

RESOLUTION NO. 020 (2025/2026)

**A RESOLUTION APPROVING
REAL PROPERTY CHARITABLE DONATION AGREEMENT BETWEEN
CITY OF NEVADA, IOWA AND WEST INDIAN RESEARCH ACRES, LLC**

WHEREAS, the City of Nevada, Iowa ("City"), and West Indian Research Acres, LLC ("Company") desire to enter into a Real Property Charitable Agreement ("Agreement"); and

WHEREAS, Company shall donate to the City the real property consisting of a parcel of land of approximately 22.45 gross acres; and

WHEREAS, City and Company agree that fair market value of the Real Property is \$458,000.00, based on a qualifying appraisal of the Real Property; and

WHEREAS, City shall use the Real Property exclusively for the public purposes of a city park and City agrees to name the city park Clem Acres; and

WHEREAS, City and Company agree to the terms and conditions as set forth in the Real Property Charitable Donation Agreement, Exhibit B attached; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nevada, Story, County, Iowa, does hereby approve the Real Property Charitable Agreement with West Indian Research Acres, LLC, per attached Exhibit B. The Mayor and City Clerk are hereby authorized to execute the agreement on behalf of the City.

PASSED AND APPROVED this 22nd day of September, 2025.

Ryan Condon, Mayor

ATTEST:

Kerin Wright, City Clerk

Moved by Council Member __, seconded by Council Member __, that Resolution No. 020 (2025/2026) be adopted.

AYES: __
NAYS: __
ABSENT: __

The Mayor declared Resolution No. 020 (2025/2026) adopted.

I hereby certify that the foregoing is a true copy of a record of the adoption of Resolution No. 020 (2025/2026) at the regular Council Meeting of the City of Nevada, Iowa, held on the 22nd day of September, 2025.

Kerin Wright, City Clerk

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REAL PROPERTY CHARITABLE DONATION AGREEMENT

This Real Property Charitable Donation Agreement (this "Agreement") is made and entered into as of _____, 2025 (the "Effective Date"), by and between West Indian Research Acres, LLC, an Iowa limited liability corporation (the "Company") and the City of Nevada, Iowa (the "City") with respect to a charitable donation in the amount of the Contribution (defined below). The purpose of this Agreement is to set forth the terms and conditions pursuant to which the Company shall provide and the City shall receive the Contribution. The Company and the City are each a "Party" and, together, the "Parties".

Background

The City is a political subdivision or governmental unit for the purposes of Section 170(c)(1) of the Internal Revenue Code of 1986, as amended (the "Code"). The Company desires to support the City through its Contribution for use of the Real Property (defined below) exclusively for public purposes.

The parties hereto agree as follows:

1. Contribution. At Settlement, the Company shall donate to the City the real property described on Exhibit A hereto, consisting of a parcel of land of approximately 22.45 gross acres and all improvements, if any, situated thereon, subject to the terms and conditions of this Agreement (the "Real Property"), but subject to (a) real estate taxes and assessments not yet due as of Closing; (b) zoning laws and building ordinances; (c) easements, covenants, and restrictions of record, provided the same do not prohibit use of the Real Property as a public park; (d) any matter that an accurate survey of the Real Property could or would show; (e) any matter arising from the City's actions, including any matter arising or permitted by the City during its prior use of the Real Property; and (f) the Restrictive Covenant (defined below) (collectively, the "Permitted Exceptions").

The City and the Company agree that the fair market value of the Real Property is \$458,000.00, which is based on a qualifying appraisal of the Real Property (the "Contribution"). The City acknowledges the Real Property and use of the Real Property in accordance with the Use Restriction (defined below) is in furtherance of a public purpose. The City agrees to cooperate with the Company and its advisors, attorneys, and accountants with respect to, and to complete any documentation or additional paperwork necessary or helpful to assist the Company in documenting its gift, such obligation to survive Settlement and delivery of the Deed (defined below). In the event the income tax deductibility of the Contribution is challenged, the City will provide reasonable assistance to the Company, in contesting the unfavorable determination or ruling. The Parties acknowledge that certain state or federal laws now or in the future may require the Company to disclose information on donations provided to charitable or governmental entities. The Company may report information about the Contribution provided under this Agreement, as required by law.

2. Settlement

a. If available, the Company shall deliver to the City a current abstract of title showing marketable title to the Real Property in conformity with this Agreement and with the land title examination standards of the Iowa State. The City acknowledges that the abstract(s) delivered hereunder will not reflect the split of the Real Property from its root parcels and, therefore, covers more real estate than the Real Property. Any new or split abstract created exclusively for the Real Property will be done at the City's sole expense or, if the Company pays for such new or split abstract, the amount paid by the Company hereunder shall be added to the Contribution. In the

absence of an abstract, the City will acquire a Title Certificate for the Real Property, which must show clear title to the Real Property in the Company, subject, however, to the Permitted Exceptions.

b. Settlement and delivery of possession of the Real Property will occur on or before December 31, 2025 ("Settlement"). Settlement will be held at the offices of the City. The Company and the City will cooperate on preparing documents. At Settlement, (i) the Company will deliver to the City a special warranty deed to the Real Property, in substantially the form and set forth in Exhibit B (the "Deed"); and an original, notarized signature page of Clem Acres, LLC to each of the Temporary Access Easement and the Drainage Agreement; and (ii) the City will deliver to the Company an original, notarized signature page of the City to each of the Temporary Access Easement and the Drainage Agreement.

c. Real property taxes on the Real Property will be prorated as of the close and Settlement based upon the latest available tax information. The City will notify Story County promptly after recording the Deed to ensure prompt tax exemption of the Real Property. If, on account of the foregoing proration, the City receives an amount greater than the actual taxes payable by the City after Settlement with respect to a period before Settlement, the difference shall be promptly paid to the Company, such obligation to survive Settlement and delivery of the Deed.

d. All risk of loss for the Real Property will remain with the Company, until Settlement, subject, in each case, to the City's obligations under Section 9, below.

3. Representations and Warranties

The Company represents and warrants as follows:

a. It has good and marketable title to the Real Property free from all mortgages, security interests or other encumbrances, other than those that will be released before Settlement and other than the Permitted Exceptions.

b. Intentionally deleted.

c. There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or, to the Company's knowledge, threatened against the Real Property or any portion thereof, or pending or, to the Company's knowledge, threatened against the Company which could affect the Company's title to the Real Property or any portion thereof, or subject a subsequent owner of the Real Property, or any portion thereof, to liability.¹

The City represents and warrants as follows:

a. It is a governmental unit for the purposes of Section 170(c)(1) of the Internal Revenue Code.

b. The City has full authority and power to enter into this Agreement, and when signed, it shall be a valid obligation of, and enforceable against, the City.

4. Additional Agreements and Covenants

¹ Drafting Note: If the City commences annexation of the Real Property prior to Settlement, we will need to add reference to the same here.

a. The City shall use the Real Property exclusively for the public purposes of a city park and an area no larger than 1 (one) acre for the deposit of trees, leaves and brush (the "Use Restriction"). The Use Restriction will be set forth on the Deed as part of a restrictive covenant that runs with the Real Property (the "Restrictive Covenant").

b. The City agrees to name the city park Clem Acres or such other name hereafter approved by Gary W. Clem, for so long as he is living, and, thereafter (i.e., after Gary W. Clem is no longer living), for so long as a child of Gary W. Clem is living, by a majority of such then living children, and, thereafter (i.e., when no children of Gary W. Clem are living), for so long as a grandchild of Gary W. Clem is living, by a majority of such then living grandchildren. Such naming rights to survive Settlement and delivery of the Deed and will be referenced on the Restrictive Covenant in the Deed. The name, as determined or hereafter approved in accordance with this Section, shall appear on appropriate, visible signage at the park, the location and design for such signage to be approved by the party holding naming rights pursuant to this section at the time such signage is proposed and installed by or for the City. This provision shall survive the transfer of the Real Property and shall not merge with the Deed, even if such Deed includes reference to these rights.

c. The City acknowledges there is a drainage tile system under a portion of the Real Property which benefits real property described as Parcel M, being a part of Lots 13 and 14 in the Southeast Quarter of Section 1, Township 83 North, Range 23 West of the 5th P.M., Story County, Iowa, more particularly described in a Plat of Survey, filed of record in the Office of the Story County, Iowa Recorder, as Instrument No. 2024-05745 ("Parcel M"). As an express condition to, and in consideration of the Contribution, the City agrees for itself and its successors in interest to the Real Property, to maintain the drainage tile and related drainage improvements located on/under the Real Property (collectively, the "Drainage Improvements") in good condition and repair and in a manner that permits the unobstructed flow of water from Parcel M through said Drainage Improvements into abutting outlets, and to otherwise improve and use the Real Property in a way that does not damage the Drainage Improvements. If any Drainage Improvement is damaged and not promptly repaired by the City, and in cases of emergency, the owner of Parcel M and its tenants, and their respective contractors and contractors' subcontractors, shall have a right of access to make such necessary repairs and, in such case, the City will reimburse any such party for all reasonable repair costs and the costs to enforce the City's obligations with respect to the Drainage Improvements, such reimbursement to be made within 30 days after such party's demand therefor and delivery of supporting invoices. The City's reimburse shall not limit any right of the easement area owner to prove damages resulting from the City's breach of obligations with respect to the Drainage Improvements. The foregoing shall be set forth in a separate recordable document agreed to by the Company and the City before Settlement and recorded with the Deed (the "Drainage Agreement").

d. The City will be solely responsible for, and this Agreement is not contingent on, the annexation of the Real Property into the City of Nevada, Iowa. The Company will reasonably cooperate with the City with respect to such annexation.

e. The Company will cause Clem Acres, LLC to deliver a temporary easement over that portion of Parcel M marked as "35' access easement" on that certain Plat of Survey, filed of record in the Office of the Story County Recorder, as Instrument No. 2024-05745 (the "Temporary Access Easement"). The Temporary Access Easement shall provide the City access to and from W. T Avenue until the earlier of (i) one year after the recording of the Temporary Access Easement; or (ii) the date the City constructs a separate access drive providing direct access between the Real Property and W. T Avenue. Said Temporary Access Easement will be a separate recordable document, to be agreed to by the Company and the City before Settlement, will be recorded with the Deed, and will (i) not require the Company, Clem Acres, LLC, or any subsequent owner to

construct or maintain the dirt path currently located within the easement area, with the City's use being at the City's own risk, (ii) require the City to reimburse the fee owner of the easement area for any repairs to the easement area caused by the City's use thereof; and (iii) contain such other terms customary for access easements. Other than as provided in the Temporary Access Easement, the City shall have no rights to the easement marked on the above-referenced Plat and the Company and/or Clem Acres may cause the amending of such Plat to remove reference to such easement.

5. No Assignment. Neither Party may assign, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any rights or obligations hereunder, without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed. It will not be considered unreasonable for the Company to withhold consent to the assignment of this Agreement by the City to any person or entity that would jeopardize the availability of an income tax deduction in the full amount of the Contribution.
6. No Third Party Beneficiaries. This Agreement inures to the benefit of the City and the Company only, and no third party shall have any rights under it, except as expressly provided herein.
7. Amendment; Entire Agreement; Binding Nature. This Agreement may not be amended other than by a writing signed by authorized representatives of both Parties. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior oral or written agreements, understandings or arrangements. This Agreement shall inure to the benefit of and be binding on the Parties and their respective successors and permitted assigns; provided, that, this provision shall not be construed to supersede any term that requires a Party to obtain the consent of the other prior to the assignment of this Agreement.
8. Governing Law. This Agreement is governed by the internal laws of the State of Iowa.
9. As Is. Except for the representations and warranties expressly set forth in this Agreement or the Deed, (a) neither the Company nor any of its owners, managers, officers, agents, representatives, or employees makes or has made any representation, warranty, or covenant, of any kind or character, express or implied, with respect to the Real Property or any matter related thereto, including, without limitation, any representation or warranty as to merchantability, fitness for a particular purpose, or the condition (physical, environmental, or otherwise) of the Real Property and (b) the City has not relied and will not rely on any warranty, representation, or covenant with respect to the Real Property. The City agrees that is acquiring, and, as of Settlement, acquires, the Real Property "as is", "where is", and "with all faults". TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CITY FOREVER RELEASES THE COMPANY AND ITS OWNERS, MANAGERS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES" AND EACH, A "RELEASED PARTY") FROM, AND, AS AGAINST EACH AND EVERY RELEASED PARTY FOREVER WAIVES, ANY AND ALL CLAIMS OF ANY AND EVERY KIND OR CHARACTER, WHETHER KNOWN OR UNKNOWN, FIXED OR CONTINGENT, AND REGARDLESS OF FAULT OR NEGLIGENCE, THAT THE CITY HAS OR MAY HEREAFTER HAVE AGAINST ANY OR ALL OF THE RELEASED PARTIES WITH RESPECT TO THE CONDITION (PHYSICAL, ENVIRONMENTAL, OR OTHERWISE) OF THE REAL PROPERTY, EXCEPT, AND THEN ONLY TO THE EXTENT, ANY SUCH CLAIM IS RELATED TO, OR VIOLATES OR OTHERWISE BREACHES, A REPRESENTATION, WARRANTY, OR COVENANT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE DEED, OR BOTH, AND THAT EXPRESSLY SURVIVES CLOSING. THE CITY ACKNOWLEDGES THAT THE LIMITATIONS CONTAINED IN THIS SECTION ARE REASONABLE, TAKING INTO CONSIDERATION, AMONG OTHER THINGS, THE

CITY'S PRIOR USE OF A PORTION OF THE REAL PROPERTY, AND ARE IN PARTIAL CONSIDERATION OF THE COMPANY'S AGREEMENT TO ENTER INTO THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE SETTLEMENT AND DELIVERY OF THE DEED.

10. Waiver. Unless otherwise expressly provided in this Agreement, no failure or delay by either Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof. Unless otherwise expressly provided in this Agreement, (a) no waiver is effective unless set forth in a writing and executed by the Party so waiving, such waiver inoperative as a waiver of any subsequent breach; (b) nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
11. Certification. Each Party certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person", or any other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and is not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Each Party shall defend (at the indemnified Party's request and then with counsel reasonably acceptable thereto), indemnify, and hold harmless each other Party and its agents, representatives, successors, and assigns from and against any and all Claims arising from or related to the indemnifying party's breach of the foregoing certification, said indemnification to survive Settlement and delivery of the Deed or the earlier termination of this Agreement.
12. Severability. If any provision of this Agreement is held by any court of competent jurisdiction to be illegal, void, or unenforceable, then such provision shall be of no force or effect, but the illegality, voiding, and unenforceability shall not affect nor impair the enforceability of any other provision of this Agreement.
13. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original for all purposes and all of which, together, shall constitute one and the same instrument. Any Party may sign and deliver this Agreement by facsimile, electronic, or PDF signatures, each such signature to be treated as an original signature.

IN WITNESS WHEREOF, the Parties have signed and thereby caused this Agreement to be duly executed effective as of the Effective Date written above.

Company

West Indian Research Acres, LLC

By: _____
Gary W. Clem, Manager

City of Nevada, Iowa

By: _____

Name: _____

Title: _____

Exhibit A
[Legal Description of the Real Property]

Parcel L, being a part of Lots 13 and 14 in the Southeast Quarter of Section 1, Township 83 North, Range 23 West of the 5th P.M., Story County, Iowa, as further shown and described on a Plat of Survey filed of record in the Office of the Story County Recorder as Instrument No. 2024-05745.

Exhibit B

[Form of Deed]
(see next page)

Prepared By/Return to: Karen L. Karr, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309, 515.242.2400
Taxpayer Information: City of Nevada, **INSERT**

Special Warranty Deed

For the consideration of One Dollar (\$1.00) and other valuable consideration, West Indian Research Acres, LLC, an Iowa limited liability company ("Grantor") does hereby convey to the City of Nevada, Iowa, an Iowa municipal corporation ("Grantee") the following described real estate in Story County, Iowa (the "Real Estate"):

PARCEL L, BEING A PART OF LOTS 13 AND 14 IN THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 83 NORTH, RANGE 23 WEST OF THE 5TH P.M., STORY COUNTY, IOWA, AS FURTHER SHOWN AND DESCRIBED ON A PLAT OF SURVEY FILED OF RECORD IN THE OFFICE OF THE STORY COUNTY RECORDER AS INSTRUMENT NO. 2024-05745.

The conveyance of the Real Estate hereunder is subject to real estate taxes and assessments not yet due as of Closing; zoning laws and building ordinances; easements, covenants, and restrictions of record; any matter that an accurate survey of the Real Estate could or would show; and any matter arising from the City's actions, including any matter arising or permitted by the City during its prior use of the Real Estate.

The conveyance of the Real Estate hereunder is further subject to a covenant not to use, lease, or otherwise occupy the Real Estate for any purpose other than a public park with the name of Clem Acres or such other name (and related signage) approved by Gary W. Clem, for so long as he is living, and, thereafter (i.e., after Gary W. Clem is no longer living), for so long as a child of Gary W. Clem is living, by a majority of such then living children, and, thereafter (i.e., when no children of Gary W. Clem are living), for so long as a grandchild of Gary W. Clem is living, by a majority of such then living grandchildren (the "Deed Restriction"), and a covenant to include said Deed Restriction in all instruments affecting the ownership, occupancy, or use of the Real Estate (collectively, the "Covenant"). The Covenant is for a term of twenty-one (21) years, subject to the right of any person with naming rights hereunder to extend the term of the Covenant in accordance with applicable law, including, without limitation, pursuant to Iowa Code Section 614.24 (as may be amended or recodified from time to time). For such term, as may be extended, the Covenant shall run with, and bind, the Real Estate, and shall bind Grantee and its successors and assigns, including, without limitation, all persons that hereafter own, use, or otherwise occupy the Real Estate, and shall inure to the benefit of, and be enforceable by, Grantor and, for so long as they have naming rights hereunder, Gary W. Clem, his children, and his grandchildren, by any appropriate proceedings at law or in equity, including, without limitation, the right of such persons to seek injunctive relief, to prevent violations of the Covenant and/or to recover damages for any such violation, Grantee acknowledging that monetary damages may be inadequate in the case of a breach

hereof.

This deed is exempt from transfer tax according to Iowa Code 428A.2(6).

Grantor hereby covenants with Grantee, and successors in interest, to warrant and defend the Real Estate against the lawful claims of all persons claiming by, through, or under Grantor with respect to Grantor's interest in the Real Estate, except as may be above stated. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated Effective as of _____, 2025

[Signature Page Follows]

GRANTOR:

WEST INDIAN RESEARCH ACRES, LLC

By: _____
Gary W. Clem, Manager

STATE OF IOWA)
) SS:
COUNTY OF _____)

This record was acknowledged before me on _____, 2025 by Gary W. Clem,
as Manager of West Indian Research Acres, LLC, an Iowa limited liability company.

NOTARY PUBLIC IN AND FOR SAID STATE
MY COMMISSION EXPIRES: _____