AGREEMENT FOR PRIVATE DEVELOPMENT

by and between

CITY OF JOHNSTON, IOWA

AND

LSJT OF IOWA, LLC

_____, 2019

Execution Version

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2019 ("Commencement Date"), by and between the CITY OF JOHNSTON, IOWA, a municipality established pursuant to the Code of Iowa of the State of Iowa ("City") and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2019, as amended ("Urban Renewal Act") and LSJT OF IOWA, LLC, an Iowa limited liability company, having offices for the transaction of business at 3737 Woodland Ave., Suite 100, West Des Moines, Iowa ("Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an urban renewal area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as Beaver Creek West Urban Renewal Area (the "Urban Renewal Area"), which is described in the Beaver Creek West Urban Renewal Plan approved for such area by Resolution No. 96-147 on July 15, 1996, and subsequently amended several times, lastly by Amendment No. 4, approved by Resolution No. 18-156 on June 18, 2018 (the "Urban Renewal Plan"); and

WHEREAS, Developer is the owner of or will acquire certain real property located in the foregoing Urban Renewal Area and as more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, Developer is willing to undertake certain activities on the Development Property including constructing certain improvements thereon ("Minimum Improvements") as more particularly described in Exhibit B attached hereto and made a part hereof; and

WHEREAS, the City is willing to provide certain incentives in consideration for Developer's obligations pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement for Private Development and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

Assessor means the assessor for Polk County, Iowa.

Beaver Creek West Urban Renewal Area Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund was created in order to pay the principal of and interest on loans, monies advanced to, or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Chapters 15A, 403, or 384 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

Buffer means the fifty-six feet landscaped separation, four feet berm, and eight feet fencing constructed between the Minimum Improvements and the surrounding residential development.

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit C and hereby made a part of this Agreement.

City means the City of Johnston, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2019, as amended.

Commencement Date means the date of this Agreement.

Construction Plans means the plans, specifications, drawings, and related documents reflecting the construction work to be performed by the Developer on the Development Property; the Construction Plans shall be as detailed as the plans, specifications, drawings, and related documents which are submitted to the building inspector of the City as required by applicable City codes.

County means the County of Polk, Iowa

Developer means LSJT of Iowa, LLC, an Iowa limited liability company, and its permitted successors and assigns.

Development Property means that portion of the Urban Renewal Area described in Exhibit A, which includes Parcel A, Parcel B, and Parcel C (which parcels are depicted on Exhibit B-1).

Economic Development Grants means the payments to be made by the City to Developer under Article VIII of this Agreement.

Employee means an individual employed by Developer or by a tenant of Developer in the Minimum Improvements on the Development Property on a part-time or full-time basis.

Event of Default means any of the events described in Section 10.1 of this Agreement.

First Mortgage means any Mortgage granted to secure any loan made pursuant to either a mortgage commitment obtained by Developer from a commercial lender or other financial institution to fund any

portion of the construction costs and initial operating capital requirements of the Minimum Improvements or all such Mortgages as appropriate.

Green Roof means a roof supporting living vegetation that also addresses the water impact of the building which it tops, constructed as part of the Minimum Improvements. The final determination of what qualifies as a Green Roof under this Agreement shall be made by the City Council in its sole discretion. The general qualifications in making a determine shall include the roof's ability to address a measurable degree of water quality and quantity requirements for the building, inclusion of living trees and/or plants, visibility to surrounding area, and utilization of materials sufficiently durable to provide for the roof's continued qualification as a "Green Roof" for the foreseeable future, but at least until the Termination Date of this Agreement.

Infrastructure Improvements means the infrastructure constructed by Developer as part of the Project and dedicated to, and accepted by, the City as public infrastructure, as more particularly described in Exhibit B attached hereto and made a part hereof.

LSJT of Iowa, LLC TIF Account means a separate account within the Beaver Creek West Urban Renewal Area Tax Increment Revenue Fund of the City in which there shall be deposited Tax Increments received by the City with respect to the portion of the Minimum Improvements that are assessed as commercial property (building/improvement value only).

Minimum Improvements means the private structures and site improvements constructed by Developer on the Development Property, as more particularly described in Exhibit B attached hereto and made a part hereof, including Parcel A Building, Parcel B Building, and Parcel C Building, as well as other improvements described in this Agreement.

Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Net Proceeds means any proceeds paid by an insurer to Developer under a policy or policies of insurance required to be provided and maintained by Developer, as the case may be, pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means the Ordinance of the City, under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the Beaver Creek West Urban Renewal Tax Increment Revenue Fund.

Parcel A Building means an approximately 15,750 square foot commercial/retail building to be constructed by Developer as part of the Minimum Improvements on Parcel A (as depicted on Exhibit B-1) of the Development Property.

Parcel B Building means a mixed-use building made up of approximately 70 residential housing units, 12,500 square feet of commercial/office space, and potentially a Green Roof, to be constructed by Developer as part of the Minimum Improvements on Parcel B (as depicted on Exhibit B-1) of the Development Property.

Parcel C Building means an approximately 6,000 square foot commercial/office building to be constructed by Developer as part of the Minimum Improvements on Parcel C (as depicted on Exhibit B-1) of the Development Property.

Project means the demolition of existing structures on Parcels A, B, and C; construction of the Minimum Improvements and Infrastructure Improvements on the Development Property; and the operation of the Minimum Improvements as commercial, retail, and/or mixed-use spaces, as further described in this Agreement.

Qualified Office Space means commercial space within the Minimum Improvements that is occupied by tenants creating quality employment opportunities where employees earn above the county median wage. "Chain" type stores, retail stores, service stations, and restaurants are ***not*** Qualified Office Space. For purposes of the Economic Development Grants (Article VIII), the initial occupant and their duration as a tenant will be utilized to help determine if a commercial space is "Qualified Office Space." The final determination of what is "Qualified Office Space" eligible for Economic Development Grants shall be solely at the discretion of the City Council, or its designee.

State means the State of Iowa.

Structured Parking means a tiered parking structure containing a minimum of 80 second floor stalls constructed as part of the Minimum Improvements.

Tax Increment means the property tax revenues on the portion of the Minimum Improvements that are assessed as commercial property (building/improvement value only) divided and made available to the City for deposit in the LSJT of Iowa, LLC TIF Account of the Beaver Creek West Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Termination Date means the date of termination of this Agreement, as established in Section 11.8 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions, or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts, or other labor disputes, delays in transportation or delivery of material or equipment, delivery of defective material or equipment, breach of contract or other delays by general contractor or subcontractors that affects the construction schedule, litigation commenced by third parties, or the acts of any federal, State, or local governmental unit (other than the City with respect to the City's obligations).

Underground Stormwater Detention System ("USDS") means any underground stormwater storage detention constructed as part of the Minimum Improvements.

Urban Renewal Area means the Beaver Creek West Urban Renewal Area, described in the preambles hereof.

Urban Renewal Plan means the Beaver Creek West Urban Renewal Plan, as amended, approved with respect to the Urban Renewal Area, described in the preambles hereof.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. 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 breach of, the terms, conditions, or provisions of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City only, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. LSJT of Iowa, LLC, is an Iowa limited liability company duly organized and validly existing under the laws of the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this 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. The Developer's attorney shall provide an enforceability opinion in the form of Exhibit F to be signed concurrently with this Agreement.

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, 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 will cause the Minimum Improvements and Infrastructure Improvements to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

f. Developer will use its best efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements and/or Infrastructure Improvements may be lawfully constructed.

g. The construction budget of the Minimum Improvements will require a total investment of approximately Fifteen Million Dollars ($15,000,000) in costs for construction, equipment/furnishings, and related expenses.

h. 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.

i. Developer has firm commitments, conditioned on the execution of this Agreement, for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements and Infrastructure Improvements in accordance with the Construction Plans contemplated in this Agreement.

j. Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements and/or Infrastructure Improvements.

k. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed according to the deadlines in Section 3.3(b) and the Infrastructure Improvements will be completed by the deadlines in Section 3.2(a).

l. 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 and the expectation that, subject to the terms of this Agreement, the Developer will receive said Grants.

ARTICLE III. DEMOLITION AND CONSTRUCTION

Section 3.1. Demolition of Existing Structures. As of the Commencement Date, Developer has completed the demolition of all structures on Parcel A. Developer agrees that it shall cause the demolition of the existing structures on Parcels B and C and shall properly dispose of all resulting debris by no later than the respective following dates; or such later date(s) as the parties shall mutually agree upon in writing:

Structures on Parcel B: January 1, 2023

Structures on Parcel C: January 1, 2028

Developer shall complete the demolition and disposal in accordance with all local, State, and federal laws and requirements. Provided however, that if Developer does not demolish an existing structure before redevelopment of the Development Property, then the Developer shall be required to maintain those structures and the lots on which the structures are maintained in a condition consistent with all City ordinances and shall immediately take any corrective action upon the request of City Staff. Upon the completion of the demolition of all structures on a particular Parcel, Developer shall provide invoices, receipts, and other documentation related to the demolition that in the City's sole discretion satisfactorily evidences the costs incurred by Developer in such demolition. Such documentation shall be used in computing the Aggregate Amount of the Economic Development Grants pursuant to Section 8.3. The Developer shall submit this documentation by no later than the October 15th immediately following the completion of the demolition of all buildings on a particular Parcel as part of the Developer's Annual Certification (submitted pursuant to Section 6.7) in that year.

Section 3.2. Construction and Dedication of Infrastructure Improvements.

a. Subject to Unavoidable Delays, Developer shall cause construction of the Infrastructure Improvements to be undertaken and completed on each Parcel by the respective following dates; or such later date as the parties shall mutually agree upon in writing:

Infrastructure Improvements on Parcel A:	August 20, 2020
Infrastructure Improvements on Parcel B:	December 31, 2023
Infrastructure Improvements on Parcel C:	December 31, 2029

b. Developer agrees that it will cause the Infrastructure Improvements to be constructed on the Development Property in conformance with this Agreement and all applicable local, State, and federal law and requirements.

c. If, during the construction of the Infrastructure Improvements, Thorpe Water is unable or economically incapable of providing domestic water service (including sufficient flow to provide fire protection) to the Development Property and the anticipated development thereon, then Developer shall submit to the City for review a negotiated buyout of Thorpe Water's rights to service the Development Property.

d. Upon completion of the Infrastructure Improvements on a particular Parcel, Developer shall dedicate such Infrastructure Improvements and any corresponding right of way to the City, at no cost

to the City, and the City shall accept dedication of the Infrastructure Improvements if (i) upon City inspection, the Infrastructure Improvements have been completed in accordance with this Agreement's terms and all standard City requirements; (ii) Developer has provided maintenance bonds for the Infrastructure Improvements meeting the requirements of Section 3.2(e); and (iii) the Infrastructure Improvements comply with any other requirement in the City's subdivision ordinances, other ordinances, and regulations related to public improvements.

e. Developer shall obtain, or require each of its general contractors to obtain, one or more bonds that guarantee the faithful performance of this Agreement for, in the aggregate, the anticipated full value of the completed Infrastructure Improvements and that further guarantee the prompt payment of all materials and labor. The performance bond(s) for a given portion of the Infrastructure Improvements shall remain in effect until construction of such Infrastructure Improvements are completed, at which time a four-year maintenance bond shall be substituted for each performance bond. The bonds shall clearly specify the Developer and City as joint obligees.

f. Developer recognizes and agrees, with respect to any portion of the Infrastructure Improvements which Developer dedicates to the City and the City accepts, that upon such dedication and acceptance the Infrastructure Improvements thereafter shall be owned and maintained by the City and that Developer shall not retain any special legal entitlements or other rights not held by members of the general public with respect to ownership, sufficiency for any particular purpose, or use of the Infrastructure Improvements.

g. Upon the completion of the construction of the Infrastructure Improvements on a particular Parcel, Developer shall provide invoices, receipts, and other documentation related to the construction that in the City's sole discretion satisfactorily evidences the costs incurred by Developer in such construction. Such documentation shall be used in computing the Aggregate Amount of the Economic Development Grants pursuant to Section 8.3. The Developer shall submit this documentation by no later than the October 15th immediately following the completion of the Infrastructure Improvements on a particular Parcel as part of the Developer's Annual Certification (submitted pursuant to Section 6.7) in that year.

Section 3.3. Construction of Minimum Improvements.

a. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with this Agreement and the Construction Plans submitted to the City in accordance with Section 3.4. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in this Agreement and the Construction Plans. All work with respect to the Minimum Improvements shall be in conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official. Developer agrees that it shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

b. Subject to Unavoidable Delays, Developer shall cause construction of the following components of the Minimum Improvements to be undertaken and completed by the respective following dates; or such later date as the parties shall mutually agree upon in writing:

Improvement Component	Construction Deadline
Parcel A Building (including Buffer and USDS for Parcel A)	January 1, 2021
Parcel B Building* (*including any Green Roof, Structured Parking, and Buffer and USDS for Parcel B)	January 1, 2025
Parcel C Building (including Buffer and USDS for Parcel C)	January 1, 2030

If Developer fails to meet the above construction deadlines, the applicable improvement component(s) shall not qualify for computing the "Aggregate Amount of the Economic Development Grants" pursuant to Section 8.3.

c. Upon the respective completion of the Buffer (or a particular Parcel's portion thereof), Green Roof, Structured Parking, and Underground Stormwater Detention System (or a particular Parcel's portion thereof), Developer shall provide invoices, receipts, and other documentation related to the construction of the Buffer, Green Roof, Structured Parking, and Underground Stormwater Detention System, as applicable, that in the City's sole discretion satisfactorily evidences the costs incurred by Developer in such construction. Such documentation shall be used in computing the Aggregate Amount of the Economic Development Grants pursuant to Section 8.3. The Developer shall submit this documentation for the respective Minimum Improvement component by no later than the October 15th immediately following the completion of the respective component as part of the Developer's Annual Certification (submitted pursuant to Section 6.7) in that year.

Section 3.4. Construction Plans. Developer shall cause Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by the City as follows:

The City shall approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the terms and conditions of the Urban Renewal Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements; (iv) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (v) no Event of Default under the terms of this Agreement has occurred; provided, however, that any such City approval of the Construction Plans pursuant to this Section 3.4 shall constitute approval for the purposes of this Agreement only.

Approval of the Construction Plans hereunder shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning, or other ordinances or regulations of the City; shall not relieve Developer of any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State, and local laws, ordinances, and regulations; shall not subject the City to any liability for the Minimum Improvements as constructed; and shall not deem the Construction Plan as sufficient to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the City for the Development Property shall be adequate to serve

as the Construction Plans for the Minimum Improvements if such site plans are approved by the building official.

Section 3.5. Certificate of Completion. After issuance of occupancy permits for the entirety of the Minimum Improvements to be completed on a particular parcel of the Development Property, the Developer may make a written request to the City for Certificate of Completion in recordable form, in substantially the form set forth in Exhibit C attached hereto. Within fifteen (15) business days of the City's receipt of such written request, the City will furnish Developer with such Certificate of Completion for the relevant Minimum Improvements, or if the City shall refuse to provide a Certificate of Completion, then the City shall instead provide a written statement indicating in what respects Developer has failed to cause the completion of the relevant Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain such Certificate of Completion.

A Certificate of Completion issued by the City pursuant to this Section 3.5 shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the Developer's obligations to cause construction of the relevant Minimum Improvements described in the certificate. A Certificate of Completion issued by the City pursuant to this Section 3.5 may be recorded in the County Recorder's Office at Developer's sole expense.

Section 3.6. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements and Infrastructure Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements and Infrastructure Improvements shall be completed within the time limits set forth herein; (b) the Minimum Improvements and Infrastructure Improvements shall be constructed and completed in substantial accordance with the Construction Plans; (c) the Minimum Improvements and Infrastructure Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens, and equitable liens, except for liens from Developer's construction or permanent financing lenders or liens which are being diligently and reasonably contested by Developer; and (d) all costs of constructing the Minimum Improvements and Infrastructure Improvements shall be paid when due.

Section 3.7 Real Property Taxes. Developer or its successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property owned by them. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer shall be solely responsible for all assessments and taxes.

Developer and its successors agree that prior to the Termination Date:

a. They will not seek 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; and

b. They will not seek 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 Commencement Date and the Termination Date.

ARTICLE IV. RIGHT-OF-WAY AND ACCESS POINT

Section 4.1. City Vacation of Right-of-way and Transfer to Developer. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to vacate and transfer certain public right-of-way located on the Development Property and legally described as follows:

> All of NW 53rd Pl ROW east of the western boundary of Lot 11 Roughwood IV to the beginning of the NW 86th St. ROW.

(the "Right-of-way Tract").

The vacation and transfer of the Right-of-way Tract is subject to the City's completion of the procedural requirements of Iowa Code Sections 306.11, 306.12, 364.12(2)(a) and City Code Chapter 137 for the vacation of city streets. Transfer of the property shall not occur unless and until these procedural requirements have been followed.

The City's actions necessary to complete the vacation and transfer of the Right-of-way Tract may collectively be referred to as the "Right-of-way Vacation." The Right-of-way Vacation shall be subject to the completion of all required City legislative processes, including but not limited to a public hearing on the vacation. The City and the Developer agree that the Right-of-way Vacation will represent a value of $163,065.00 to the Developer.

The Right-of-way Vacation will be conditioned on Developer's completion of substantially all demolition on the Development Property, as described in Section 3.1, and shall be scheduled by the City to precede the Developer's completion of the hammerhead turn around at the end of NW 53rd Place, as described in Exhibit B.

Following completion of the Right-of-way Vacation, the City agrees to convey the Right-of-way Tract to Developer, and Developer agrees to accept the same, subject to easements and appurtenant servient estates and any zoning and other ordinances. The transfer shall be considered closed upon the delivery to Developer of a duly executed special warranty deed for the Right-of-way Tract and the filing of all title transfer documents ("Closing"). Such transfer shall occur under the terms and conditions of this Agreement and following all process required by the City pursuant to the Iowa Code. The transfer of the Right-of-Way Tract shall be subject to the following terms:

a. The Right-of-way Tract is currently tax-exempt while owned by the City. Developer shall pay all real estate taxes and any special assessments, if any, on the Right-of-way Tract assessed from and after the time that Developer acquires possession of the Right-of-way Tract.

b. Developer agrees to take the Right-of-way Tract "As Is," including with respect to environmental matters. The City makes no warranties or representations as to the condition of the Right-of-way Tract. The City and Developer acknowledge and agree that City has undertaken no investigations with respect to the suitability of the Right-of-way Tract for Developer's proposed uses, including but not limited to subsurface investigations regarding the soil conditions of the Right-of-way Tract. Notwithstanding anything herein to the contrary, Developer hereby waives all claims against the City as to the condition of the Right-of-way Tract. Developer agrees to indemnify, release, defend, and hold harmless the City for all claims, damages, or costs relating to the Right-of-way Tract that arise after the Developer's possession of the Right-of-way Tract. This Section shall survive the Closing.

c. Developer may, at Developer's expense prior to Closing, have the Right-of-way Tract surveyed and certified by a Registered Land Surveyor. Developer shall be responsible for all surveys and platting of the Right-of-way Tract, if any.

d. The City, Developer, and the individual signatories hereto further agree to make, execute, and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 4.2. NW 54th Avenue Access Point. The City and the Developer agree that within 730 days of the issuance of an occupancy permit for all of the Minimum Improvements on Parcel A of the Development Property, the City may terminate the east-most full access point to Parcel A from NW 54th Avenue and may require the Developer to convert said access point to a right-in-right-out access point at Developer's sole cost, and Developer hereby agrees to promptly complete such conversion.

ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and/or Infrastructure Improvements, as applicable, (and, from time to time at the request of the City, furnish the City with proof of coverage or payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk– Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements and/or Infrastructure Improvements, as applicable, at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least $1,000,000 for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the Project and arising out of any act, error, or omission of Developer, their directors, officers, shareholders, members, contractors, and subcontractors or anyone else for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to Developer and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements, and at all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of coverage or the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than $50,000 or self-insurance up to not more than $1,000,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by Developer and approved by the City.

ii. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount for each occurrence and for each year of $1,000,000.

iii. Such other insurance, including workers' compensation insurance respecting all employees of Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article V to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, which are authorized under the laws of the State to assume the risks covered thereby. Developer will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Developer may maintain or cause to be maintained a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

d. Developer agrees to notify the City immediately in the case of damage exceeding $25,000 in amount to, or destruction of, the Minimum Improvements, or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer will apply the Net Proceeds of any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof.

e. Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE VI. FURTHER COVENANTS OF DEVELOPER

Section 6.1. Maintenance of Property. Developer shall maintain, preserve, and keep the Development Property, including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Maintenance of Records. Developer shall keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Developer relating to this Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 6.3. Compliance with Laws. Developer shall comply with all federal, State, and local laws, rules, and regulations relating to the Project.

Section 6.4. Non-Discrimination. In the construction and operation of the Minimum Improvements and Infrastructure 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 shall 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, except as permitted by law.

Section 6.5. Available Information. Upon request, Developer shall promptly provide the City with copies of information requested by City that are related to this Agreement and/or the Project so that City can determine compliance with this Agreement.

Section 6.6. Employment. Developer is constructing the Minimum Improvements with the anticipation that the Minimum Improvements will be occupied by commercial enterprises that will be employing individuals therein at least until the Termination Date of this Agreement. Through the Termination Date, Developer shall use commercially reasonable efforts to obtain and retain tenants for the Minimum Improvements who will employ Employees therein. Specifically, with respect to the Parcel

A Building, the Parcel A Building shall contain at least one full-service, sit-down restaurant as well as high-quality retail business(es).

Section 6.7. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, a duly authorized officer of Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; (ii) the date of the first full assessment of the Parcel B Building; (iii) certification verifying which improvements are occupied by commercial tenants employing Employees therein; (iv) substantiation of costs incurred in the demolition of existing structures on Parcels A, B or C, and construction costs for Infrastructure Improvements on each Parcel; (v) certification of whether the Buffer, Green Roof, Structured Parking, and Underground Stormwater Detention System have been completed and if so provide substantiation of the applicable construction costs or number of stalls (as applicable); and (vi) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such statement, proof, and certificate shall be provided not later than October 15 of each year, commencing October 15, 2019 and continuing through the Termination Date. Developer shall provide additional supporting information for its Annual Certifications upon request of the City. *See* Exhibit E for form required for Developer's Annual Certification.

Section 6.8. Use of Minimum Improvements/Relocation. Developer shall use all commercially reasonable efforts to cause commercial/retail/office operations at the Minimum Improvements on the Development Property to continually occur until at least the Termination Date of this Agreement. Developer agrees and covenants that it will not, absent written consent from the City, whose consent shall be granted to the extent allowed by law, sell or lease the Minimum Improvements or Development Property to any enterprise that is Relocating to the City from another part of Polk County outside of the City's limits or from a contiguous county in Iowa. "Relocating" or "Relocation" means the closure or substantial reduction of an enterprise's existing operations in one area of the State and the initiation of substantially the same operation in the same county or a contiguous county (outside the City's limits) in the State. In general, use of urban renewal incentives cannot be used for projects that involve a Relocating enterprise (whether the relocating enterprise is the developer, land owner, tenant, or otherwise) unless there is a written agreement regarding the use of economic incentives from the city where the business is currently located and the city to which the business is Relocating, either specific to this Project or in general (a fair play or neutrality agreement), or if the City finds the use of tax increment in connection with the Relocation is in the public interest, which means that the business has provided a written affirmation that it is considering moving part or all of its operations out of state and such action would result in either significant employment or wage loss in Iowa. Developer understands and agrees that if it sells or leases to a Relocating enterprise in violation of this provision, as determined by the City in its sole, reasonable discretion, the Developer and City will be prohibited from providing any portion of the Economic Development Grants to the Relocating enterprise under this Agreement or any amendment thereto. In addition, Developer understands and agrees that if it does lease to a Relocating entity, as determined by the City in its sole discretion, the Developer is not eligible for a pro rata portion of the

Economic Development Grants under this Agreement and will be responsible for paying back a pro rata portion of the previously received Economic Development Grants, if applicable. The pro rata amount shall be calculated based upon the square footage occupied by the Relocating enterprise as compared to the total amount of commercial space in the completed Minimum Improvements.

Section 6.9. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Agreement to any other party unless: (i) the transferee partnership, corporation, company, or individual assumes in writing all of the obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof, which consent shall not be unreasonably withheld.

Section 6.10. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, or its successors or assigns, agree that the Development Property (with the exception of any right of way transferred to the City with the Infrastructure Improvements) and Minimum Improvements cannot be leased, transferred or sold to a non-profit entity or 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) and any subsequent successor laws related thereto).

ARTICLE VII. RESERVED

ARTICLE VIII. ECONOMIC DEVELOPMENT GRANTS

Section 8.1. Economic Development Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to make payments of Economic Development Grants to Developer as described in this Article VIII, pursuant to the following terms and conditions.

Section 8.2. Parcel A Economic Development Grants.

a. Schedule. Assuming completion and full assessment of the Parcel A Building on January 1, 2021, debt certification to the Auditor by the City prior to December 1, 2021, the Economic Development Grants for the Parcel A Building shall commence on June 1, 2023, and end on June 1, 2027, pursuant to Section 403.19 of the Urban Renewal Act under the following formula:

June 1, 2023	100% of Tax Increments for Fiscal Year 22-23 from the Parcel A Building
June 1, 2024	100% of Tax Increments for Fiscal Year 23-24 from the Parcel A Building
June 1, 2025	100% of Tax Increments for Fiscal Year 24-25 from the Parcel A Building
June 1, 2026	100% of Tax Increments for Fiscal Year 25-26 from the Parcel A Building

June 1, 2027 100% of Tax Increments for Fiscal Year 26-27 from the Parcel A Building

The above schedule of the payments for Economic Development Grants is based on the first full assessment of the Parcel A Building being January 1, 2021. If the completion of the Parcel A Building is delayed so that the Parcel A Building is not fully assessed as of January 1, 2021, then the first Economic Development Grant will not begin as scheduled, but will be delayed one year. However, in no event shall the schedule of Economic Development Grants for the Parcel A building be delayed more than one year, meaning that the latest potential date for Developer's first Economic Development Grant for the Parcel A Building, if eligible, is June 1, 2024 and the last Grant paid on June 1, 2028.

b. Conditions Precedent. Notwithstanding the provisions of Section 8.2 above, the obligation of the City to make an Economic Development Grant for the Parcel A Building in any year shall be subject to and conditioned upon the following:

(i) Developer's compliance with the terms of this Agreement by Developer with respect to the construction and operation of, and payment of taxes on, the Parcel A Building at the time of payment; and

(ii) City Council determining that the Parcel A Building contains at least one full-service, sit-down restaurant as well as high-quality retail business(es), and if it is economically feasible, Parcel A Building has a roof-top patio.

c. Calculation of Grants. Each annual payment shall be equal in amount to 100% of the available Tax Increments collected by the City with respect to the Parcel A Building (building/improvement value only) under the terms of the Ordinance and deposited into the LSJT of Iowa, LLC TIF Account (without regard to any averaging that may otherwise be utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period in respect of the Parcel A Building, but subject to limitation and adjustment as provided in this Article.

d. Limitation to Minimum Improvements. The Economic Development Grants are only for the Parcel A Building described in this Agreement and not any expansions or improvements not included within the definition of the Parcel A Building which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

e. Maximum Amount of Economic Development Grants. The aggregate amount of the Economic Development Grants that may be paid to Developer under this Section 8.2 shall in no event exceed the lesser of (i) the Aggregate Amount of Economic Development Grants determined in Section 8.2(a); or (ii) $475,000. The Developer acknowledges that each Economic Development Grant payment to be paid to Developer according to this Section 8.2 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 Parcel A Building (building value only). The City makes no assurance that the Developer will receive Economic Development Grants which reach the maximum set out in this Section 8.2(e).

f. Event of Default/Annual Certifications. In the event that an Event of Default occurs and is continuing beyond any applicable notice and cure periods or any certification filed by Developer under Section 6.7 (or other information) discloses the existence or prior occurrence of an Event of Default that

was not cured or cannot reasonably be cured with respect to the construction of, operation of, and payment of taxes on, the Parcel A Building, the City shall have no obligation thereafter to make any payments to Developer in respect of the Economic Development Grants and the provisions of this Section 8.2 shall terminate and be of no further force or effect.

Each Annual Certification filed by Developer under Section 6.7 shall be considered separately in determining whether the City shall make any of the Economic Development Grant payments available to Developer under this Section 8.2. Under no circumstances shall the failure by Developer to qualify for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully complies with the provisions hereof and Developer becomes entitled thereto, up to the maximum aggregate amount set forth in Section 8.2.

Section 8.3. Economic Development Grants Conditioned on Development of Parcel B.

a. Timing of Grants. Assuming each of the conditions precedent described in Section 8.3(c) are met, including the Developer being and remaining in compliance with the terms of this Agreement, and pursuant to the other terms and conditions of this Article VIII, the City shall make annual grants to Developer on or around each June 1, starting in the first fiscal year in which the City receives Tax Increment from those portions of the Parcel B Building assessed as commercial, and ending (i) in the fiscal year in which the Aggregate Amount of Economic Development Grants (as determined by Section 8.3(d)) has been paid; or (ii) at the end of fiscal year 2031-2032, whichever is earlier.

b. Calculation of Grants. Each annual payment shall be equal in amount to 100% of the available Tax Increments collected by the City with respect to the portion(s) of the Parcel B Building and Parcel C Building that are assessed as commercial property (building/improvement value only), as well as any available Tax Increments from the Parcel A Building (building/improvement value only) following the completion of the Parcel A Economic Development Grant schedule set forth in Section 8.2(a), under the terms of the Ordinance and deposited into the LSJT of Iowa, LLC TIF Account (without regard to any averaging that may otherwise be utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period in respect of the portion of the Parcel B Building and Parcel C Building assessed as commercial and the Parcel A Building after the completion of the Parcel A Economic Development Grant schedule, but subject to limitation and adjustment as provided in this Article.

c. Conditions Precedent to Economic Development Grants. The City and Developer agree that the City's obligation to make any and each payment described in this Section 8.3 is subject to each of the following conditions precedent:

1. Developer completing the demolition of existing buildings on Parcel B by the deadline set forth in Section 3.1, and Developer being in compliance with the terms of Section 3.1 regarding the maintenance of any structures on Parcel C that are not demolished;

2. Developer completing the construction of the Infrastructure Improvements on Parcels A and B by the deadlines established in Section 3.2(a), and the Infrastructure Improvements being dedicated to the City and accepted by the City;

3. Developer completing construction of the Parcel B Building in accordance with the deadline established by Section 3.3(b), in substantially the form described in this Agreement;

4. Developer being in compliance with Sections 6.6 through 6.8 related to employment and use obligations related to the Minimum Improvements on Parcels A, B and C;

5. Developer submitting its Annual Certification in compliance with Section 6.7, including invoices, receipts, and other documentation related to the demolition of existing buildings and the construction of the Infrastructure Improvements, Buffer, Green Roof, Structured Parking, and Underground Stormwater Detention System that, in the City's sole discretion, satisfactorily evidences the costs incurred by Developer in such demolition and construction, (provided, however, that if Developer has not completed one or more of these components or has previously submitted such documentation to the satisfaction of the City, then no documentation shall required with respect to those components);

6. Developer being in compliance with all of the terms of this Agreement at the time of payment; and

7. No Event of Default shall have occurred and be continuing.

d. Aggregate Amount of Economic Development Grants. The maximum amount paid by the City to the Developer as Economic Development Grants under this Section 8.3 shall be determined by the Developer's completion of certain aspects of the Project and by the uses to which the Minimum Improvements are put, as further described below. The maximum amount of the Economic Development Grants paid under this Section 8.3 may be referred to as the "Aggregate Amount of Economic Development Grants." The Aggregate Amount of Economic Development Grants shall not exceed the sum of the value awarded according to the following table:

Project Component Completed	**Value Awarded toward Aggregate Amount of Economic Development Grants**
A. Buffer construction completed in accordance with all terms of this Agreement	$57,375
B. Structured Parking construction completed in accordance with all terms of this Agreement	$5,300 per completed second floor parking stall, up to a maximum of $570,000
C. Green Roof construction on Parcel B Building completed in accordance with all terms of this Agreement	The lesser of: (i) 50% of the actual construction costs for the Green Roof, as evidenced by documentation submitted pursuant to Section 3.3(c), or

	(ii) 50% of the $810,600 estimated as construction costs for the Green Roof ($405,300)
D. Underground Stormwater Detention System completed in accordance with all terms of this Agreement	The lesser of: (i) 25% of the actual construction costs for the Underground Stormwater Detention System, as evidenced by documentation submitted pursuant to Section 3.3(c), or (ii) $92,500
E. City Council determines that Qualified Office Space is developed as part of the Parcel B Building	100% of the available Tax Increment generated by the portion of the Parcel B Building that is Qualified Office Space for the lesser of 5 years or until fiscal year 2031-2032, not to exceed $325,000 in the aggregate
F. City Council determines that there are qualifying retail uses in the Parcel C Building, such determination to be made in the sole discretion of the City at the time of construction and/or occupancy of the Parcel C Building	Amount to be determined at the time of City Council determination, not to exceed $165,000 for all qualifying retail uses in Parcel C Building
G. Demolition of all existing buildings on Parcels A, B or C consistent with the deadlines set forth in Section 3.1	Demolition costs for demolition of all structures on Parcel A, B or C as evidenced by documentation submitted pursuant to Section 3.1, up to an aggregate amount not to exceed $249,000 for all Parcels
H. Infrastructure Improvements constructed on a particular Parcel per the completion deadlines in Section 3.2(a).	Cost of Infrastructure Improvements on each Parcel as evidenced by documentation submitted pursuant to Section 3.2(g), up to an aggregate amount not to exceed $85,000 for all Parcels
I. If Developer complies with Section 3.2(c) and the City Council votes, in its sole discretion, to provide an additional incentive to assist Developer with water service buyout and/or the provision of water service to the Development Property	Amount to be determined at the time of City Council determination, not to exceed $100,000

Total Not to Exceed:	$2,049,175

e. Limitation to Minimum Improvements. The Economic Development Grants are only for the Minimum Improvements and other Project components described in this Agreement and not any expansions or improvements not described in this Agreement which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

f. Maximum Amount of Economic Development Grants. The aggregate amount of the Economic Development Grants that may be paid to Developer under this Section 8.3 in no event shall exceed the Aggregate Amount of Economic Development Grants determined in Section 8.3(d). The Developer acknowledges that each Economic Development Grant payment to be paid to Developer according to this Section 8.3 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 portion of the Parcel B Building and Parcel C Building assessed as commercial property (building/improvement value only) and any available Tax Increments from the Parcel A Building (building/improvement value only) following the completion of the Parcel A Economic Development Grant schedule set forth in Section 8.2(a), through no later than fiscal year 2031-32. The City makes no assurance that the Developer will receive Economic Development Grants which reach the Aggregate Amount of Economic Development Grants calculated in Section 8.3(d).

g. Timing of Payments. After the Developer's annual certification indicates the Phase B Building is fully assessed, and if the Developer satisfies all of the terms of this Agreement and all conditions of Section 8.3(c) are met, then the City shall certify to the appropriate County office prior to December 1 of that year its request for the available Tax Increment resulting from the assessments imposed by the County as of January 1 of that year, to be collected by the County and paid to the City as taxes are paid during the following fiscal year and which shall thereafter be disbursed to the Developer on or before June 1 of that fiscal year provided Developer remains in compliance with this Agreement at the time of payment. As an example, if the Phase B Building is completed and fully assessed on January 1, 2023, and if the Annual Certification reflecting that full assessment is filed with the City by October 15, 2023, and all other terms of this Agreement are satisfied, the City would certify for the Tax Increment generated by the commercial portion of the Parcel B Building by December 1, 2023 for collection by the County and payment to the City in fiscal year 2024-2025, allowing for an initial grant to be paid to Developer on or before June 1, 2025, all subject to the terms of this Article and this Agreement.

h. Event of Default/Annual Certifications. In the event that an Event of Default occurs and is continuing beyond any applicable notice and cure periods or any certification filed by Developer under Section 6.7 (or other information) discloses the existence or prior occurrence of an Event of Default that was not cured or cannot reasonably be cured, the City shall have no obligation thereafter to make any payments to Developer in respect of the Economic Development Grants and the provisions of this Section 8.3 shall terminate and be of no further force or effect.

Each Annual Certification filed by Developer under Section 6.7 shall be considered separately in determining whether the City shall make any of the Economic Development Grant payments available to Developer under this Article. Under no circumstances shall the failure by Developer to qualify for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully complies with the provisions hereof and Developer becomes entitled thereto, up to the maximum aggregate amount determined in Section 8.3(d).

Section 8.4. Source of Grant Funds Limited.

a. The Economic Development Grants described in Article VIII shall be payable from and secured solely and only by amounts deposited and held in the LSJT of Iowa, LLC TIF Account of the Beaver Creek West Urban Renewal Tax Increment Revenue Fund of the City. The City hereby covenants and agrees, to the extent allowed by law, to maintain the Ordinance in force with respect to the Development Property during the term hereof and to apply the appropriate percentage of Tax Increment collected in respect of the Minimum Improvements and allocated to the LSJT of Iowa, LLC TIF Account to pay the Economic Development Grants, as and to the extent set forth in this Article. The Economic Development Grants 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 Economic Development Grants to the Developer.

b. Each Economic Development Grant described in Article VIII is subject to annual appropriation by the City Council each fiscal year. The City has no obligation to make any payments of Economic Development Grants to Developer as contemplated under this Agreement until the City Council annually appropriates the funds necessary to make such payments. 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 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 or by the City's bond counsel 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. Notwithstanding the provisions of Article VIII hereof, 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, or receives an opinion from its legal counsel to the effect that the use of Tax Increment resulting from the Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Article VIII, 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. Upon receipt of any such legal opinion or non-appropriation, the City shall promptly forward notice of the same to Developer. If the non-appropriation or circumstances or legal constraints giving rise to the decision continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer under the terms of Article VIII, then the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

d. The City makes no representation with respect to the amounts that may finally be paid to the Developer as Economic Development Grants, and under no circumstances shall the City, its agents, governing body members, attorneys, employers, successors or assigns, in any manner be liable to the Developer so long as the City timely applies the Tax Increment actually collected and held in the LSJT of Iowa, LLC TIF Account of the Beaver Creek West Urban Renewal Tax Increment Revenue Fund (regardless of the amounts thereof) to the payment of the Economic Development Grants to the Developer, as and to the extent described in this Article.

Section 8.5. Use of Other Tax Increment. The City shall be free to use any and all Tax Increment above and beyond the percentages to be given to Developer in this Agreement, or any available Tax Increment resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increment may lawfully be used pursuant to the provisions of the Urban Renewal Act (including an allocation of all or any portion thereof to the reduction of any eligible City costs), and the City shall have no obligations to Developer with respect to the use thereof.

ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article IX, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend, and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements, Infrastructure Improvements, or Development Property.

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer against the City to enforce its rights under this Agreement); (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer or their officers, agents, servants or employees about the Minimum Improvements,

Infrastructure Improvements, or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants, or employees.

d. The provisions of this Article IX shall survive the termination of this Agreement.

ARTICLE X. DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

a. Failure by the Developer to cause the construction of the Minimum Improvements or Infrastructure Improvements to be commenced and completed pursuant to the terms, conditions, and limitations of this Agreement;

b. Transfer of any interest in this Agreement or the Development Property or the Minimum Improvements in violation of the provisions of this Agreement;

c. Failure by Developer to pay ad valorem taxes on the Development Property and Minimum Improvements;

d. Failure by the Developer to substantially observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement;

e. The Developer shall:

i. file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

ii. make an assignment for the benefit of its creditors; or

iii. admit in writing its inability to pay its debts generally as they become due; or

iv. be adjudicated bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee, or liquidator of the Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against the Developer, and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment; or

f. Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certification furnished by the Developer pursuant to this Agreement,

shall prove to have been knowingly incorrect, incomplete, or misleading in any material respect on or as of the date of the issuance or making thereof.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsection 10.1(e) for which a notice/cure period is not required) the giving of thirty (30) days' written notice by the City to the Developer and the holder of the First Mortgage (but only to the extent the City has been informed in writing of the existence of a First Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

a. The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement;

b. The City may terminate this Agreement;

c. The City may withhold any of the Certificates of Completion;

d. The City shall have no obligation to make payment of the Economic Development Grants to Developer subsequent to the Event of Default and shall be entitled to recover from Developer, and Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amount from Developer; and/or

e. 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 the Developer, as the case may be, under this Agreement.

Section 10.3. No Remedy Exclusive. 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.

Section 10.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer understands and agrees that an amount equivalent to the City's costs and reasonable attorney fees incurred in connection with the drafting and execution of this Agreement shall be deducted from Developer's first Economic Development Grants.

b. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE XI. MISCELLANEOUS

Section 11.1. Conflict of Interest. 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.

Section 11.2. Notices and Demands. 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

a. In the case of Developer, is addressed or delivered personally to LSJT of Iowa, LLC at 3737 Woodland Ave., Suite 100, West Des Moines, IA 50266, Attn: Steve Scott;

b. In the case of the City, is addressed to or delivered personally to the City at City Hall, 6221 Merle Hay Road, Johnston, IA 50131, Attn: Economic Development Director and City Manager;

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.

Section 11.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.6. 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. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 11.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2032, unless terminated earlier under the provisions of this Agreement.

Section 11.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

Section 11.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representative, all on or as of the day first above written.

[Remainder of page intentionally left blank; signature pages follow]

EXHIBIT A
DEVELOPMENT PROPERTY

The Development Property is commonly referred to as:

All of Lots 11, 12, 13, 14, 15, 16, 23, 24, 25 and Lot "B" Road, and part of Lot "A" Road, that is adjacent to and directly North of Lots 23, 24, and 25, and part of Lot "C" Road, that is adjacent to and directly North of Lots 11, 12, and 13 of Roughwood IV, an official plat, City of Johnston, Polk County, Iowa.

AND

The North 245.0 feet of the East 267.0 feet of the Northeast 1/4 of the Northeast 1/4 of Section 15, Township 79 North, Range 25 West of the 5th P.M., City of Johnston, Polk County, Iowa.

EXHIBIT B
MINIMUM IMPROVEMENTS AND INFRASTRUCTURE IMPROVEMENTS

Minimum Improvements means the private improvements constructed by the Developer on the Development Property, which shall include at a minimum the Parcel A Building, the Parcel B Building (including a Green Roof), and the Parcel C Building. The Minimum Improvements may also include a Buffer, Structured Parking improvement, and an Underground Stormwater Detention System, all as more particularly described below:

Parcel A Building:

Parcel A Building means an approximately 15,750 square foot commercial/retail building to be constructed by Developer as part of the Minimum Improvements on Parcel A (as depicted in Exhibit B-1) of the Development Property. The Parcel A Building shall be able to accommodate a full-service, sit-down restaurant as well as high-quality retail business(es), and if it is economically feasible, the Parcel A Building shall have a roof-top patio.

Parcel B Building:

Parcel B Building means a mixed-use building made up of approximately 70 residential housing units and 12,500 square feet of commercial/office space to be constructed by Developer as part of the Minimum Improvements on Parcel B (as depicted in Exhibit B-1) of the Development Property. The Parcel B Building shall include residences and the exterior design of the building will have a contemporary theme that complements the adjoining retail center. The façade materials will incorporate primarily brick and masonry elements accented by architectural metal cladding and architectural wood-look fiber-cement panels. Amenities will include an indoor climate-controlled parking structure, bike storage and workshop, fitness center, pet spa, and community gathering spaces. Atop the parking garage will be an outside amenity deck with a saltwater swimming pool and multiple gathering areas with fireplaces and firepits, stainless steel barbecue grills, shade structures, and a sequestered dog park. A Green Roof system is being incorporated into both the amenity deck and the rooftop areas and terraces of the upper floor residences. The terraces and amenity deck will also feature potted trees and shrubs around the perimeters.

The plant materials in the Green Roof are comprised of varieties that are drought resistant so that, even though the green roof areas are irrigated to withstand extreme dry and windy conditions, a minimum of supplemental irrigation is needed. These varieties include succulent, water-holding plants like Sedums, Alliums, Sempervivums, Delospermas and a few others. The best plants both store water and have a special type of metabolism called 'Crassulacean Acid Metabolism', CAM for short. CAM plants are unique in that under drought conditions their stomates (leaf pores) are open at night rather than during the day, as is the case with most plants. CAM plants exchange gasses (oxygen and carbon dioxide) in the dark when it is cooler and less windy. CAM plants are up to ten times more efficient with water conservation than non-CAM plants. The plant medium is a soil made up of predominately high quality inorganic aggregates, contains a special clay particle to bind nutrients, contains an acid rain buffering component, and is formulated with disease suppressive organic material at a level that is consistent with ecologically sustainable soil/plant communities.

Parcel C Building:

Parcel C Building means an approximately 6,000 square foot commercial/office building to be constructed by Developer as part of the Minimum Improvements on Parcel C (as depicted in Exhibit B-1) of the Development Property.

Buffer:

A) A 50' landscaped buffer is required between commercial and existing residential uses. The buffer may be installed in phases as each development parcel is constructed, provided temporary measures are taken to buffer residential uses that are otherwise identified as future commercial uses within the PUD.

B) A minimum 6' privacy fence shall be incorporated into the landscape buffer. The fence shall be opaque and constructed of treated wood, cedar red wood, polyvinyl chloride, stone brick or other material approved by City Council. Posts shall be anchored appropriately for material used and designed to support fence height. Location of the fence will be established during site plan approval. Fence height shall not exceed 8'.

C) Lots with side yard lots lines abutting the redevelopment area require additional buffer protection to offset closer proximity of housing to commercial development; therefore, the buffer shall be widened to 60' along the east edge of lots ten and seventeen of Roughwood Plat IV for areas within twenty-five feet of a residence. Furthermore, a four-foot-high minimum berm shall be incorporated into the entire length of the buffer area along the east edge of lots ten and seventeen of Roughwood Plat IV. The fence shall be located on top of this berm.

D) All required buffers shall contain the appropriate quantity of landscaping as specified in Chapter 166.34 of the City of Johnston Code of Ordinances.

Structure Parking:

The structured parking shall consist of a minimum of two stories with no fewer than 125 stalls within the structure, constructed on Parcel B.

Underground Stormwater Detention:

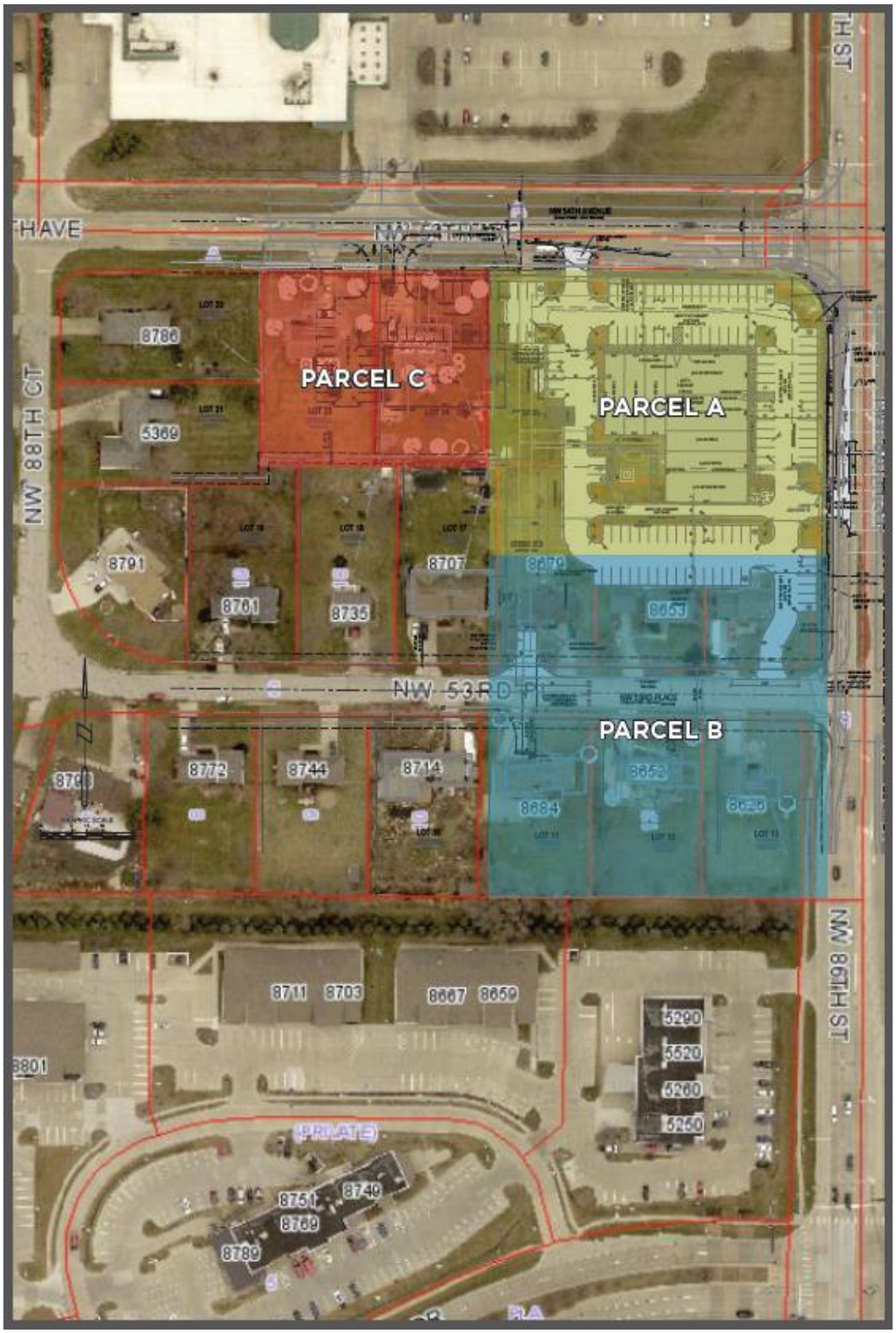
Shall be sufficient to meet stormwater detention requirements for the site in tandem with any above ground stormwater detention.

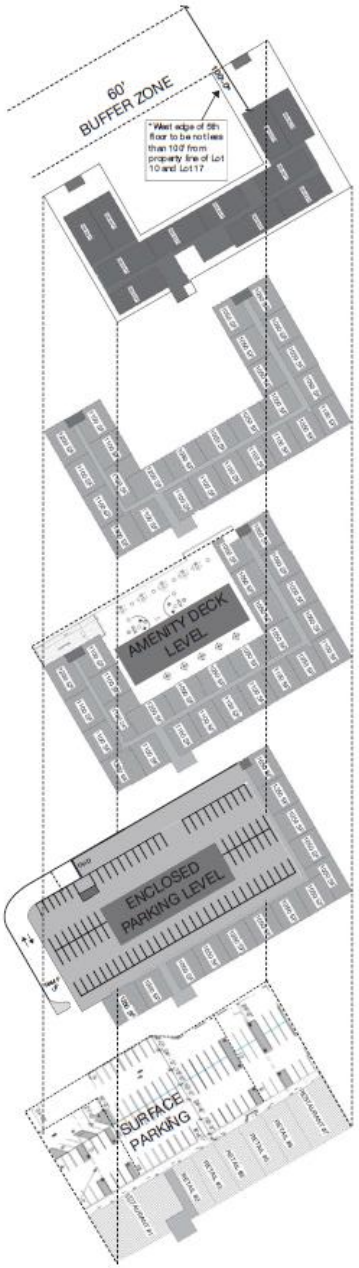
See Exhibit B-1 for site plan and improvement depictions.

Infrastructure Improvements means those improvements constructed by the Developer with the intent to dedicate such improvements to the City pursuant to the terms of the Agreement. The Infrastructure Improvements include:

-The extension of the storm and sanitary sewers and water mains in and through the Development Property to NW53rd Place appropriately sited and sized for future connection to the Project and Roughwood Neighborhood.
-A hammerhead turn around at the end of NW 53rd Place in conformance with an approved site plan. The hammerhead being constructed for the Parcel A phase is on the north side of 53rd Place and will be enlarged into the south side of 53rd Place when Parcel B is developed.

EXHIBIT B-1
PROJECT DEPICTION/SITE PLAN





UNITS PER FLOOR

FIFTH FLOOR: 11 UNITS

FOURTH FLOOR: 29 UNITS

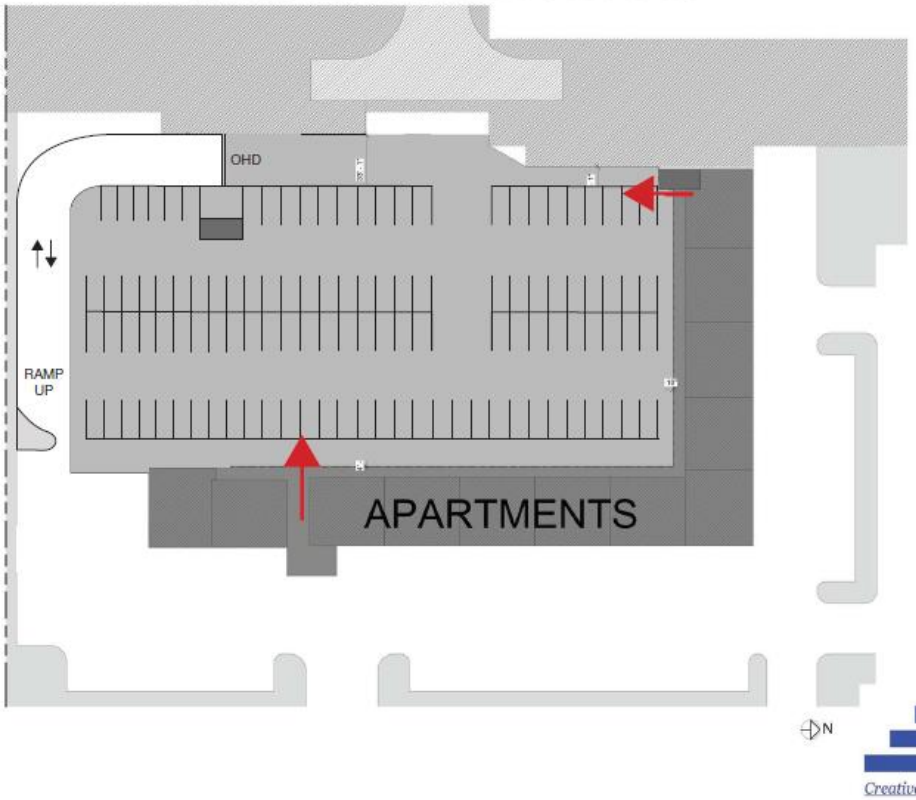
THIRD FLOOR: 32 UNITS

SECOND FLOOR: 13 UNITS

FIRST FLOOR: 9,370 SF RETAIL
8,800 SF RESTAURANT

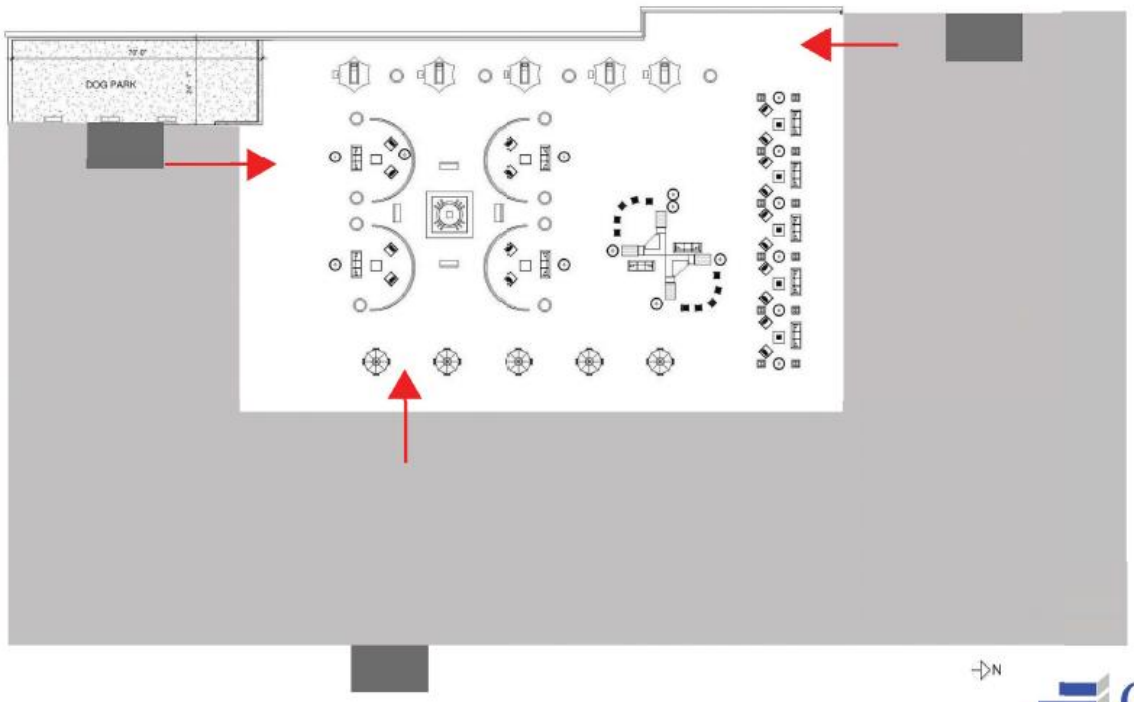
GTG

SECOND FLOOR PARKING



GTG
07/01/2016
Creative Building Solutions That Work

THIRD FLOOR OUTDOOR PLAN



GTG
Creative Building Solutions That Work

MAIN ENTRY RENDERING LOOKING WEST

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07/01/2016
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3RD FLOOR AMENITY DECK LOOKING SOUTH

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PERSPECTIVE LOOKING SOUTHWEST

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PERSPECTIVE LOOKING EAST

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Vicinity Sketch
NW 70TH AVE
Subject Property
NW 62ND AVE
NW 86TH ST
MERLE HAY RD
Allowed Access
NW 54TH AVENUE
NW 86TH STREET
Lot 17
NW 53RD PLACE
NW 53rd Place Terminus
Allowed Access
Lot 10
Legend
50' Buffer
Expanded Buffer
North of NW 53rd Place
South of NW 53rd Place
Corporate Limits