

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Marshalltown, Iowa (the “City”) and Betty’s Properties, LLC (the “Company”) as of the \_\_\_ day of \_\_\_\_\_, 2023 (the “Commencement Date”).

WHEREAS, the City has established the Marshalltown Urban Renewal Area No. 4 (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 new commercial building on the Property (the “Project”) for use in the business operations of a pharmacy; 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 defraying the costs of constructing and maintaining the Project; and

WHEREAS, Chapter 403 of the Code of Iowa authorizes cities to establish urban renewal areas and to undertake economic development; 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; and

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement, the parties hereto agree as follows:

### **A. Company’s Covenants**

**1. Project Construction.** The Company agrees to construct the Project on the Property. Furthermore, the Company agrees to invest not less than \$815,000 into capital improvement 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 Project 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 Project by no later than December 31, 2023.

The Company agrees to ensure that the completed Project is used in the business operations of a pharmacy throughout the Term (as hereinafter defined) of this agreement (the “Business Operations Requirement”).

Further, the Company agrees to maintain, preserve, and keep the Property, including but not limited to the Project, 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. The Company further agrees to maintain compliance with local zoning, land use, building and safety codes and regulations

**2. Employment Requirements.** The Company agrees to meet the following employment requirements (the “Employment Requirements”) during the Term, as hereinafter defined, of this Agreement.

a. Establishment of Employment Positions. The Company agrees to establish not less than one and a half (1.5) full-time equivalent pharmacist employment positions and two (2) **[part-time][full-time]** equivalent pharmacy technician employment positions in connection with its business operations on the Property by no later than March 1, 2024.

Full-Time Equivalent Employment Positions means either (i) an employee who works at least 40 hours per week or 2,000 hours per year; or (ii) any combination of employees who, in the aggregate, work at least forty hours per week at least 2,000 hours per year.

b. Maintenance of Employment Positions. From March 1, 2024, and continuing throughout the remainder of the Term of this Agreement, the Company agrees to comply with the Employment Requirements in connection with its business operations on the Property.

**3. Company’s Annual Report.** The Company agrees to submit an annual report (the “Annual Report”) to the satisfaction of the City by no later than each October 1 during the Term of this Agreement, commencing October 1, 2024, demonstrating that (i) the Business Operations Requirement is being met; (ii) the Company owns the Property, including the Project; and (iii) the Employment Requirements are being met. The Company agrees to provide such supporting documentation as may be requested by the City as an accompaniment to the Annual Report.

**4. Property Taxes.** The Company agrees to 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 receipts, cancelled checks or certification based on public records as evidence of each such payment.

**5. 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 Project pursuant to the terms and conditions of this Agreement.
- (ii) Failure by the Company to maintain compliance with the Business Operations Requirement pursuant to the terms and conditions of this Agreement.

- (iii) Failure by the Company to maintain compliance with the Employment Requirements pursuant to the terms and conditions of this Agreement.
- (iv) Failure by the Company to maintain compliance with Section A.3 of this Agreement.
- (v) Failure by the Company to fully and timely remit payment of property taxes when due and owing.
- (vi) Failure by the Company to comply with any other material Sections of this Agreement.

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 Covenants**

**1. Payments.** In recognition of the Company's obligations set out above, the City agrees to make twenty (20) annual economic development tax increment payments (the "Payments" and, individually each, a "Payment") to the Company during the Term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments to be made in any fiscal year during the Term shall not exceed \$16,000. Further, the aggregate, total amount (the "Maximum Payment Total") of the Payments made under this Agreement during the Term (as hereinafter defined) shall not exceed \$160,000. 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 the unencumbered Incremental Property Tax Revenues (as hereinafter defined) received by the City from the Marshall County Treasurer which are attributable to the Urban Renewal Area. Incremental Property Tax Revenues are determined by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the property in the Urban Renewal Area; (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 situated in the Urban Renewal Area, as shown on the property tax rolls of Marshall County; and (4) deducting any property tax credits which shall be available with respect to the Property.

The Payments will be made on December 1 and June 1 of each fiscal year, beginning on December 1, 20[24], and continuing through and including June 1, 2034, 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 of this Agreement, beginning December 1, 20[23], 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 of Incremental Property Tax Revenues to be collected in such following fiscal year equal to or less than \$16,000 (the “Appropriated Amount”).

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, 2034.

**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, 20[24] and on June 1, 20[25], the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2023).

In addition, no Payment shall exceed the amount of unencumbered 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) received by the City from the Marshall County Treasurer attributable to the taxable valuation of the property situated in the Urban Renewal Area.

**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 Marshall County Auditor an amount equal to the most recently obligated Appropriated Amount.

**C. Administrative Provisions**

**1. Amendment and Assignment.** This Agreement may not be amended or assigned by either party 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 borrowing to be done in connection with the carrying out of the Project, without further action on the part of the City.

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

**3. 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.

**4 Term.** The term (the “Term”) of this Agreement shall commence on the Commencement Date and end on the date on which the last Payment is made by the City to the Company under Section B.1 above.

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

BETTY'S PROPERTIES, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A – REAL PROPERTY DESCRIPTION:**

Certain real property situated in the City of Marshalltown, Marshall County, State of Iowa bearing Marshall County Property Tax Parcel Identification Numbers 8418-26-379-010, 8418-26-379-011 and 8418-26-379-009.

**EXHIBIT B – SITE PLAN:**