Payment shall not exceed the Annual Percentage 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 Marshall County Treasurer attributable to the taxable incremental valuation of the Property in the six (6) months immediately preceding such Payment due date.

5. 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.3 above, then the City Clerk will certify by December 1 of each such year to the Marshall County Auditor an amount equal to the most recently obligated Appropriated Amount.

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, 2036.

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 MARSHALLTOWN, IOWA

By: _____
Mayor

Attest:

City Clerk

KARL OF MARSHALLTOWN, LLC

By: _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Marshalltown, Marshall County, State of Iowa bearing Marshall County Property Tax Parcel Identification Numbers 8418-26-201-018, 8418-26-201-012 and 8418-26-201-017.

EXHIBIT B
SITE PLAN

EXHIBIT C
COMPANY'S TRIGGERING CERTIFICATION

Date: October 1, 20____

The City of Marshalltown, Iowa (the "City") and Karl of Marshalltown, LLC (the "Company") entered into a Development Agreement dated as of the ____ day of _____, 2022 (the "Commencement Date").

Pursuant to the Development Agreement, the Company hereby certifies to the City that it intends for the process of dividing Incremental Property Tax Revenues to begin in the City's 20__ - 20__ Fiscal Year.

KARL OF MARSHALLTOWN, LLC

By: _____
[Name, Title]

EXHIBIT D
TIF 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 = \$_____ (“Available TIF”)
- (7) Available TIF (\$_____ x Annual Percentage* (____%) = TIF Estimate (\$_____).

<u>Fiscal Year of City</u>	<u>Annual Percentage</u>
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