

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Fort Dodge, Iowa (the “City”) and Kemna Properties-Ft. Dodge, LLC, (the “Company”) as of the ___ day of _____, 2014 (the “Commencement Date”).

WHEREAS, the City has established the Center City and Industrial Park Urban Renewal Areas (the “Urban Renewal Areas”), and has adopted a tax increment ordinance for the Urban Renewal Areas; and

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

WHEREAS, the Company has proposed to undertake the demolition of the existing Ron’s Car Wash and Quick Lube facilities and the remediation of environmental issues (the “Private Project”) on the Property and the preparation of such Property for future development; 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 carrying out the Private Project; 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. Private Project. The Company agrees to complete the Private Project on the Property and to subsequently promote the maintenance, development and highest and best use of the Property throughout the Term, as hereinafter defined. The Company will submit a detailed site plan (the “Site Plan”) for the development of the Property to the City. Upon approval by the City, the Site Plan will be attached hereto as Exhibit B. The Company agrees to redevelop the Property in accordance with the Site Plan and to substantially complete such redevelopment by no later than December 31, 2016. The Company agrees to demonstrate, to the satisfaction of the City, the total actual costs (the “Project Costs”) incurred in carrying out the Private Project.

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

3. Property Tax Payment Certification. Furthermore, the Company agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2015, an amount (the “Company’s Estimate”) equal to 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 determining such Company's Estimate, the Company will complete and submit the worksheet attached hereto as Exhibit B. 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 produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

Upon request, the City staff shall provide reasonable assistance to the Company in formulating the annual estimates required under this Section A.3.

4. Legal and Administrative Fees. The Company hereby agrees to cover the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$3,000. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

5. Remedy. The Company hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion, until such time as the Company has demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

B. City's Obligations

1. Payments. In recognition of the Company's obligations set out above, the City agrees to make six (6) semiannual economic development tax increment payments (the "Payments") to the Company in each fiscal year 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 shall not exceed the lesser of (i) the Project Costs, or (ii) \$76,000 (the "Maximum Aggregate Payments"), 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 Webster County Treasurer attributable to the taxable valuation of the Property.

It is assumed that the new valuation from the Private Project will go on the tax rolls as of January 1, 2015. Accordingly, the Payments will be made on December 1 and June 1 of each fiscal year, beginning on December 1, 2016 and continuing to, and including, June 1, 2019, or until such earlier date upon which total Payments equal to the Maximum Aggregate Payments have been made.

2. Annual Appropriation. Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term, as hereinafter defined, 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.3 above, provided however that no Payment shall be made under this Agreement after June 1, 2019.

3. Payment Amounts. Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2016 and on June 1, 2017, the aggregate amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2015), provided, however, that no Payment shall exceed the amount of Incremental Property Tax Revenues received by the City from the Webster County Treasurer attributable to the taxable valuation of the Property.

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 Webster 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 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 Private Project and the Infrastructure 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, 2019 or on such earlier date upon which the aggregate sum of Payments made to the Company equals the Maximum Aggregate Payments.

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 FORT DODGE, IOWA

By: _____
Matt Bemrich, Mayor

Attest:

Jeff Nemmers, City Clerk

KEMNA PROPERTIES-FT.DODGE, LLC

By: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated at 2518 1st Avenue South in the City of Fort Dodge, County of Webster, State of Iowa bearing the Webster County Property Tax Identification Parcel Number 0721326008; and

Certain real property situated at 2524 1st Avenue South in the City of Fort Dodge, County of Webster, State of Iowa bearing the Webster County Property Tax Identification Parcel Number 0721326009.

EXHIBIT B
SITE PLAN

EXHIBIT C
ANNUAL TIF WORKSHEET
COMPANY'S ESTIMATE

- (1) Date of Preparation: October _____, 20____.
- (2) Assessed Valuation of Property as of January 1, 20____:
\$_____.
- (3) Base Valuation of Property:
\$_____.
- (4) Incremental Valuation of Property (1 minus 2):
\$_____ (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
- (7) Estimate = \$_____