

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement") is made on or as of the 10<sup>th</sup> day of September 2020, by and between the City of Johnston, Iowa ("City") and Donovan Development, L.L.C., an Iowa limited liability company ("Developer").

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and is engaged in carrying out urban renewal project activities in an area known as the East Central TIF Urban Renewal Area (the "Urban Renewal Area"), which is described in the Urban Renewal Plan approved for such area by Resolution No. 93-121 on September 20, 1993, and subsequently amended several times, lastly by Amendment No. 9, approved by Resolution No. 18-308 on November 5, 2018 (the "Urban Renewal Plan"); and

WHEREAS, the City Council has heretofore adopted Ordinance No. 952, and related prior ordinances (the "Ordinance"), under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided, and a special fund created under the authority of Section 403.19(2) of the Code of Iowa; and

WHEREAS, the City has been presented with a proposal ("Proposal") to be undertaken by Developer on property located in the Urban Renewal Area and legally described on the attached Exhibit A ("Development Property"); and

WHEREAS, under the terms of the Proposal, Developer will undertake certain activities within the City as described under Article II (the "Project"), generally described as economic development activities, in return for reimbursement of certain incremental property taxes from the increased valuation due to the construction of certain Minimum Improvements on the Development Property ("Economic Development Grants"); and

WHEREAS, the City has found that the use of City funds to finance the Economic Development Grants will promote the creation or retention of jobs and is in accord with the provisions of the applicable laws under which the Project will be undertaken, including but not limited to, Iowa Code Chapter 15A; and

WHEREAS, the City finds that Developer's Project is uniquely beneficial to the City when considered in conjunction with Developer's other investment in the community.

THEREFORE, the City Council authorizes the City's payment of Economic Development Grants to Developer according to the prerequisites, terms and conditions of this Agreement and the Developer agrees to such terms and conditions as follows:

### **ARTICLE I. REPRESENTATIONS AND WARRANTIES**

1. Developer makes the following representations and warranties:

a. Donovan Development, L.L.C. is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa, and it 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.

b. This Agreement has been duly and validly 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 enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

c. 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 governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. 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 (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

f. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

g. Developer would not undertake its obligations under this Agreement without the payment by the City of the Economic Development Grants being made to Developer pursuant to this Agreement.

## ARTICLE II – CONDITIONS

1. Each Economic Development Grant described in Article III is contingent upon the following conditions:

- a. Developer shall cause the construction of an approximately 11,500 square foot, one-story, metal building to be used as warehouse and office space on the Development Property, along with parking facilities serving the same (the "Minimum Improvements"). Developer shall facilitate the build out of the interior spaces of the Minimum Improvements suitable to the tenants that lease portions of the Minimum Improvements from the Developer. The Minimum Improvements must comply with the terms of this Agreement and all local, State, and federal laws and regulations. Further, the Minimum Improvements shall be substantially in conformity with the Preliminary Plan and Landscape Plan approved by Johnston City Council on May 7, 2018. Construction costs are expected to be approximately \$1,200,000.
- b. All ad valorem real estate taxes for the prior fiscal year and any taxes due and payable for the current fiscal year must be paid as of the date of each Annual Certification (as described in Article III, Section 4), and Developer or its successors or assigns shall not have:
  - i. sought any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal or local law with respect to taxation of real property contained on the Development Property between the date of execution of this Agreement and the Termination Date; or
  - ii. sought administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings.

Nothing in this provision shall prevent Developer from contesting the taxable value assessed by the County Assessor for the Minimum Improvements.

- c. Developer is constructing the Minimum Improvements with the intention that the Minimum Improvements shall be occupied by business tenants that create and retain employment in the Minimum Improvements. Of the built out interior space included in the Minimum Improvements, no less than 25% of such interior space must be constructed to be used as office space.
- d. Developer must have submitted an Annual Certification in the form of Exhibit C as

described below in Article III, Section 4, commencing October 15, 2021 and ending on October 15, 2026, both dates inclusive, and such Annual Certifications must show compliance with the terms of this Article II.

- e. Developer and Developer's tenant(s) and successor(s) in ownership to the Minimum Improvements, if any, must not be in material violation of any local, state or federal environmental law or regulation and Developer must not be aware of any pending or threatened claim against Developer, Developer's tenant(s), and successor(s) in ownership to the Minimum Improvements, if any, with respect to such laws, in relation to the Development Property, Minimum Improvements, and this Project.
- f. The Minimum Improvements must be completed prior to January 1, 2022.
- g. Developer shall not transfer, convey, or assign its interest in the Development Property or Minimum Improvements, or its interest in this Agreement, unless the transferee assumes all of Developer's obligation under this Agreement in writing, and the City consents to such transfer in writing. Notwithstanding the forgoing sentence, the Developer may lease portions of the Minimum Improvements to tenants and transfer, convey, or assign its interests in the Development Property and/or Minimum Improvements to a business that will operate the Minimum Improvements. During the term of this Agreement, Developer, or its successors or assigns, agree that the Development Property cannot be used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

### ARTICLE III – ECONOMIC DEVELOPMENT GRANTS

#### 1. Source of Grants:

- a. Each Economic Development Grant payment outlined in this Article III is wholly contingent upon and shall be payable solely and only from incremental property taxes received on the Minimum Improvements (building value only) from the County Auditor consistent with Iowa Code section 403.19 and the Ordinance. Each Economic Development Grant to the Developer shall consist of a rebate of allowable incremental property taxes. The local debt services and physical plant and equipment levies (PPEL) and any other levies excluded from collection under section 403.19 are not included in the allowable incremental property taxes and are not part of the Economic Development Grants. The City will rebate to Developer the allowable incremental taxes received resulting from the construction of the Minimum Improvements (building value increase), measured from the January 1, 2020 assessment for the Development Property (the "Existing Value").

Developer and City agree that the Existing Value of the Development Property (and any existing improvements thereon) as of January 1, 2020, is \$1,300 and will not be considered part of the incremental value when determining the amount of Economic Development Grants to which Developer is entitled. Developer will not receive any rebate for this Existing Value.

- b. The Economic Development Grants are only for the construction of the Minimum Improvements described in this Agreement and not any future or other buildings or expansions.

## 2. Calculation of Grants:

- a. If Developer meets the conditions set forth in Article II and otherwise complies with this Agreement, the City shall reimburse 50% of the allowable incremental taxes it receives on the increase in value for the Development Property identified in Exhibit A, under the formula described above, for five (5) fiscal years beginning with fiscal year 2023-2024 (assuming the first full valuation of the Minimum Improvements is as of January 1, 2022). All such Economic Development Grants shall be funded solely and only from the incremental property taxes actually received under Iowa Code 403.19 and the Ordinance for the Minimum Improvements (building value only) on the Development Property, and shall not be paid from any other source.
- b. If, due to the change in commercial property tax law in 2013 or any subsequent amendment, the City receives state tax replacement monies or Business Property Tax Credit replacement monies, the City will retain such monies and have no obligation to the Developer for such amounts.
- c. The allowable incremental taxes that are the basis of Economic Development Grants for each fiscal year will be calculated by the City Administrator with assistance from the County Assessor with the Economic Development Grants expected to be made on or about June 1<sup>st</sup> of the year property taxes are paid, contingent on the Developer's compliance with this Agreement. See Exhibit B for projected schedule of payments.
- d. Should Developer successfully protest the assessed value of the Minimum Improvements and be reimbursed by the County for overpaid taxes for any fiscal year in which Developer has already received Economic Development Grants, the City may: (i) reduce any subsequent Grants by an amount equivalent to the portion of the prior Grants that would not have been paid if the Minimum Improvements had originally been assessed at the adjusted value; or (ii) recoup from Developer an amount equivalent to the portion of the prior Grants that would not have been paid if the Minimum Improvements had originally been assessed at the adjusted value if the set off in (i) is not available or feasible. If there is an open PAAB appeal or related proceeding or protest that is unresolved as of the Termination Date with

respect to any fiscal year for which an Economic Development Grant was paid to Developer, this Section III.2.d. shall survive the termination of the Agreement.

3. Maximum Amount of Grants. The total of all Economic Development Grants paid by the City over five years under this Agreement shall not exceed the allowable incremental property taxes actually received by the City that are generated by the construction of the Minimum Improvements (improvement value), but in no event shall the aggregate amount of Economic Development Grants exceed \$85,000. The Economic Development Grants shall be the only monetary consideration given by the City to Developer in connection with this Agreement.
4. Annual Certification:
  - a. To assist the City in monitoring the performance of Developer hereunder, a duly authorized officer of Developer shall annually certify to the City (a) that all taxes owed on the Development Property have been timely paid, (b) 25% of the built out interior space in the Minimum Improvements consists of office space; and (c) Developer is not in material violation of this Agreement or any local, state or federal environmental law or regulation and is not aware of any pending or threatened claim against Developer with respect to such laws. Developer's annual certification pursuant to this provision shall be in substantially the form set forth on Exhibit C, attached hereto, and due each year on October 15<sup>th</sup> beginning on October 15, 2021 and continuing through the duration of this Agreement.
  - b. Developer shall provide supporting information for its Annual Certifications upon request of the City.
5. Preconditions and Annual Appropriation:
  - a. Each Grant set out in Article III is wholly contingent upon a finding that Developer and its successors are in compliance with the conditions set forth in Article II of this Agreement.
  - b. Each Economic Development Grant is subject to annual appropriation by the City Council each fiscal year. The City has no obligation to make any payments to Developer as contemplated under this Agreement until the City annually appropriates the funds necessary to make such payments. The right of non-appropriation reserved to the City in this paragraph is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants 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 by the City 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. To this end the provisions of this Agreement are severable.

- c. The City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment, incremental property taxes are not made available to the City, or the City receives an opinion from its legal counsel to the effect that the use of incremental property taxes resulting from the Minimum Improvements to fund an Economic Development Grant to Developer is not authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof. In such event, the City shall promptly forward notice of the same to Developer. If the non-appropriation or circumstances or legal constraints continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

#### ARTICLE IV – DEFAULT AND MISCELLANEOUS

1. Developer Default:

- a. Whenever Developer defaults under this Agreement, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by the City to Developer, but only if the default has not been cured within said thirty (30) days, or if the default cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the default will be cured as soon as reasonably possible:
  - i. The City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure the default and continue its performance under this Agreement;
  - ii. The City may terminate this Agreement;
  - iii. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement; and
  - iv. The City will have no obligation to make payment of Economic Development

Grants to Developer subsequent to the default.

- b. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every 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.
- c. 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.

2. Miscellaneous:

- a. Developer shall indemnify, defend and hold harmless the City and its governing body members, officers, agents, servants and employees thereof (the "indemnified parties"), and releases and agrees that the indemnified parties shall not be liable for, any loss, damage, liabilities, injuries, claims, demands, costs and expenses of every kind and nature, including legal fees, arising out of or in connection with the Project or this Agreement. This provision shall survive the termination of this Agreement
- b. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the 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, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.
- c. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and
  - i. In the case of Developer, is addressed or delivered personally to Donovan Development, L.L.C., 5530 NW Beaver Dr STE 100, Johnston, IA 50125, Attn: Pat Munro;
  - ii. In the case of the City, is addressed to or delivered personally to the City at



6221 Merle Hay Road, PO Box 410, Johnston, IA 50131, Attn: Adam Plagge;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

- d. 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.
- e. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.
- f. This Agreement shall terminate and be of no further force or effect after December 31, 2027 ("Termination Date"), unless terminated earlier under the provisions of this Agreement.
- g. No assignment by a party of this Agreement or its rights and responsibilities hereunder shall be valid without the prior written consent of the other party.
- h. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.
- i. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

*[signature pages follow on the next page]*

(SEAL)

CITY OF JOHNSTON, IOWA

By: \_\_\_\_\_  
Paula Dierenfeld, Mayor

ATTEST:

By: \_\_\_\_\_  
Cyndee Rhames, City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me a Notary Public in and for said State, personally appeared Paula Dierenfeld and Cyndee Rhames, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Johnston, Iowa, a political subdivision created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said State



**EXHIBIT A**  
**LEGAL DESCRIPTION**

The properties ("Development Property") on which Developer will construct Minimum Improvements is as follows:

**Local Addresses:** 5840 NW Beaver Dr

**Parcel Numbers in Polk County, Iowa:** 241.00847.400.018

**Legal Description:**

-EX BEG NE COR LT 105 THN SW 250.48F TO SE COR LOT 105 THN NW 6.18F THN NE 251.29F THN SE 4.85F TO POB- LOT 105 NW BEAVER BUSINESS PARK

**EXHIBIT B**  
**PROJECTED SCHEDULE FOR GRANT PAYMENTS**

<b>Completion Date*</b>	<b>1<sup>st</sup> Full Assessment Date</b>	<b>Payment Nos.</b>	<b>Certification Date</b>	<b>FY of Tax Rebate for Property Taxes</b>	<b>Estimated Payment Dates</b>
12/31/21	1/1/22	1	10/15/21	22/23	6/1/23
		2	10/15/22	23/24	6/1/24
		3	10/15/23	24/25	6/1/25
		4	10/15/24	25/26	6/1/26
		5	10/15/25	26/27	6/1/27

**\*All dates will change if completion dates change. No Economic Development Grants will be made for partial assessments. All payments subject to Developer's compliance with the terms of the Agreement at the time of payment.**

**EXHIBIT C**  
**DEVELOPER'S ANNUAL CERTIFICATION**  
**(DUE ON OR BEFORE OCTOBER 15 EACH YEAR)**

WHEREAS, the City of Johnston, Iowa (the "City") authorized the payment of Economic Development Grants to Donovan Development, L.L.C. (the "Developer") pursuant to a Development Agreement entered into between the parties; and

WHEREAS, the Agreement contained certain conditions required to be completed by Developer in order for Developer to be eligible to receive such Economic Development Grants, and as such Developer hereby certifies the following as satisfaction of such conditions:

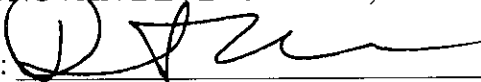
NOW, THEREFORE, pursuant to the Agreement, this is to certify the following:

- (A) All property taxes on the Development Property for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of this Certification have been paid.
- (B) 25% of the interior finished space in the Minimum Improvements has been constructed as and is used as office space.
- (C) Developer is not in material violation of the Agreement or any local, state or federal environmental law or regulation and is not aware of any pending or threatened claim against Developer with respect to such laws.
- (D) The base value or Existing Value of the Development Property from which increment will be calculated equals \$1,300 (combined building/improvement and land value), which was the assessed value of the Development Property on January 1, 2020.

Signed this 10 day of SEPTEMBER, 2020

I certify under PENALTY OF PERJURY under the laws of the State of Iowa that the foregoing paragraph is true and correct.

DONOVAN DEVELOPMENT, L.L.C.

By: 

Print Name: PAT MUNKO

Title: MGR