

## **DEVELOPMENT AGREEMENT**

The City of Oelwein, Iowa (“City”) and Matt Construction, Inc. (“Developer”), and do hereby agree to the following terms and conditions related to incentive payments to be paid by City to Developer under this agreement (“Development Agreement”), related to renovation and rehabilitation to be performed by Developer to the property located at 1. S. Frederick, Oelwein, Iowa. (“Property”), same to be effective for reference purposes as of the \_\_\_\_ day of \_\_\_\_\_, 2024,

**Whereas**, Developer intends to acquire the Property located at 1. S. Frederick (“Property”) in downtown Oelwein for purposes of renovation and rehabilitation of the Property, Developer having entered an agreement to purchase Property from the current owner of Property subject to various contingencies, and

**Whereas**, City finds that significant renovations, structurally and otherwise, to the Property are necessary, and that the Property will likely continue to fail, currently exhibiting structural integrity issues, and that said failure is not in the best interests of the City, and

**Whereas**, Developer proposes to perform the following renovations and/or rehabilitation work to the Property (building on the Property):

1. Structural repair to the north wall
2. Making available commercial storefront space
3. Complete demolition and rehabilitation of upper story housing.

and

**Whereas**, Developer has submitted a pre-application to the IDEA Community Catalyst Grant program related to proposed improvements to Property and same has been approved, with Developer being invited and/or eligible to apply for the Community Catalyst Grant, and

**Whereas**, one of the elements or factors considered, or scored, by IDEA when reviewing Catalysy Grant Applications is community value which is to some extent measured by City investment in the project, and

**Whereas**, because the City finds significant value in the Project, the City finds it appropriate to invest in the project.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and obligations of the Parties contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

1. Representations and Warranties.

1.1 “Representations and Warranties of City” In order to induce Developer to enter into this Agreement, City hereby represents and warrants to Developer that to the best of City’s knowledge:

- (1) City has obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and that it has full power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement, upon execution and delivery by City (assuming due authorization, execution and delivery by the Developer) is a valid and legally binding instrument of City, as of and after the Effective Date, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or effecting creditor’s rights generally.
- (2) City shall exercise its best efforts to cooperate with Developer in the development process as specifically provided for herein.
- (3) City agrees to work with Developer to exercise best efforts to resolve any disputes mutually and reasonably between City and Developer arising during the development process in a reasonable and prompt fashion.
- (4) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the charter of City, any evidence of indebtedness, agreement or instrument of whatever nature to which City is now a party or by which it or its property is bound, or constitute a default under any of the foregoing.
- (5) There are no actions, suits or proceedings pending or threatened against or affecting City in any court or before any arbitrator or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially affect the financial position or operations of City or which affects the validity of this Agreement or City’s ability to perform its obligations under this Agreement.

1.2 “Representations and Warranties of Developer” The Developer makes the following representations and warranties:

- (1) Developer is an Iowa business corporation duly organized and validly existing under the laws of the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.
- (2) This Agreement has been duly authorized, executed and delivered by Developer and (assuming due authorization, execution and delivery by the City), is in full force and effect and is a valid and legally binding instrument of Developer as of the Effective Date, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, other laws relating to or affecting creditor’s rights generally.
- (3) Developer shall exercise its best efforts to cooperate with City in the development process as specifically provided for herein.
- (4) Developer agrees to work with City to exercise best efforts to resolve any disputes mutually and reasonably between Developer and City arising during the development process in a reasonable and prompt fashion.
- (5) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the Articles of Incorporation or the bylaws of Developer or any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which its property is bound, or which constitutes a default under any of the foregoing.
- (6) There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, financing position or result of the operations of Developer or which affects the validity of the Agreement or Developer’s ability to perform its obligations under this Agreement.

- (7) Developer will perform its obligations under this Agreement in accordance with the material terms of this Agreement, the Catalyst Grant agreement between Developer and IEDA, and all local, state and federal laws and regulations.
- (8) Developer has firm commitments for permanent financing or sufficient wherewithal to complete the Project in an amount sufficient, together with equity commitments, to successfully complete the Project and requirements of this Agreement and shall provide evidence thereof to City prior to the Effective Date.

## 2. Project and Payments.

2.1 Developer and City agree that Developer shall undertake the Project and that City will make payments to Developer, consistent with the following terms and provisions:

- (1) "Project" Shall be defined as the activities and other obligations to be performed or accomplished by Developer as described in this Agreement and in the yet to be submitted Catalyst Grant Application, same to be approved for submission by the City Council prior to submission.
- (2) "Project Timeline and "Grant Payments" shall be as follows:
  - a. City will pay Developer the sum of \$50,000.00 on or after August 1, 2024 if Developer is awarded the Catalyst Grant and has taken all steps required by IEDA to accept the Grant, Grant Obligations, and to otherwise be permitted to move forward with the Project by IEDA
  - b. City will pay Developer the sum of \$25,000.00 upon completion of all necessary structural repairs to the north wall of the Property, subject to confirmation of structural stability by a structural engineer to be hired/contracted by Developer, said payment to be made on or about August 1, 2025.
  - c. City will pay Developer the sum of \$25,000.00 upon Substantial Project Completion, which shall at a minimum require that Developer have at least two commercial spaces complete and either available for rent or rented on the main floor and at least three residential apartments complete and either available for rent or rented in the upper level, prior to the end of calendar year 2025. (To be considered available, a space, commercial or residential, must have been given an Occupancy Permit by the City of Oelwein.) This payment will be paid on or about August 1, 2026.
  - d. Each request for reimbursement will include reports of the work completed and structural or other inspection reports if required.
  - e. Assuming all required information has been provided, payments will be

made within thirty (30) days of reimbursement request.

### 3. General Terms and Provision.

3.1 “Notices and Demands” Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be deemed to have been properly given if and when delivered in person or three (3) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

(1) If to Developer:

Mätt Construction, Inc.  
Attn: Megan Mätt  
203 Y. Ave.  
Sumner, IA 50674

(2) If to City:

City of Oelwein  
Attn: Dylan Mulfinger  
City Administrator  
20 2<sup>nd</sup> Ave. SW  
Oelwein, IA 50662

or at such other address with respect to either party as that party may, from time to time designate in writing and provide to the other party.

3.2 “Binding Effect” This Agreement shall be binding upon and shall inure to the benefit of City and Developer and their respective successors and assigns.

3.3 “Execution By Scanning or Electronic Signature” The parties agree that this Agreement may be transmitted between them by scanning or electronic signature. The parties intend that the scanned or electronic signatures constitute original signatures and that such scanned or electronically signed Agreement containing the signatures (original, scanned, or e-signed) of all the parties is binding on the parties.

3.4 “Maintenance of Insurance” Developer shall maintain the Property in good repair and condition, ordinary wear and tear excepted, and shall not suffer or commit waste or damage upon the Property. Developer shall pay for and maintain insurance in an amount not less than the full insurable value of the project property. Developer shall name the City, and IEDA if required by a Catalyst Grant Agreement, as additional insured / loss payee(s). Developer shall provide the City with a copy of each and every insurance policy in effect related to the Property.

3.5 “Responsibilities” Subject to the terms of this Agreement, Developer will be

solely responsible for completing all work on the Project. Neither party will be considered an agent of the other for purposes of this Project, and each will hold harmless and indemnify the other for any damages suffered by any person or entity as a result of its own or its agents' acts or failures to act in performance of its obligations under this Agreement.

- 3.6 “Assignment of Agreement” The Parties may not assign, transfer or convey in whole or in part this Agreement, without the consent of each Party. Consent shall not be unreasonably withheld.
- 3.7 “Amendments” No change, modification, or termination of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed by the Parties.
- 3.8 “Catalyst Grant Contingency” The City's obligation to provide funds hereunder is contingent on Developer being awarded a \$100,000.00 Catalyst Grant and Developer accepting all Grant Obligations.
- 3.9 “Personal Guaranty” The principals of the Developer agree to personally guarantee project completion consistent with the terms of the Catalyst Grant Application and Agreement. To the extent the City provides incentives outlined herein to Developer and Developer fails to fully complete the Project as provided in the Catalyst Grant Application, Catalyst Contract/Agreement, or this document, the Developer, and those providing Personal Guarantees, shall be required to reimburse the City for any payments made hereunder within sixty (60) days of demand therefor from the City, and shall all be jointly and severally liable for the sums so due. Should the City have to take legal action to collect any sums due from the Developer or the Guarantors, the Developer and the Guarantors shall be liable for City’s legal expenses and costs. (Personal Guaranty attached hereto as **Exhibit A**)
- 3.10 “Entire Agreement” This Agreement contains the entire understanding between the City and the Developer with respect to the Project contained herein
- 3.11 “Laws Ordinances and Regulations” Developer shall comply with all laws, rules and regulations relating to its businesses, other than laws, rules and regulations the failure to comply with which or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, financial or otherwise, of Developer.
- 3.12 “Building Permits” Developer agrees to apply for, obtain, and otherwise follow all laws and regulations related to the issuance of necessary Permits for the Project.

3.13 “Non-Discrimination” In carrying out the Project, Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age or disability. Developer further agrees to not discriminate upon the basis of race, religion, color, sex, sexual orientation, national origin, age or disability in the sale, lease, rental, use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof (however, Developer shall not have any liability to City to the extent that a successor in interest shall breach this covenant and City shall seek enforcement of this covenant directly against the party in breach of same).

3.14 “Conflict of Interest” Developer agrees that no member, officer or employee of City, or its designees or agents, nor any consultant or member of the governing body of City, and no other public official of City who exercises or has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the project, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of this Project at any time during or after such person's tenure. In connection with this obligation, Developer shall have the right to rely upon the representations of any party with whom it does business and shall not be obligated to perform any further examination into such party's background.

#### 4. Events of Default and Remedies.

4.1 “Events of Default Defined” 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, any one or more of the following events:

- (1) Failure by Developer to pay or cause to be paid, before delinquency, all real property taxes assessed with respect to the Real Estate owned by Developer.
- (2) Failure by Developer to substantially observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

4.2 “Remedies on Default by Developer” Whenever any Event of Default referred to in Section 5.1 of this Agreement occurs and is continuing, City, as specified below, may take any one or more of the following actions after the giving of written notice by City to Developer (and the holder of any mortgage encumbering any interest in the Property of which City has been notified of in writing) of the Event of Default, but only if the Event of Default has not been cured within thirty (30) days following such notice, or if the Event of Default cannot be cured within thirty (30) days and Developer does not provide assurances to City that the Event of Default will be cured as soon as reasonably possible thereafter:

- (1) City may suspend its performance under this Agreement until it receives assurances from the Developer deemed adequate by City, that the Developer will cure its default and continue its performance under this Agreement;
  - (2) City may cancel and rescind this Agreement;
  - (3) City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- 4.3 “No Remedy Exclusive” No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Should the City have to take legal action to collect any sums due from the Developer or the Guarantors, the Developer and the Guarantors shall be liable for City’s legal expenses and costs.
- 4.4 “No Implied Waiver” In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and attested to by its City Administrator and Developer has caused this Agreement to be duly executed on or as of the first above written.

CITY OF OELWEIN, IOWA

By \_\_\_\_\_  
Brett DeVore, Mayor

By \_\_\_\_\_  
Dylan Mulfinger, City Administrator

Mätt Construction, Inc., Developer

By \_\_\_\_\_  
Megan Mätt

State of Iowa            )  
                                  )§  
County of Fayette    )

Subscribed and sworn to me, the undersigned Notary Public, in and for the State of Iowa, by Megan Mätt, known to me to be the identical person named herein, who swore and affirmed that she executed same in her capacity as \_\_\_\_\_ for the Corporation, with the authority and at the direction of the Corporation, by it and by her voluntarily entered.

\_\_\_\_\_  
Notary Public, State of Iowa

**Exhibit A**  
**PERSONAL GUARANTY AGREEMENT**

The undersigned, as “Guarantor”, in consideration of, and as inducement to the City of Oelwein (“City”) entering into a certain Development Agreement dated \_\_\_\_\_ between City and Mätt Construction, Inc. (“Developer”), hereby agrees as follows:

1. Consideration. This Guaranty is made for good and valuable consideration and to induce City to enter into a Development Agreement with Developer. Guarantor has a substantial financial interest in Developer and Guarantor acknowledges the receipt and adequacy of the consideration received by Guarantor in connection with the aforementioned Development Agreement between City and Developer.
2. Financial Guaranty. Guarantor hereby unconditionally guarantees payment to City of all sums that may become due from Developer to City under the aforementioned Development Agreement, including but not specifically limited to the repayments of grant sums, interest, fees, premiums, costs and expenses, attorney’s fees and costs, and other amounts or damages which may be due or awarded to City under and consistent with the terms of the Development Agreement. By executing this Guaranty Agreement, Guarantor hereby acknowledges that Guarantor has reviewed the Development Agreement between City and Developer, has had sufficient opportunity to consult with legal counsel, and fully understands Guarantor’s financial obligations and exposure under this Guaranty Agreement.
3. Payment to Guarantor. Guarantor hereby agrees that in the event Developer becomes obligated to pay any sum to City under and consistent with the terms of the Development Agreement, that Guarantor will pay any such amounts in full to City within sixty (60) days of the mailing of written notice by City to Guarantor that such sums are due. Guarantor agrees that all such notices shall be sent to Guarantor at the address and email address listed below, or at such other address or email address as Guarantor may from time to time provide to City in writing. Any such notice may be mailed by overnight mail or first-class mail, postage pre-paid, and/or sent via email, the sixty (60) day notice time frame shall be deemed to commence on the first day following mailing or emailing.
4. Nature of Guarantor’s Liability. Guarantor agrees that Guarantor’s payment obligations under this Guaranty Agreement are an independent contractual undertaking on the part of Guarantor, and that Guarantor’s liability to City shall be joint and several with Developer’s obligations and/or liability to City under the Development Agreement. Guarantor further agrees that City’s remedies against Guarantor for breach of this Guaranty Agreement shall be separate and distinct from its remedies against Developer, and City may, at its sole option, proceed directly against Guarantor without first proceeding against Developer. Neither the failure of City in any particular instance to insist upon Guarantor’s strict performance, nor the granting by City of any particular indulgence, forbearance or concession to either Guarantor or Developer, shall operate as

a waiver on the part of City to thereafter insist upon Guarantor's strict performance of this Guaranty Agreement. Guarantor agrees that, absent an express agreement in writing to the contrary signed by City, this Guaranty Agreement shall be irrevocable by Guarantor until such time as the Developer's obligations under the Development Agreement have been fully satisfied and the City has released Developer from any further obligations thereunder.

5. Governing Law and Venue. Guarantor agrees that the interpretation and enforcement of this Guaranty Agreement shall be governed by Iowa Law and jurisdiction shall be in the District Court in and for Fayette County, Iowa.

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Megan Mätt

State of Iowa     )  
                          )§  
County of Fayette )

Subscribed and sworn to me, the undersigned Notary Public, in and for the State of Iowa, by Megan Mätt, known to me to be the identical person named herein, who swore and affirmed that she executed the same in her personal capacity as an expression of her voluntary act and deed.

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Notary Public, State of Iowa