



COUNCIL LETTER

MEETING DATE: October 17, 2017

REQUESTED BY: Jeff Reiter

ITEM TITLE: RESOLUTION SETTING A DATE FOR A PUBLIC HEARING TO CONSIDER A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BETTENDORF AND ASCENTRA CREDIT UNION.

Explanation

One of the City of Bettendorf's top priorities in its efforts to encourage economic development and revitalize Downtown, is to see the Town Square Block fully developed in a manner that generates positive economic gains for the entire Downtown corridor, and the City as a whole.

For more than three years, the Town Square site has remained underutilized and undeveloped. A Development Agreement is being brought to you by Ascentra Credit Union, looking to fully develop the site, with a brand new corporate headquarters (approx. 40,000 sf), in the heart of Downtown Bettendorf. This Development Agreement will support the growth and expansion of one of the longest standing, and top employing businesses in Downtown Bettendorf. It will allow them to expand their operations, both physically and with new employees, while constructing a brand new, state of the art, contemporary and iconic building in the heart of Downtown Bettendorf.

This agreement that is brought to you includes a 10 year, 100% TIF, capped at \$2,000,000, as well as an exchange of land, with terms outlined in the agreement. The land exchange includes the Town Square Block and the existing Ascentra Credit Union site. Additionally, the City will work with Ascentra to have the utility poles buried along the alley system, and relocation of the traffic signal, to help accommodate their new building footprint.

With the use of this incentive package, Ascentra Credit Union will not only remain in Downtown Bettendorf, but it will add jobs, create new commerce, and have the capacity necessary to construct a substantial new corporate headquarters building. This sort of economic growth will assist in the overall revitalization of Downtown, and help add to the excitement and energy already taking place! With the ongoing construction of the new I-74 Bridge, the redevelopment of the Isle Jetty Park, the new Bridges residential complex, and the new land based casino operation, the last 12 months have injected new life in Downtown. This Ascentra project will kick off 2018 with even more investment and expansion in Downtown.

The date for said Public Hearing is being set for November 21, 2017.

If the matter is not budgeted in the current year, explain why funding is requested and the anticipation:

Funds will be generated and issued in the form of a TIF rebate. Additional funding will come from the Downtown Property Acquisition Fund that is already in hand.

List Attachments:

- Resolution
- Development Plan Submitted by Ascentra
- Development Agreement Draft

ITEM TO INCLUDE ON AGENDA

CITY OF BETTENDORF, IOWA

October 17, 2017

7:00 P.M.

Amended and Restated Urban Renewal Plan for Downtown Urban Renewal Area (f/k/a District One)

- Resolution fixing date for a public hearing on the proposal to enter into a Development Agreement with Ascentra Credit Union, which involves the potential transfer of land to a multi-state business for development of a home office.

IMPORTANT INFORMATION

1. The above agenda items should be included, along with any other agenda items, in the meeting agenda. The agenda should be posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If no such office exists, the notice must be posted at the building in which the meeting is to be held.
2. If you do not now have a bulletin board designated as above mentioned, designate one and establish a uniform policy of posting your notices of meeting and tentative agenda.
3. Notice and tentative agenda must be posted at least 24 hours prior to the commencement of the meeting.

**NOTICE MUST BE GIVEN PURSUANT TO IOWA CODE
CHAPTER 21 AND THE LOCAL RULES OF THE CITY.**

October 17, 2017

The City Council of the City of Bettendorf in the State of Iowa, met in _____ session, in the Council Chambers, City Hall, 1609 State Street, Bettendorf, Iowa, at 7:00 P.M., on the above date. There were present Mayor _____, in the chair, and the following named Council Members:

Absent: _____

Vacant: _____

* * * * *

Council Member _____ then introduced the following proposed Resolution entitled "RESOLUTION FIXING DATE FOR A PUBLIC HEARING ON THE PROPOSAL TO ENTER INTO A DEVELOPMENT AGREEMENT WITH ASCENTRA CREDIT UNION, WHICH INVOLVES THE POTENTIAL TRANSFER OF LAND TO A MULTI-STATE BUSINESS FOR DEVELOPMENT OF A HOME OFFICE, AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF", and moved that the same be adopted. Council Member _____ seconded the motion to adopt. The roll was called and the vote was,

AYES: _____

NAYS: _____

Whereupon, the Mayor declared the Resolution duly adopted as follows:

RESOLUTION NO. _____

RESOLUTION FIXING DATE FOR A PUBLIC HEARING ON
THE PROPOSAL TO ENTER INTO A DEVELOPMENT
AGREEMENT WITH ASCENTRA CREDIT UNION, WHICH
INVOLVES THE POTENTIAL TRANSFER OF LAND TO A
MULTI-STATE BUSINESS FOR DEVELOPMENT OF A
HOME OFFICE, AND PROVIDING FOR PUBLICATION OF
NOTICE THEREOF

WHEREAS, by Resolution No. 176-90, adopted June 19, 1990, and to be amended by Resolution on November 21, 2017, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Urban Renewal Plan (the "Plan" or "Urban Renewal Plan") for the Downtown (f/k/a District One) Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Plan is on file in the office of the Recorder of Scott County; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City has received a proposal from Ascentra Credit Union (the "Developer"), a multi-state business, in the form of a proposed Development Agreement (the "Agreement") by and between the City and the Developer, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the Downtown Urban Renewal Area, as defined and legally described in the Agreement and locally referred to as "Town Square" (the "Development Property") and consisting of the construction of a 36,000 square foot commercial building on the Development Property to be used as Developer's home office, together with all related site improvements, as outlined in the proposed Development Agreement; and

WHEREAS, the Agreement contemplates the City will complete certain Public Improvements described therein on the Development Property; and

WHEREAS, the Agreement further proposes that the City will make up to twenty (20) consecutive semi-annual payments of Economic Development Grants to Developer consisting of 100% of the Tax Increments pursuant to Iowa Code Section 403.19 and generated by the construction of the Minimum Improvements, the cumulative total for all such payments not to exceed the lesser of \$2,000,000, or the amount accrued under the formula outlined in the proposed Development Agreement, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, the Agreement also proposes that Developer and the City will enter into a Minimum Assessment Agreement with the County setting the minimum actual value of the Minimum Improvements for tax purposes at not less than \$9,090,000; and

WHEREAS, one of the obligations of the Developer relates to employment retention and/or creation; and

WHEREAS, the Agreement also involves the transfer of land between the parties including the City transferring the Development Property to Developer for \$750,000 while retaining the right to reacquire certain unused portions thereof from the Developer, and Developer transferring its existing property in the Area to the City for \$1,150,000, all subject to the terms and conditions of the Agreement; and

WHEREAS, Iowa Code Chapters 15A and 403 (the "Urban Renewal Law") authorize cities to make grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapter, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein; and

WHEREAS, neither the Urban Renewal Law nor any other Code provision sets forth any procedural action required to be taken before said economic development activities can occur under the Agreement, and pursuant to Section 364.6 and 364.7 of the City Code of Iowa, it is deemed sufficient if the action hereinafter described be taken and the City Clerk publish notice of the proposal and of the time and place of the meeting at which the Council proposes to take action thereon and to receive oral and/or written objections from any resident or property owner of said City to such action.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BETTENDORF IN THE STATE OF IOWA:

Section 1. That this Council meet in the Council Chambers, City Hall, 1609 State Street, Bettendorf, Iowa, at 7:00 P.M. on November 21, 2017, for the purpose of taking action on the matter of the proposal to enter into a Development Agreement with Ascentra Credit Union.

Section 2. That the City Clerk is hereby directed to cause at least one publication to be made of a notice of said meeting, in a legal newspaper, printed wholly in the English language, published at least once weekly, and having general circulation in said City, said publication to be not less than four (4) clear days nor more than twenty (20) days before the date of said public meeting.

Section 3. The notice of the proposed action shall be in substantially the following form:

(One publication required)

NOTICE OF PUBLIC HEARING OF THE CITY COUNCIL OF
THE CITY OF BETTENDORF IN THE STATE OF IOWA, ON
THE MATTER OF THE PROPOSAL TO ENTER INTO A
DEVELOPMENT AGREEMENT WITH ASCENTRA CREDIT
UNION, WHICH INVOLVES THE POTENTIAL TRANSFER
OF LAND TO A MULTI-STATE BUSINESS FOR
DEVELOPMENT OF A HOME OFFICE, AND THE HEARING
THEREON

PUBLIC NOTICE is hereby given that the Council of the City of Bettendorf in the State of Iowa, will hold a public hearing on November 21, 2017, at 7:00 P.M. in the Council Chambers, City Hall, 1609 State Street, Bettendorf, Iowa, at which meeting the Council proposes to take action on the proposal to enter into a Development Agreement (the "Agreement") with Ascentra Credit Union (the "Developer"), a multi-state business.

The Agreement would obligate the Developer to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the Downtown Urban Renewal Area as defined and legally described in the Development Agreement and locally referred to as "Town Square" (the "Development Property"), consisting of the construction of a 36,000 square foot commercial building on the Development Property to be used as Developer's home office, together with all related site improvements, under the terms and following satisfaction of the conditions set forth in the Agreement. One of the obligations of Developer relates to employment retention and/or creation.

The Agreement would further obligate the City to construct certain Public Improvements described therein on the Development Property.

The Agreement would further obligate the City to make up to twenty (20) consecutive semi-annual payments of Economic Development Grants to Developer consisting of 100% of the Tax Increments pursuant to the Iowa Code Section 403.19 and generated by the construction of the Minimum Improvements, the cumulative total for all such payments not to exceed the lesser of \$2,000,000, or the amount accrued under the formula outlined in the proposed Development Agreement, under the terms and following satisfaction of the conditions set forth in the Agreement.

The Agreement also proposes that Developer and the City will enter into a Minimum Assessment Agreement with the County setting the minimum actual value of the Minimum Improvements for tax purposes at not less than \$9,090,000.

The Agreement also involves the transfer of land between the parties including the City transferring the Development Property to Developer for \$750,000 while retaining the right to reacquire certain unused portions thereof from the Developer, and Developer transferring its

existing property in the Area to the City for \$1,150,000, all subject to the terms and conditions of the Agreement.

A copy of the Agreement is on file for public inspection during regular business hours in the office of the City Clerk, City Hall, City of Bettendorf, Iowa.

At the above meeting the Council shall receive oral or written objections from any resident or property owner of said City, to the proposal to enter into the Agreement with the Developer. After all objections have been received and considered, the Council will at this meeting or at any adjournment thereof, take additional action on the proposal or will abandon the proposal to authorize said Agreement.

This notice is given by order of the City Council of the City of Bettendorf in the State of Iowa, as provided by Section 364.6 and 364.7 of the City Code of Iowa.

Dated this _____ day of _____, 2017.

City Clerk, City of Bettendorf in the State of
Iowa

(End of Notice)

PASSED AND APPROVED this 17th day of October, 2017.

Mayor

ATTEST:

City Clerk

CERTIFICATE

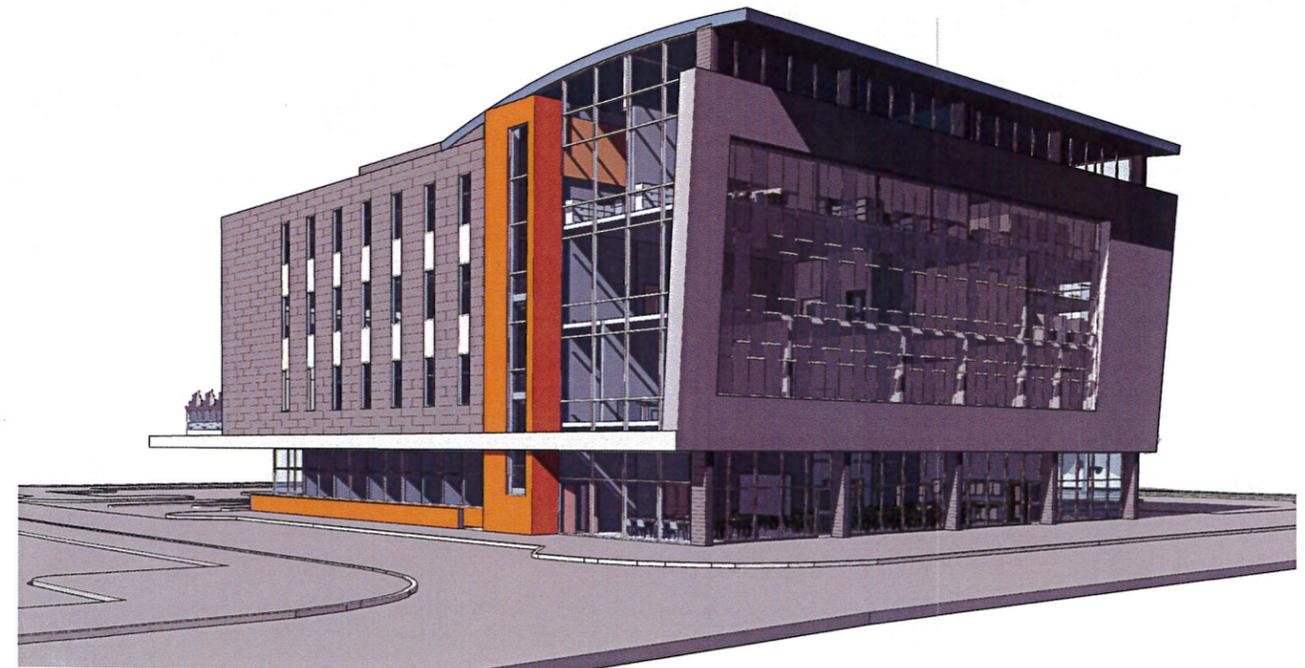
STATE OF IOWA)
) SS
COUNTY OF SCOTT)

I, the undersigned City Clerk of the City of Bettendorf, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the records of the City showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective City offices as indicated therein, that no Council vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this _____ day of _____, 2017.

City Clerk, City of Bettendorf, State of Iowa

(SEAL)



PROJECT CHEDDAR
PROJECT CHEDDAR

PERSPECTIVES

⊕ 06.15.17

LEGATARCHITECTS
SUSTAINABILITY | PERFORMANCE | DESIGN

**PROJECT
CHEDDAR**

**PROJECT
CHEDDAR**

1234 MAIN STREET

ARCHITECT
Legat Architects
1515 5th Ave. Suite 108
Moline, IL 61265
P. 309.517.5536
www.legat.com

CONSULTING ENGINEER/ARCHITECT
J+M Civil Design
2550 Middle Rd. Suite 300
Bettendorf, IA 52722
P. 563.549.7795
www.jmcivildesign.com

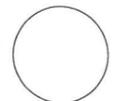
STRUCTURAL ENGINEER
Structural Engineer Name
2435 Kimberly Rd. 240 S
Bettendorf, IA 52722
P. 563-359-3117
www.select-structural.com

MEP/FP ENGINEER
MEP/FP Engineer Name
MEP/FP Address Line 1
MEP/FP Address Line 2
P. xxx.xxx.xxxx
F. xxx.xxx.xxxx
www.-.com

TECHNOLOGY ENGINEER
Technology Engineer Name
Technology Address Line 1
Technology Address Line 2
P. xxx.xxx.xxxx
F. xxx.xxx.xxxx
www.-.com

ACOUSTIC ENGINEER
Acoustic Engineer Name
Acoustic Address Line 1
Acoustic Address Line 2
P. xxx.xxx.xxxx
F. xxx.xxx.xxxx
www.-.com

FOOD SERVICE CONSULTANT
Food Service Consult. Name
Food Service Address Line 1
Food Service Address Line 2
P. xxx.xxx.xxxx
F. xxx.xxx.xxxx
www.-.com



SIGNATURE _____
DATE _____

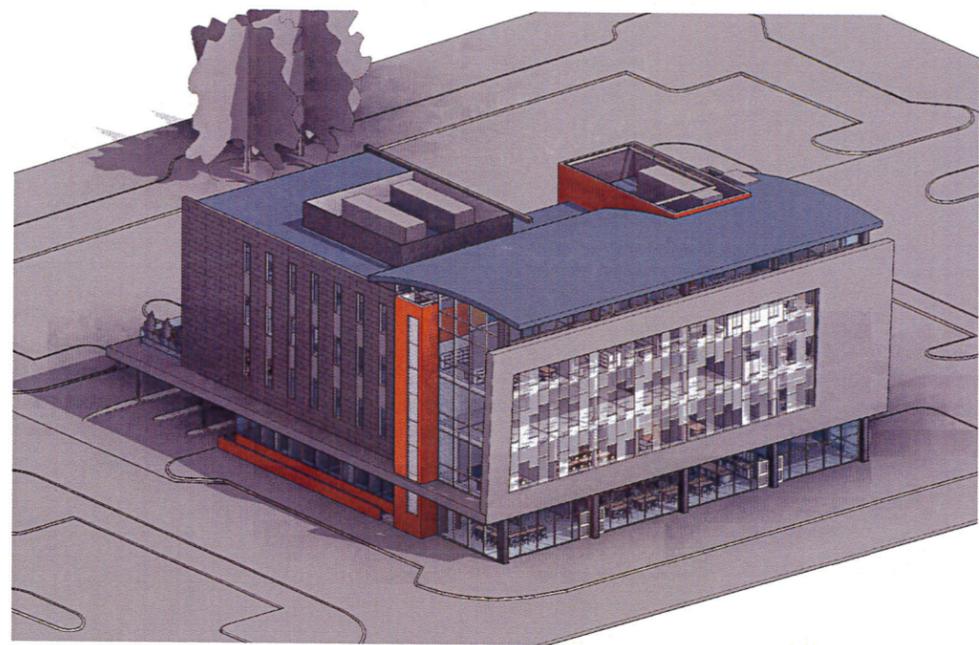
REVISIONS		
NO.	DESCRIPTION	DATE

PROJECT NUMBER 217029.00
DATE OF ISSUE 06.15.17
DRAWN BY KE
CHECKED BY JKS

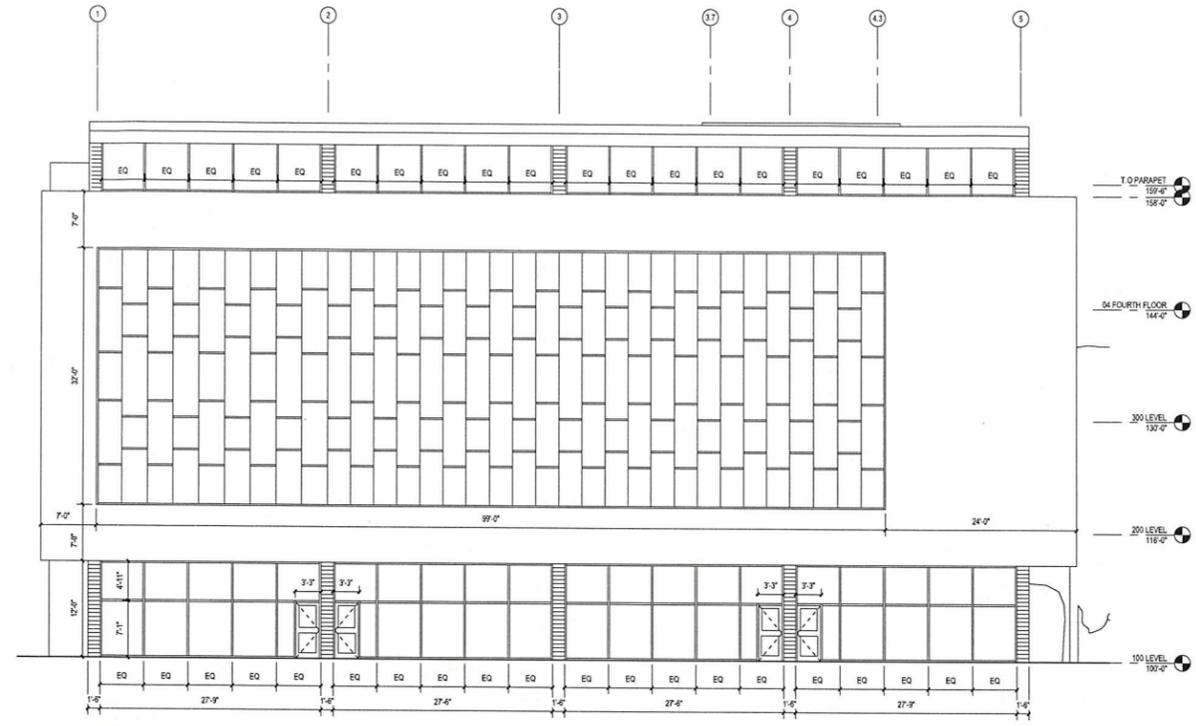
EXTERIOR BUILDING ELEVATIONS

+100' 0" = +

A-201
Not For Construction



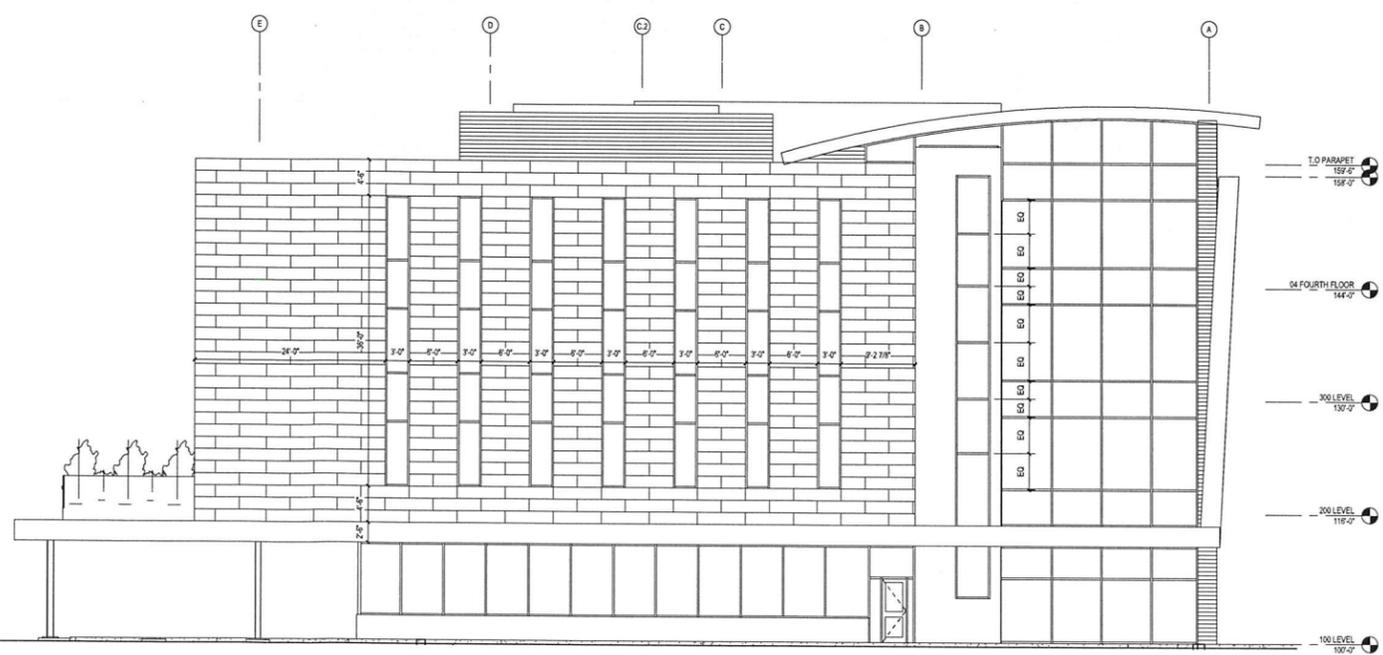
5 AXON - NORTHEAST CORNER



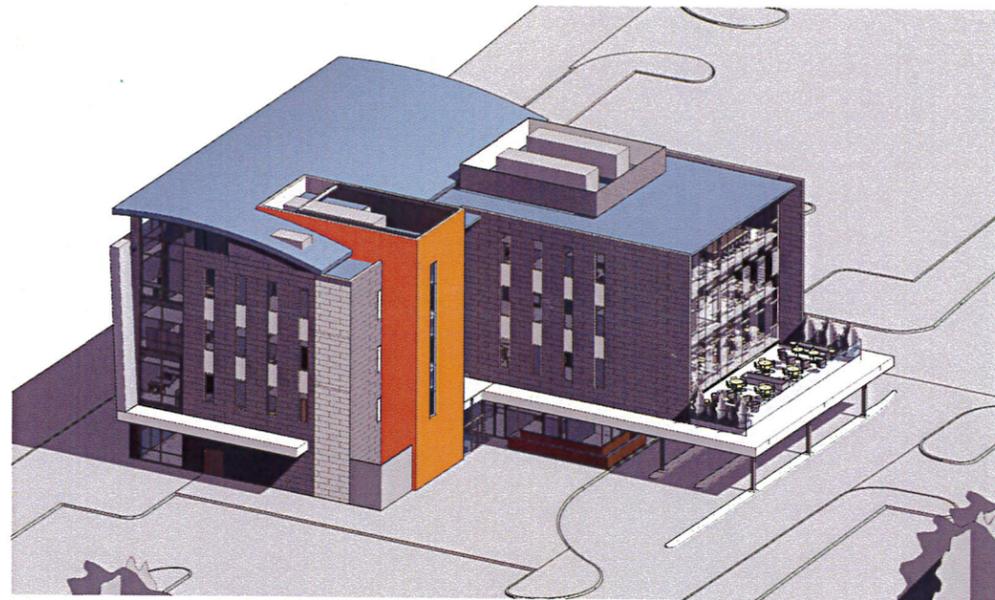
2 BUILDING ELEVATION - NORTH
1/8" = 1'-0" A-101



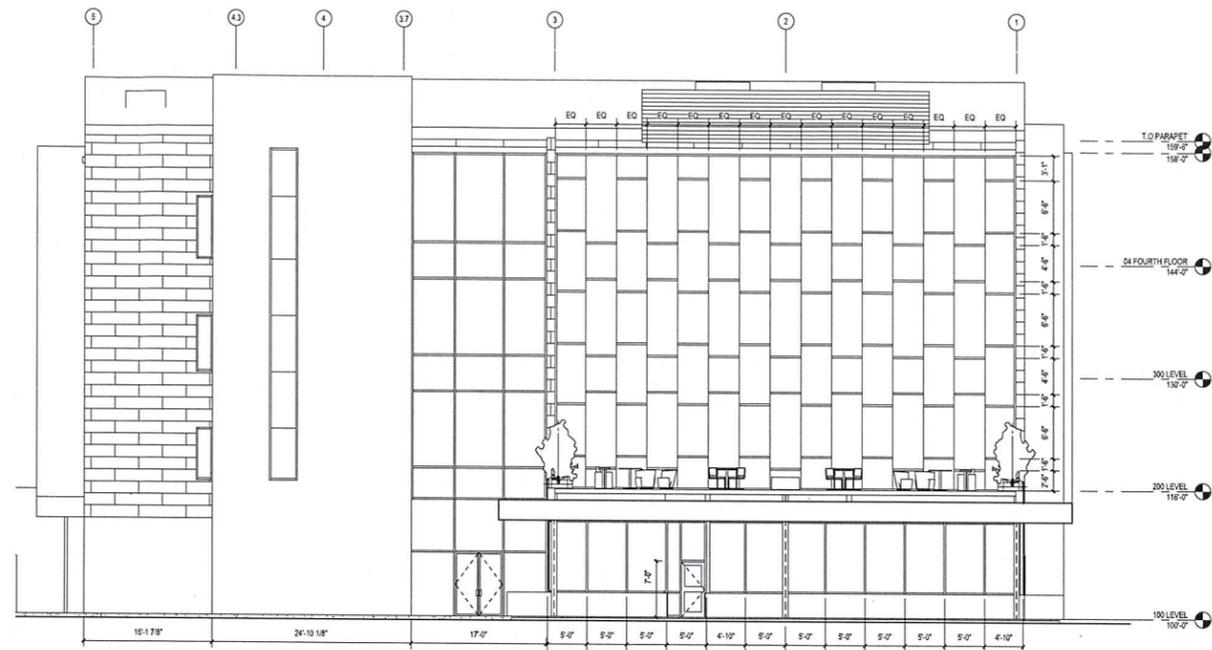
1 PERSPECTIVE - NORTHEAST CORNER



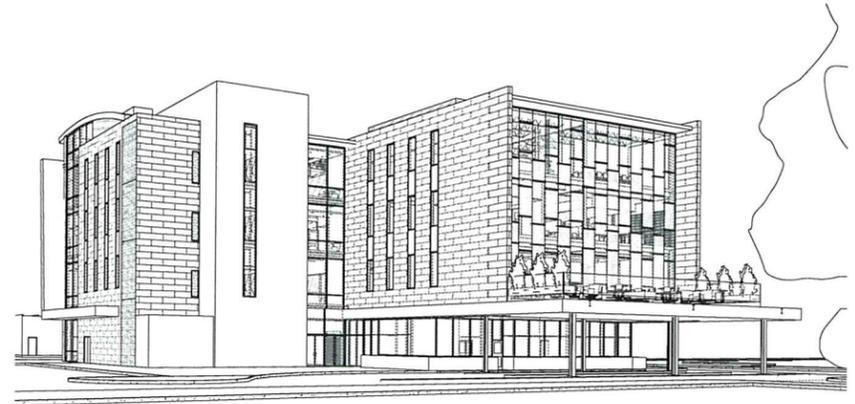
4 BUILDING ELEVATION - EAST
1/8" = 1'-0" A-101



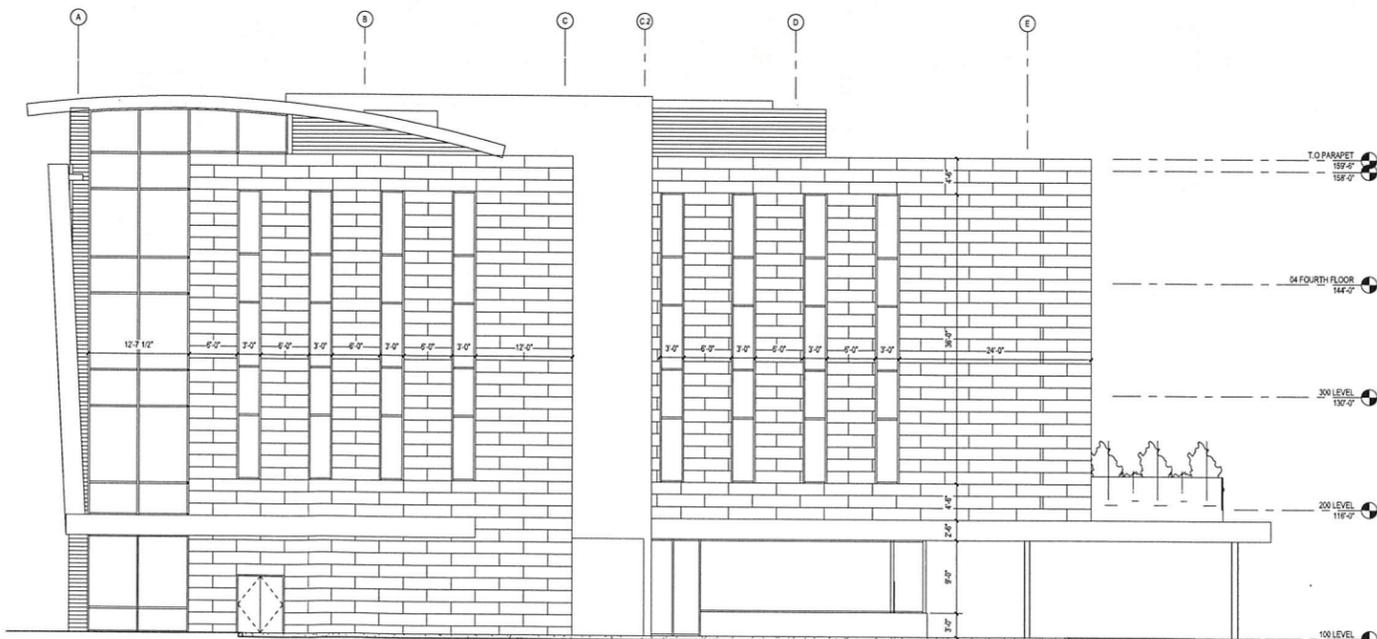
4 AXON - SOUTHWEST CORNER



2 BUILDING ELEVATION - SOUTH
1/8" = 1'-0" A-101



3 PERSPECTIVE VIEW - SOUTHWEST



1 BUILDING ELEVATION - WEST
1/8" = 1'-0" A-101

PROJECT CHEDDAR

PROJECT CHEDDAR

1234 MAIN STREET

ARCHITECT
Legat Architects
1515 5th Ave. Suite 108
Moline, IL 61265
P. 309.517.5536
www.legat.com

CIVIL ENGINEER/LANDSCAPE ARCHITECT
J+M Civil Design
2550 Middle Rd. Suite 300
Bettendorf, IA 52722
P. 563.549.7795
www.jmcivil.com

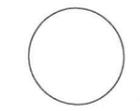
STRUCTURAL ENGINEER
Structural Engineer Name
2435 Kimberly Rd. 240 S
Bettendorf, IA 52722
P. 563-359-3117
www.select-structural.com

MEP/FP ENGINEER
MEP/FP Engineer Name
MEP/FP Address Line 1
MEP/FP Address Line 2
P. xxx.xxx.xxx
F. xxx.xxx.xxx
www.-.com

TECHNOLOGY ENGINEER
Technology Engineer Name
Technology Address Line 1
Technology Address Line 2
P. xxx.xxx.xxx
F. xxx.xxx.xxx
www.-.com

ACOUSTIC ENGINEER
Acoustic Engineer Name
Acoustic Address Line 1
Acoustic Address Line 2
P. xxx.xxx.xxx
F. xxx.xxx.xxx
www.-.com

FOOD SERVICE CONSULTANT
Food Service Consult. Name
Food Service Address Line 1
Food Service Address Line 2
P. xxx.xxx.xxx
F. xxx.xxx.xxx
www.-.com



SIGNATURE
DATE

REVISIONS

NO.	DESCRIPTION	DATE

PROJECT NUMBER 217029.00
DATE OF ISSUE 06.15.17
DRAWN BY KE
CHECKED BY JKS

EXTERIOR BUILDING ELEVATIONS

+100' 0" = +

A-202
Not For Construction

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into between the City of Bettendorf, Iowa, an Iowa Municipal Corporation (“City”), and Ascentra Credit Union (f/k/a Alcoa Employees Credit Union), an Iowa 501(c)(14) State Chartered Credit Union (“Ascentra”), as of the ____ day of _____, 2017.

RECITALS

WHEREAS, Ascentra will acquire from the City certain property, more specifically described on Exhibit “A” attached hereto (the “Property”), which is located within the Downtown Urban Renewal Area and upon which Ascentra intends to redevelop a “Project” on the Property; and

WHEREAS, the City will acquire from Ascentra certain property more specifically described on Exhibit “A-1” (the “Ascentra Property”), which is located within the Downtown Urban Renewal Area;

WHEREAS, Ascentra is a multistate business and desires to construct its home office on the Property;

WHEREAS, the Project will not occur without financial assistance from the City of Bettendorf;

WHEREAS, under Chapter 15A of the Iowa Code, the City is required to determine that a public purpose will reasonably be accomplished and the City Council so FINDS that jobs will be preserved and expanded, and the tax base increased as a result of the Agreement signed herein;

WHEREAS, under Chapter 403 of the Iowa Code, the City may enter into development agreements to attract and retain businesses to strengthen and revitalize the economy of the State of Iowa and the City of Bettendorf; and

WHEREAS, Chapters 15A and 403 of the Iowa Code authorize 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:

Section 1. Ascentra Obligations.

1.1 Ascentra shall purchase the north parcel of the Property (as specifically identified on Exhibit “A”) from the City for the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000.00), and the south parcel of the Property (as specifically identified on Exhibit A, and also set forth on Exhibit “A-2”) from the City for the amount of One Dollar (\$1.00). Closing on the purchase of the Property is anticipated to take place by December 31, 2017. Ascentra shall undertake future development work, consisting of but not limited to the construction and development of new buildings for commercial or mixed uses on the Property, and, if necessary, infrastructure improvements on or adjacent to the Property within existing easements or rights of way. All infrastructure improvements shall comply with City ordinances and engineering requirements.

1.2 Ascentra agrees that any buildings constructed on the Property during the term of this Agreement shall adhere to the design and performance standards identified in any governing overlay district with design standards being incorporated into the development plan. The parties recognize that this is a highly visible site and as such, the parties agree that it shall be developed in an attractive, consistent manner, commensurate with the City’s established Downtown Master Plan.

1.3 Ascentra shall develop the Property, subject to obtaining all necessary approvals, as follows: New construction of an office building containing a minimum of Thirty Six Thousand (36,000) square feet, including first floor or grade level commercial use. The Property will initially include a parking lot on that portion of the Property described on Exhibit "A-2" (the "Parking Lot").

1.4 At such time as the City constructs, or causes to be constructed, alternative public parking structure or lot on a parcel directly adjacent to the Property (for clarity, this includes parcels adjacent to the Property, but does not include parcels north of Grant Street), with an equivalent or greater number of no-charge stalls as Ascentra constructed on its Property, upon the City's discretion and agreement of the parties, and upon execution of standard conveyance documents, Ascentra will convey the south parcel of the Property containing the Parking Lot it constructed back to the City for One Dollar (\$1.00). This restriction shall run with the land and conveyance documents will be drafted accordingly. At no time, however, shall Ascentra be required to convey the Parking Lot to the City, except as set forth herein. This conveyance is contingent on the City providing Ascentra with guaranteed usage of sufficient parking stalls without charge in its alternative parking structure or lot for all Ascentra employees primarily officed at the Property.

1.5 Over the term of this Agreement at least twenty (20) new jobs will be created in the City of Bettendorf as a result of the Project.

Section 2. City Obligations.

2.1 In order for the redevelopment of the Property to occur, the City shall grant, transfer and convey the Property to Ascentra by Special Warranty Deed and complete, or cause to be completed, the following work, the same of which is depicted on Exhibit "B", attached hereto and incorporated herein by reference: (a) burial of utility lines currently existing on the Property, at an estimated cost of \$110,000; and, (b) relocation of the mast arm and infrastructure of the traffic signal (including the traffic cabinet and non-mast arm infrastructure) to the northwest corner of 21st and Grant Streets, at an estimated cost of Eighty-Two Thousand Dollars (\$82,000). Said work shall be commenced within 90 days of the execution of this Agreement and diligently pursued to completion, and shall be at the City's sole cost and expense. Ascentra shall be under no obligation to commence or complete the development work until the City has met its obligations hereunder.

2.2 The parties acknowledge that Ascentra may request that the City's Comprehensive Plan, land use map, and zoning map be amended to allow for development within the Property. Any such requests will be received and addressed in accordance with applicable law, including, but not limited to, the Bettendorf City Code.

2.3 The City shall purchase the existing Ascentra Property from Ascentra on an as-is basis for the amount of One Million, One Hundred Fifty Thousand Dollars (\$1,150,000.00). The purchase price of the Ascentra Property shall be paid to Ascentra as follows (a) Seven Hundred Fifty Thousand Dollars (\$750,000.00) on or before June 30, 2018; and (b) additional consideration in the amount of Four Hundred Thousand Dollars (\$400,000) to be paid at the closing on the Ascentra Property, such closing to take place at a time and place agreed upon by the parties. Ascentra shall have thirty (30) days to vacate the Ascentra Property following receipt of the Certificate of Occupancy for the Property and shall grant, transfer, and convey the Ascentra Property to City by Warranty Deed at the closing. Such closing will be contingent on execution of standard real estate conveyance documents.

2.4 For so long as Ascentra's home office is located on the Property, to the fullest extent allowed by law, the City agrees it will not develop the Ascentra Property to incorporate a bank or credit union and no ATM shall be placed on the Ascentra Property without the prior written consent of Ascentra, which such consent shall be given in Ascentra's sole discretion. This restriction shall run with the land.

Section 3. Economic Development Payments.

The City agrees to make tax increment rebate payments (“TIF Rebate”) to Ascentra in support of this Project. The TIF Rebate shall be paid only from the tax incremental revenues derived from the Project, pursuant to this Section 3 and Chapters 15A and 403 of Iowa Code. For the purposes of this Agreement, the tax incremental revenues derived from the Project shall mean only the taxes available for division by the County and remitted to the City under the Urban Renewal Law in excess of the base year assessment for the Property.

Ascentra shall be entitled to the TIF Rebate that accumulates for the entire Property (north and south parcels), regardless of changes in ownership of any individually platted lots until such time as the City reacquires the portion of the Property containing the Parking Lot (as set forth on Exhibit “A-2”), Ascentra shall then be entitled to the TIF Rebate only on the north parcel of the Property. It shall be up to the Ascentra to determine whether the TIF Rebate shall pass through to the individual lot owners on the north parcel

The TIF Rebates shall be made on December 1st and June 1st of each fiscal year, and shall continue for a maximum period of (10) fiscal years of taxes. The mutually agreed upon maximum sum total of TIF to be rebated to Ascentra is Two Million Dollars (\$2,000,000.00) payable in installments over a maximum of a ten (10) year period (for avoidance of doubt, twenty (20) full semi-annual payments). Ascentra acknowledges that each TIF Rebate payment to be paid to Ascentra according to this Section 3 is wholly contingent upon and shall come solely and only from incremental taxes received by the City under Iowa Code Section 403.19 from levies upon the Property. The City makes no assurance that Ascentra will receive TIF Rebates which reach the ten-year aggregate maximum of \$2,000,000.

On or about November 1st of each year, Ascentra shall report to the City the status of payment of all property taxes then due on the Property and certify to the City the development costs associated with the Project. On December 1st of each year, and based upon Ascentra’s certification to the City, the City shall certify said amount to the county auditor pursuant to Iowa Code Section 403.19(6) as debt incurred within the District (as established by the Tax Increment Financing Ordinance).

The obligation of the City to make any TIF Rebate in any year shall be subject to and conditioned upon the following:

- a. compliance with the terms of this Agreement by Ascentra, including, but not limited to, the employment obligations in Section 1.5 of this Agreement and payment of property taxes; and
- b. timely filing by Ascentra of the Annual Certifications required above and the Council's approval thereof.

The TIF Rebate shall begin when Ascentra provides notice to the City that certification to the county auditor is appropriate. Said notification by Ascentra shall not occur until all necessary zoning and site plan review processes have been completed. The TIF Rebates to the Ascentra are subject to the timely payment of property taxes by Ascentra or other owners of the Property.

Pursuant to the terms of Iowa Code section 403.6(19), Ascentra shall execute a Minimum Assessment Agreement for the Property in the amount of Nine Million Ninety Thousand Dollars (\$9,090,000.00) effective upon substantial completion of the Project but in no event later than January 1, 2019. The Minimum Assessment Agreement will contemplate that at such time as the City reacquires the portion of the Property containing the Parking Lot, the minimum assessment of \$9,090,000 shall apply to

the north parcel of the Property. Said Minimum Assessment Agreement shall be in full force and effect for the duration of the TIF Rebates on the Property and shall run with the land.

Section 4. Term of Agreement.

This Agreement shall terminate the earlier of the date of the 20th semi-annual TIF Rebate is paid or the date the aggregate maximum TIF Rebate amount is reached, unless this Agreement is terminated earlier pursuant to its terms.

Section 5. Right of Non-Appropriation.

The TIF Rebates shall be payable from and secured solely and only by amounts deposited and held in the applicable tax increment revenue fund of the City under Iowa Code 403.19 and derived from the Property. The TIF Rebates shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds. Any commercial and industrial property tax replacement monies that may be received by the City under chapter 441.21A and any monies received back by the City under chapter 426C relating to the Business Property Tax Credit shall not be used to pay TIF Rebates to Ascentra.

Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay any installment of the TIF Rebate from the Pledged Tax Increment Revenues described in Section 3 hereto shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit within the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation by the City Council of the City as provided in this section. The City may exercise its right of non-appropriation as to the amount of the TIF Rebates to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall be exercised only by an ordinance approved by two thirds (2/3) of the City Council affirmatively declaring the City's election not to appropriate funds otherwise required to be paid in the next fiscal year under the Development Agreement. The vote for non-appropriation shall require three prior separate readings at regularly-scheduled City Council meetings, with no suspension of the rules or shortening the timing of the readings or approvals.

In the event the City Council of the City elects to not appropriate sufficient funds in the budget for any future fiscal year from the Pledged TIF Rebate described in Section 3 hereto for the payment in full of the installments on the TIF Rebate due and payable in that fiscal year, then the City shall have no further obligation to Ascentra for the payment of all installments due in the next fiscal year which cannot be paid with the funds then appropriated for that purpose.

The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to pay future installments on the TIF Rebates shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision, and to this end the provisions of this Agreement are severable.

Section 6. Assignment.

This Agreement may not be amended or assigned by either party without the express permission of the other party. However, the City hereby gives its permission that Ascentra's right to receive the TIF Rebate hereunder may be assigned by Ascentra to a private lender, as security, or to another entity which is controlled by Ascentra, without further action on the part of the City. The City agrees not to unreasonably withhold its permission upon receipt of a request from Ascentra for assignment of all or any portion of its rights and obligations hereunder to any other party and to either approve or deny such request within sixty (60) days after receipt of such request by the City Council.

Section 7. Successors and Assigns.

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

Section 8. Governing 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 the laws of the State of Iowa.

Section 9. Jury Trial Waiver.

The parties hereto, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily, and intentionally waive any right they may have to a trial by jury in any litigation based on or arising out of this agreement or instrument, or any related instrument or agreement, or any of the transactions contemplated hereby or any course of conduct, dealing, statements, whether oral or written, or action of any party hereto. No party shall seek to consolidate by counterclaim or otherwise, any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. These provisions shall not be deemed to have been modified in any respect or relinquished by any party hereto except by a written instrument executed by all parties.

Section 10. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11. Entire Agreement.

This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written.

The City and Ascentra have caused this Agreement to be signed, and the City's seal to be affixed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

[Signature Page Follows]