

AGREEMENT FOR PRIVATE DEVELOPMENT

BY AND BETWEEN

CITY OF OSKALOOSA, IOWA

AND

OSKALOOSA GATEWAY HOTEL, LLC

_____, 2019

AGREEMENT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT (“Agreement”), is made on or as of the ____ day of _____, 2019, by and between the CITY OF OSKALOOSA, IOWA, a municipality (“City”), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2019, as amended (the “Urban Renewal Act”), and OSKALOOSA GATEWAY HOTEL, LLC, an Iowa limited liability company having offices for the transaction of business at 1525 S. Forest Rd., Ste. 200, Freeport, Illinois (“Developer”).

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Oskaloosa Urban Renewal Area (the “Urban Renewal Area”), which is described in Amendment No. 1 to the Oskaloosa Amended and Restated Urban Renewal Plan approved for such Urban Renewal Area by Resolution No. 14-08-71 on August 18, 2014, as further amended by Amendment No. 2 as approved by Resolution No. _____ on _____, 2019 (the “Urban Renewal Plan”); and

WHEREAS, a copy of the foregoing Urban Renewal Plan, as amended, has been or will be recorded among the land records in the office of the Recorder of Mahaska County, Iowa; and

WHEREAS, the Developer is the owner of certain real property located within the Urban Renewal Area as described in Exhibit A attached hereto and made a part hereof (the “Development Property”); and

WHEREAS, Developer is willing to cause certain improvements on the Development Property including construction of an approximately 76-room hotel (the “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.

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 Oskaloosa, 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 for the Minimum Improvements 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.

Developer means Oskaloosa Gateway Hotel, LLC, and its permitted successors and assigns.

Development Property means that portion of the Oskaloosa Urban Renewal Area described in Exhibit A.

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

Event of Default means any of the events described in Section 11.1 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.

Full-Time Equivalent Employment Unit means the employment by Developer of the equivalent of one person for 2,000 hours per year, assuming eight hours per day for a five-day, forty-hour work week for fifty weeks per year.

Minimum Actual Value means the actual value assigned to the Minimum Improvements and the Development Property, pursuant to the Minimum Assessment Agreement entered into between the parties and the County Assessor.

Minimum Improvements means the construction of a building to be used as a hotel, as more particularly described in Exhibit B attached hereto and made a part hereof.

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 Ordinances of the City under which the taxes levied on the taxable property in the Area shall be divided and a portion paid into the Oskaloosa Urban Renewal Area Tax Increment Revenue Fund.

Oskaloosa Gateway Hotel, LLC TIF Account means a separate account within the Oskaloosa 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 Minimum Improvements and Development Property.

Oskaloosa 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.

Project means the construction and operation of the Minimum Improvements on the Development Property and the creation and retention of jobs, as described in this Agreement.

State means the State of Iowa.

Tax Increments means the property tax revenues derived from the assessed value (after rollback) of the Minimum Improvements and Development Property in excess of the Development Property's January 1, 2019 assessed value (after rollback) of \$391,550, and divided and made available to the City for deposit in the Oskaloosa Gateway Hotel, LLC TIF Account of the Oskaloosa Urban Renewal Area Tax Increment Revenue Fund.

Termination Date means the date of termination of this Agreement, as established in Section 12.8 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, litigation commenced by third parties, or the acts of any federal, State, or local governmental unit (other than the City).

Urban Renewal Area means the area known as the Oskaloosa Urban Renewal Area.

Urban Renewal Plan means the Oskaloosa Amended and Restated Urban Renewal Plan, as amended, approved with respect to the Oskaloosa 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. Oskaloosa Gateway Hotel, 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.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions, or provisions of the governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer will cause the Minimum 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 may be lawfully constructed.

g. Developer expects that the construction of the Minimum Improvements will require a total investment of approximately \$11,300,000.

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 for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum 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.

k. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed by June 1, 2020.

l. Developer would not undertake its obligations under this Agreement without the incentives provided to the Developer by the City pursuant to this Agreement.

m. Developer will not seek to change the current land assessment category, or the zoning classification, of the Development Property or the Minimum Improvements between the date of execution of this Agreement and the Termination Date.

ARTICLE III. CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 3.1. Construction of Minimum Improvements. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to the City. 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 the Construction Plans, and shall require a total investment of approximately \$11,300,000.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by the City as provided in this Section 3.2. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable federal, State and local laws and regulations. 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 approval of the Construction Plans pursuant to this Section 3.2 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 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be undertaken and completed: (i) by no later than June 1, 2020; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. 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.

Section 3.4. Certificate of Completion. Upon written request of Developer after issuance of an occupancy permit for the Minimum Improvements, the City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit C attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.4, the City shall, within twenty (20) days after written request by Developer provide a written statement indicating in adequate detail in what respects Developer has failed to complete the 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.

Issuance by the City of the Certificate of Completion pursuant to this Section 3.4 is solely for the purposes of this Agreement, and shall not constitute approval for any other City purpose shall it subject the City to any liability for the Development Property or the Minimum Improvements as constructed.

ARTICLE IV. PROPERTY TAXES AND MINIMUM ASSESSMENT AGREEMENT

Section 4.1. Real Property Taxes. Developer 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. Until Developer's obligations have been assumed by any other person, all pursuant to the provisions of this Agreement, Developer shall be solely responsible for all assessments and taxes.

Developer agrees that Developer and its permitted successors shall not, prior to the Termination Date: (i) 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; nor (ii) seek any tax exemption deferral or abatement either presently or prospectively authorized under any federal, State, or local law with respect to taxation of the Minimum Improvements and the Development Property.

Section 4.2. Minimum Assessment Agreement. As further consideration for this Agreement, Developer, City, and the County Assessor shall execute an Assessment Agreement pursuant to the provisions of Iowa Code Section 403.6(19) specifying the Assessor's Minimum Actual Value for the Minimum Improvements on the Development Property for calculation of real property taxes in the form attached as Exhibit F ("Assessment Agreement" or "Minimum Assessment Agreement"). Specifically, Developer, City, the County Assessor, the holder of any mortgage and all prior lienholders shall agree to a minimum actual value for the Minimum Improvements to be constructed on the Development Property and Development Property of not less than \$5,000,000 upon completion of the Minimum Improvements, but no later than January 1, 2021, until the Assessment Agreement Termination Date (as defined below). Such minimum actual value at the time applicable is herein referred to as the "Assessor's Minimum Actual Value" (land and taxable improvement value).

Nothing in the Assessment Agreement shall limit the discretion of the Assessor to assign an actual value to the property in excess of such Assessor's Minimum Actual Value nor prohibit Developer from seeking through the exercise of legal or administrative remedies a reduction in such actual value for property tax purposes; provided, however, that Developer shall not seek a reduction of such actual value below the Assessor's Minimum Actual Value in any year so long as the Assessment Agreement shall remain in effect. The Assessment Agreement shall remain in effect until December 31, 2031 (the "Assessment Agreement Termination Date"). The Assessment Agreement shall be certified by the Assessor for the County as provided in Iowa Code Section 403.6(19) (2019) and shall be filed for record in the office of the County Recorder, and such filing shall constitute notice to any subsequent encumbrancer or purchaser of the Development Property or part thereof, whether voluntary or involuntary. Such Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer, as well as all prior lienholders and the holder of the First Mortgage, each of which shall sign a consent to the Minimum Assessment Agreement.

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, 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 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 Properties. Developer will maintain, preserve, and keep its properties within the City (whether owned in fee or a leasehold interest), including but not limited to the Development Property and 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 will 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 will comply with all federal, State, and local laws, rules, and regulations relating to the Development Property and the Minimum Improvements.

Section 6.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any applicant, employee, or customer because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, employees, and customers are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

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 so that City can determine compliance with this Agreement.

Section 6.6. Employment. Developer shall hire at least fifteen (15) Full-Time Equivalent Employment Units to work at the Development Property by July 1, 2020 and shall retain a Monthly Average of fifteen (15) Full-Time Equivalent Employment Units until the Termination Date in order to be eligible for Economic Development Grants. Developer's Annual Certifications, starting with the Certification due on October 15, 2020 and continuing until the Termination Date, shall show that a Monthly Average of at least fifteen (15) Full-Time Equivalent Employment Units has been maintained since July 1, 2020.

"Monthly Average" means the average number of Full-Time Equivalent Employment Units employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months, as shown in Developer's Annual Certification in Section 6.7. Developer shall not receive any Economic Development Grants if the Monthly Average of Full-Time Equivalent Employment Units employed by Developer does not meet the requirements of this Section 6.6. Developer shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

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 provide Annual Certifications to the City. Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been timely paid for the prior fiscal year and for the current fiscal year as of the date of certification (if due and payable); (ii) the date of the first full assessment of the Minimum Improvements; (iii) certification of the number of Full-Time Equivalent Employment Units as of October 1 and as of the first day of each of the preceding eleven (11) months (the first certification need only reflect the preceding three months); and (iv) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certification, and during the preceding twelve (12) months, Developer is not, and were 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 certification 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 from Developer shall be provided not later than October 15 of each year, commencing October 15, 2020 through the Termination Date. Developer shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit E for the form required for Developer's Annual Certification.

Section 6.8. Term of Operation; Hotel Brand.

a. Developer shall operate the Minimum Improvements on the Development Property as a commercial hotel, and satisfy the employee obligations in Section 6.6, until the Termination Date of this Agreement. If Developer ceases its operations at the Minimum Improvements on the Development Property, including the employee obligations in Section 6.6, prior to the Termination Date, it shall be an Event of Default.

b. Developer shall operate the Minimum Improvements under the brand and flag of a Fairfield Inn and Suites. If the Developer is unable to secure the Fairfield Inn and Suites hotel brand, then the Developer shall notify the City of the intended alternate flag(s) and brand(s) of hotel for the Minimum Improvements, which alternate(s) will be submitted to the City Council for its approval. The City's approval of any alternate flag(s) and brand(s) shall not be unreasonably withheld, provided the proposed alternate flag(s) and brand(s) are demonstrated to be comparable to the Fairfield Inn and Suites flag and brand and the Minimum Improvements that would be constructed under the alternate flag(s) and brand(s) are substantially similar to the Minimum Improvements as described herein. The Developer covenants and agrees that until the Termination Date it will not change the flag or brand of the hotel unless it receives prior approval of the City Council, which approval shall not be unreasonably withheld.

Section 6.9. 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. Without limiting the generality of the foregoing, Developer guarantees that: (i) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (ii) the Minimum Improvements shall be constructed and completed in accordance with the Construction Plans; (iii) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (iv) all costs of constructing the Minimum Improvements shall be paid when due.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. 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 its existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or terminate, transfer, convey, or assign its interest in the Development Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability

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 be given or withheld in the sole and absolute discretion of the City.

In the event that Developer wishes to assign this Agreement, including its rights and duties hereunder, Developer and transferee individual or entity shall request that the City and Developer consent to an amendment of this Agreement to accommodate the transfer and to provide for the assumption of all Developer obligations under this Agreement. Such transfer shall not be effective unless and until the City and Developer consent in writing to an amendment of this Agreement authorizing the transfer.

Section 7.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Developer or its successors, or assigns agree that the Development Property cannot be 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)).

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 up to ten (10) years of consecutive annual payments of Economic Development Grants to Developer up to a total amount not to exceed Eight Hundred Fifty Thousand Dollars (\$850,000) in the aggregate, under the following schedule:

<u>Date</u>	<u>Amount of Economic Development Grants</u>
June 1, 2022	One Hundred percent (100%) of Tax Increments for Fiscal Year 2021-2022
June 1, 2023	One Hundred percent (100%) of Tax Increments for Fiscal Year 2022-2023
June 1, 2024	One Hundred percent (100%) of Tax Increments for Fiscal Year 2023-2024
June 1, 2025	One Hundred percent (100%) of Tax Increments for Fiscal Year 2024-2025
June 1, 2026	One Hundred percent (100%) of Tax Increments for Fiscal Year 2025-2026
June 1, 2027	One Hundred percent (100%) of Tax Increments for Fiscal Year 2026-2027
June 1, 2028	One Hundred percent (100%) of Tax Increments for Fiscal Year 2027-2028
June 1, 2029	One Hundred percent (100%) of Tax Increments for Fiscal Year 2028-2029
June 1, 2030	One Hundred percent (100%) of Tax Increments for Fiscal Year 2029-2030
June 1, 2031	One Hundred percent (100%) of Tax Increments for Fiscal Year 2030-2031

Each annual payment shall be equal in amount to the above percentages of the Tax Increments, not to exceed \$850,000 in the aggregate, collected by the City with respect to the Minimum Improvements and the Development Property under the terms of the Ordinance and deposited into the Oskaloosa Gateway Hotel, 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 Minimum Improvements, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the “Economic Development Grants”). For the purposes of this Agreement, property taxes collected on the January 1, 2019 assessed value (after rollback) of the Development will not be considered part of the Tax Increments for any Economic Development Grants. The parties agree that the January 1, 2019 assessed value (after rollback) of the Development Property is \$391,550.

Section 8.2. Payment Schedule. Assuming the Minimum Improvements are first assessed (partially or fully) on January 1, 2020, completed by June 1, 2020, Developer’s Annual Certification is timely filed by October 1, 2020 and contains the information required under Section 6.7 and the Council approves of the same, the City shall certify to the County prior to December 1, 2020 its request for the available Tax Increments resulting from the assessments imposed by the County as of January 1, 2020, to be collected by the County and paid to the City as taxes are paid during the following fiscal year (2021-22) and which shall thereafter be disbursed to Developer on June 1, 2022 (for 100% of the Tax Increment for fiscal year 2021-2022). The parties acknowledge and agree that if the Minimum Improvements are not completed by December 31, 2019, the first grant payment will be based on any partial assessment assessed by the County as of January 1, 2020, and such fact will not be a reason to extend the grant schedule beyond June 1, 2031. Moreover, the parties acknowledge and agree that if the Minimum Improvements are not fully completed by June 1, 2020, or another mutually agreed to date under Section 3.3 of this Agreement, then Developer shall not be eligible for any grants hereunder.

Section 8.3. Maximum Amount of Grants. The aggregate amount of the Economic Development Grants that may be paid to Developer under this Agreement shall be equal to the sum of the total amount of the applicable percentage of Tax Increments collected in respect of the assessments imposed on the Minimum Improvements over the specified time period, but in no event shall exceed Eight Hundred Fifty Thousand Dollars (\$850,000) over ten (10) years. It is recognized by all parties that the total aggregate amount set forth above is a maximum amount only and was calculated based on the construction of the Minimum Improvements and that the actual payment amounts will be determined as set forth in Section 8.1 and this Article. The Developer understands that the actual payments could be significantly less than the total aggregate amount set forth above.

Section 8.4. Limitations. The Economic Development Grants are only for the Minimum Improvements described in this Agreement (building/improvement increase value only) and not any future expansions or phases 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.

Section 8.5. Conditions Precedent. Notwithstanding the provisions of Section 8.1 above, the obligation of the City to make an Economic Development Grant in any year shall be subject to and conditioned upon the following:

- a. Developer's compliance with the terms of this Agreement, including, but not limited to, the payment of property taxes;
- b. Execution of and Developer's compliance with the Minimum Assessment Agreement; and
- c. Developer's timely filing of the Annual Certifications required under Section 6.7 hereof and the Council's approval thereof.

In the event that an Event of Default occurs 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 Article shall terminate and be of no further force or effect.

Each Annual Certification filed by Developer under Section 6.7 hereof shall be considered separately in determining whether the City shall make any of the Economic Development Grant payments available to Developer under this Section. Under no circumstances shall the failure by Developer to qualify Developer 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 Sections 8.1 and 8.3.

Section 8.6. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts deposited and held in the Oskaloosa Gateway Hotel, LLC TIF Account of the Oskaloosa Urban Renewal Area Tax Increment Revenue Fund of the City. The City hereby covenants and agrees to maintain the Ordinance in force during the term hereof on the Development Property and to apply the appropriate percentage of Tax Increments collected in respect of the Development Property and Minimum Improvements and allocated to the Oskaloosa Gateway Hotel, 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 under chapter 441.21A shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under chapter 426C relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council each fiscal year. The City has no obligation to make any payments to Developer as contemplated under this Agreement until the City 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 Section 8.1 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 Increments resulting from the Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 8.1, 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 Section 8.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

Section 8.7. Use of Other Tax Increments. The City shall be free to use any and all Tax Increments above and beyond the percentages to be given to Developer in this Agreement, or any available Tax Increments resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increments 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. RESERVED

ARTICLE X. INDEMNIFICATION

Section 10.1. 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 X, 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 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 or any other person who may be about the Minimum 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. 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, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

e. The provisions of this Article X shall survive the termination of this Agreement.

ARTICLE XI. EVENTS OF DEFAULT AND REMEDIES

Section 11.1. 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 during the Term of this Agreement:

a. Failure by Developer to cause the construction of the Minimum Improvements to be completed and the operations to continue pursuant to the terms and conditions of this Agreement;

b. Transfer of Developer's interest in the Development Property, Minimum Improvements, or this Agreement or the assets of Developer in violation of the provisions of this Agreement;

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

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

e. Developer ceases operations of the hotel prior to the Termination Date;

f. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents; or

g. 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 as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as a 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 Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment; or

h. Any representation or warranty made by Developer in this Agreement or in any written statement or certificate furnished by Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

Section 11.2. Remedies on Default. Whenever any Event of Default referred to in Section 11.1 of this Agreement occurs and is continuing, the City may take any one or more of the following actions after giving thirty (30) days' written notice to 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 (except in the case of an Event of Default under Section 11.1(e) or (f)), but only if the Event of Default has not been cured to the satisfaction of the City within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and 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 Developer, deemed adequate by the City, that Developer will cure the default and continue its performance under this Agreement;

b. The City may forfeit or terminate this Agreement;

c. The City may withhold the Certificate of Completion;

d. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer, as the case may be, under this Agreement; and

e. The City shall have no obligation to make payment of Economic Development Grants to Developer subsequent to an Event of Default that remains uncured and shall be entitled to recover from the Developer, and the Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer under Article VIII hereof, 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. The City may demand such payment at any time following its determination that Developer is in default under this Agreement, including if Developer fails to employ Full-Time Equivalent Employment Units as required by Section 6.6 of this Agreement.

Section 11.3. 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 11.4. 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 11.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer understands and agrees that an amount equivalent to the City's costs and attorney fees incurred in connection with the drafting and execution of this Agreement, as well as

attorneys and planning fees in connection with the drafting and adoption of the Urban Renewal Plan Amendment, shall be deducted from Developer's first Economic Development Grants; and

b. Whenever any Event of Default occurs and the non-defaulting party employs attorneys or incurs 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 defaulting party herein contained, the defaulting party agrees that it shall, on demand therefor, pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the non-defaulting party upon a final successful claim.

ARTICLE XII. MISCELLANEOUS

Section 12.1. 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, except Steve Burnett (an employee of Mahaska Communications Group, an entity affiliated with Musco Sports Lighting, LLC, a majority owner in the Developer, hereinafter "Musco") and Bob Drost and Doug Yates (employees of Musco) and who shall not participate in deliberations or decisions related to the Project on behalf of the City, 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 12.2. 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 Oskaloosa Gateway Hotel, LLC at 1525 S. Forest Rd, Ste. 200, Freeport, IL 61032, Attn: Manager;
- b. In the case of the City, is addressed to or delivered personally to the City at City Hall, 220 S. Market Street, Oskaloosa, IA 52577, Attn: City Clerk;

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 12.3. 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 12.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.5. Governing Law; Venue. The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Iowa applicable to contracts wholly to be performed therein. The parties agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or relating hereto shall be brought solely in the state courts located in Mahaska County, Iowa. The parties irrevocably waive objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum. The parties further expressly waive any right to a jury trial.

Section 12.6. 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 12.7. 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 12.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2031, unless terminated earlier under the provisions of this Agreement.

Section 12.9. 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. Developer shall reimburse the City for all costs of recording.

Section 12.10. 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, Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

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

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property is legally described as follows:

Lot 1 of Gateway Commercial Park, a Subdivision in the City of Oskaloosa, Mahaska County, Iowa

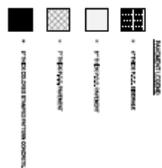
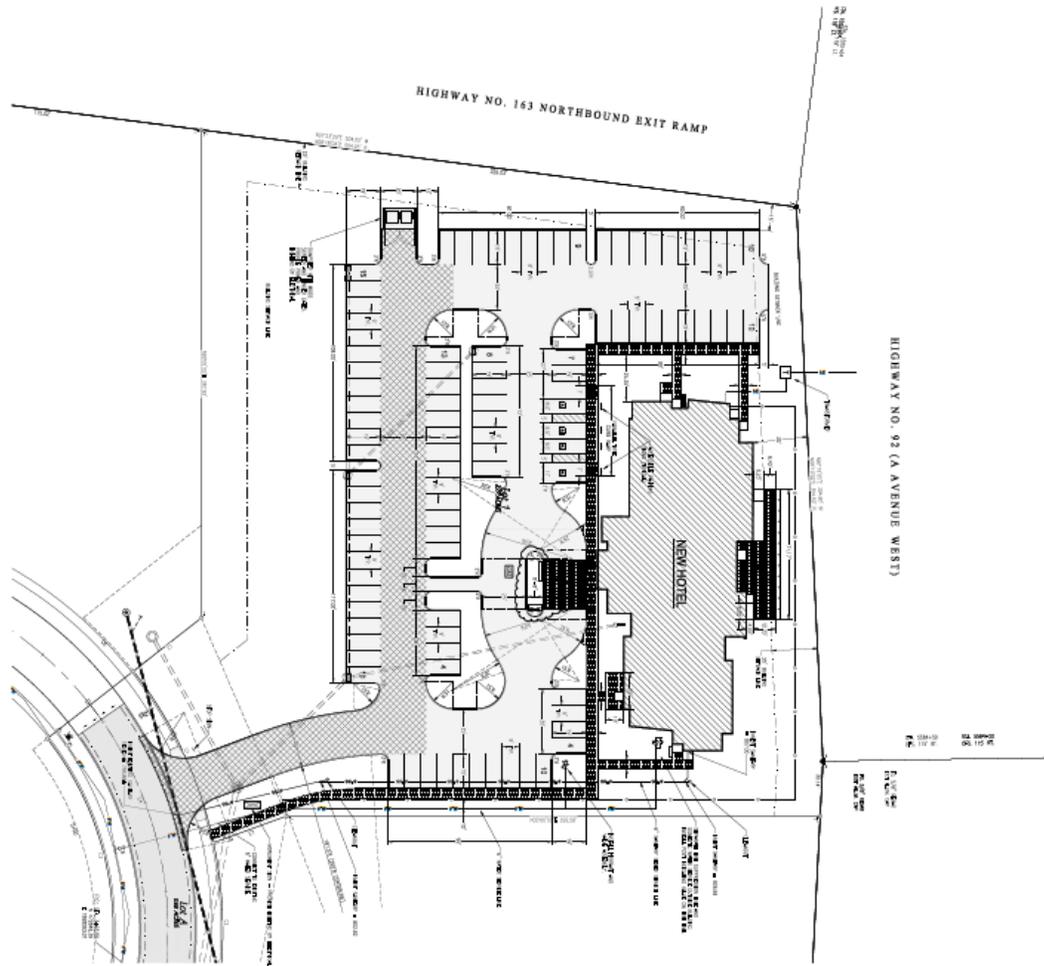
EXHIBIT B
DESCRIPTION OF MINIMUM IMPROVEMENTS

Minimum Improvements means the construction of a building to be used as a hotel, with approximately 76 guest rooms including 24 suites, a meeting room, an indoor pool, a business center, and a breakfast area. The construction of the Minimum Improvements will be completed in 2019. Construction costs are expected to be approximately \$11,300,000.

The value after construction of the Minimum Improvements for the Minimum Improvements and Development Property shall be at least \$5,000,000, but the Mahaska County Assessor will make the final determination as to the value.

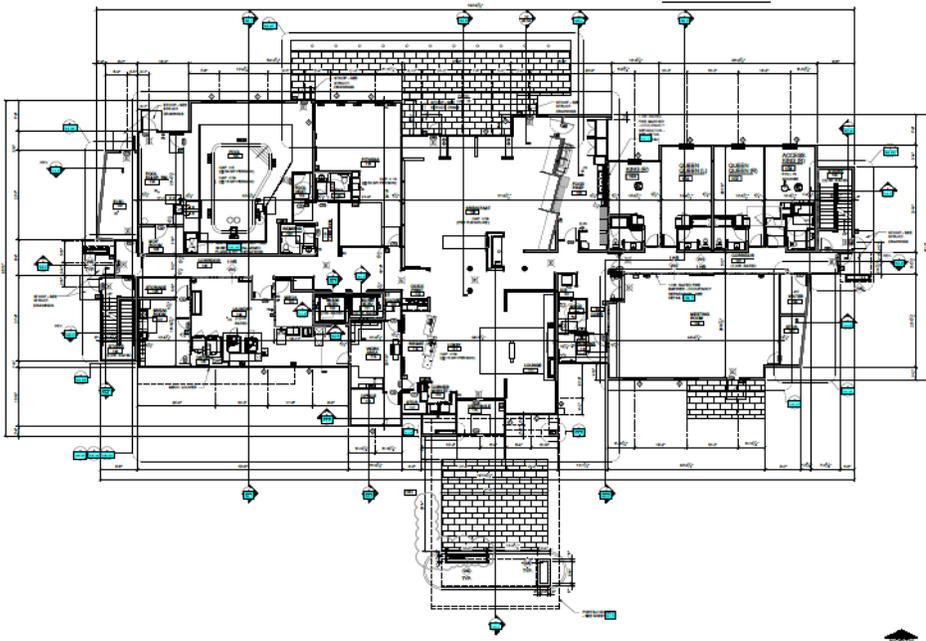
See Exhibit B-1 for site plans, floor plans, and elevations of the Minimum Improvements.

EXHIBIT B-1
SITE PLANS, FLOOR PLANS, AND ELEVATIONS OF MINIMUM IMPROVEMENTS

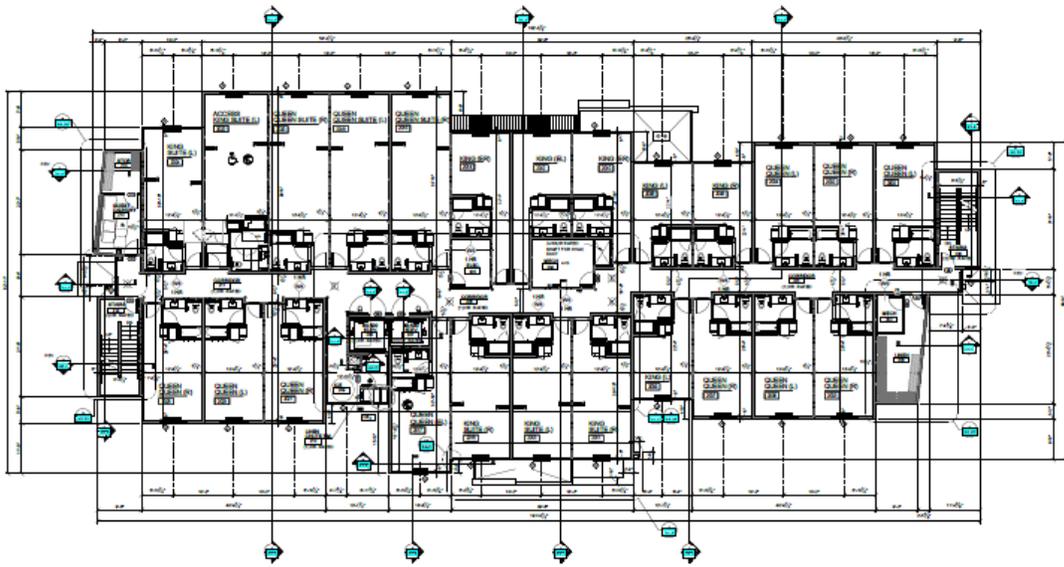


 2018.116 2018.116	NEW HOTEL FOR: FAIRFIELD INN GATEWAY COMMERCIAL PARK HWY 92 AND HWY 163 OSKALOOSA, IA 52577	OWNER: OSKALOOSA GATEWAY HOTEL, LLC 1525 S. FOREST ROAD, SUITE 200 FREEPORT, ILLINOIS 61032	LOCATION: AT THE	 25 SOUTH MAIN STREET ROCKFELLAR, MISSOURI 64088 1-800-888-8888	SHEET TITLE SHEET NO. SHEET TOTAL DATE
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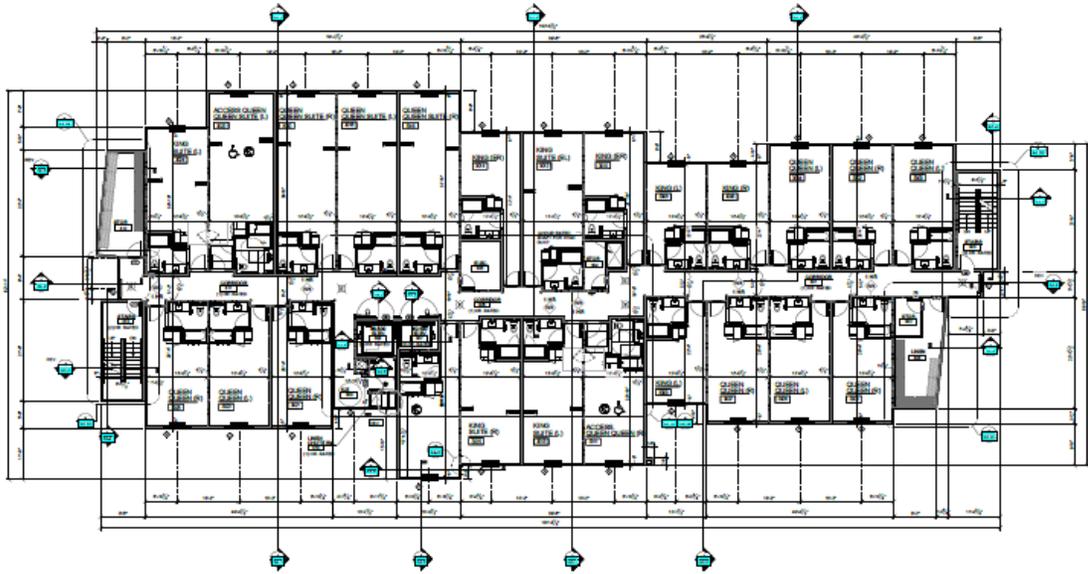
FLOOR PLANS



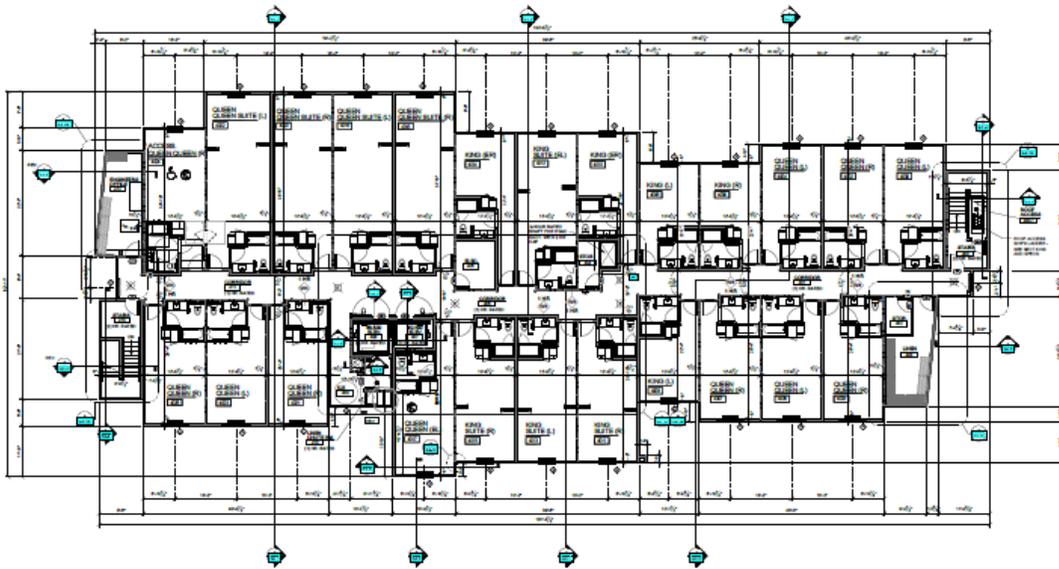
FIRST FLOOR PLAN
SCALE 1/8" = 1'-0"



SECOND FLOOR PLAN
SCALE 1/8" = 1'-0"



THIRD
FLOOR PLAN
SCALE: 1/8" = 1'-0"



FOURTH
FLOOR PLAN
SCALE: 1/8" = 1'-0"

EXHIBIT C
CERTIFICATE OF COMPLETION

WHEREAS, the City of Oskaloosa, Iowa (“City”), and Oskaloosa Gateway Hotel, LLC (“Developer”) did on or about the ____ day of _____, 2019, make, execute, and deliver, each to the other, an Agreement for Private Development (the “Agreement”), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

Lot 1 of Gateway Commercial Park, a Subdivision in the City of Oskaloosa, Mahaska County, Iowa

(the “Development Property”); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its permitted successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Mahaska County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

[Remainder of page intentionally left blank; signature page follows]

Type of Document: MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF
OSKALOOSA AND OSKALOOSA GATEWAY HOTEL, LLC

Return Document to: Amy Miller, City Clerk
City of Oskaloosa
220 S. Market Street,
Oskaloosa, IA 52577

Preparer Information: Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611

Taxpayer Information: N/A

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION: Lot 1 of Gateway Commercial Park, a Subdivision in the City of
Oskaloosa, Mahaska County, Iowa

EXHIBIT D
MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Oskaloosa, Iowa (“City”) and Oskaloosa Gateway Hotel, LLC, an Iowa limited liability company, (“Developer”), did on or about the ____ day of _____, 2019, make, execute and deliver, each to the other, an Agreement for Private Development (the “Agreement”), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Amended and Restated Oskaloosa Urban Renewal Plan (“Plan”), as amended, to develop certain real property located within the City and within the Oskaloosa Urban Renewal Area, as amended.

The Development Property is described as follows:

Lot 1 of Gateway Commercial Park, a Subdivision in the City of Oskaloosa, Mahaska County, Iowa

(the “Development Property”); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2019 and terminates on December 31, 2031, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City and Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, Oskaloosa, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement for Private Development on the ____ day of _____, 2019.

EXHIBIT E
DEVELOPER ANNUAL CERTIFICATION
(due before October 15th as required under terms of Development Agreement)

The Developer certifies the following:

During the time period covered by this Certification, the Developer is and was in compliance with Section 6.7 of the Agreement as follows:

(i) All ad valorem taxes on the Development Property then owed by the Developer in the Urban Renewal Area have been timely paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) the Minimum Improvements were first fully assessed on January 1, 20___, at a full assessment value of \$_____;

(iii) The number of Employees employed at the Minimum Improvements as of October 1, 20___ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__:	_____	April 1, 20__:	_____
September 1, 20__:	_____	March 1, 20__:	_____
August 1, 20__:	_____	February 1, 20__:	_____
July 1, 20__:	_____	January 1, 20__:	_____
June 1, 20__:	_____	December 1, 20__:	_____
May 1, 20__:	_____	November 1, 20__:	_____

(iv) The undersigned officer of Developer has re-examined the terms and provisions of the Agreement and certifies that at the date of such certificate, and during the preceding twelve (12) months, the Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of the 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.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

Oskaloosa Gateway Hotel, LLC, an
Iowa limited liability company

By: _____

Name: _____

Title: _____

Attachments: Proof of payment of taxes

Exhibit E-1

Revised Final Version

EXHIBIT F
MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT (“Minimum Assessment Agreement” or “Assessment Agreement”) is dated as of _____, 2019, by and between the City of Oskaloosa, Iowa (“City”), a municipal corporation established pursuant to the Code of Iowa and acting under the authorization of Chapter 403 of the Code of Iowa, 2019, as amended (the “Urban Renewal Act”), and Chapter 15A , and Oskaloosa Gateway Hotel, LLC, an Iowa limited liability company having an office for the transaction of business at 1525 S. Forest Rd., Ste. 200, Freeport, IL 61032 (“Developer”).

WITNESSETH:

WHEREAS, the City and Developer have entered into an Agreement for Private Development dated as of _____, 2019 (“Agreement”) regarding certain real property located in the City which is legally described as follows:

Lot 1 of Gateway Commercial Park, a Subdivision in the City of Oskaloosa, Mahaska County, Iowa

(the “Development Property”); and

WHEREAS, defined terms used, but not otherwise defined, herein shall have the same meaning as given to them in the Agreement; and

WHEREAS, it is contemplated that Developer will undertake the construction of the Minimum Improvements (as defined in the Agreement) on the Development Property, as provided in the Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish certain minimum actual values for the Minimum Improvements to be constructed on the Development Property by Developer pursuant to the Agreement; and

WHEREAS, the City and the Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon completion of construction of the above-referenced Minimum Improvements on the Development Property, but no later than January 1, 2021, the minimum actual value which shall be fixed for assessment purposes for the Development Property (building/improvement and land value) shall be not less than Five Million Dollars (\$5,000,000) in taxable value after any rollback (hereafter referred to as the "Minimum Actual Value").

The Minimum Actual Value shall continue to be effective until termination of this Minimum Assessment Agreement on December 31, 2031 (the “Assessment Agreement Termination Date”). The Minimum Actual Value shall be maintained during such period regardless of: (a) any failure to complete the Minimum Improvements on the Development Property; (b) destruction of all or any portion of the Minimum Improvements on the Development Property; (c) diminution in value of the Development Property or the Minimum Improvements thereon; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring.

2. Developer (or subsequent buyer) 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 and the Minimum Improvements thereon pursuant to the provisions of this Minimum Assessment Agreement and the Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements thereon, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Development Property or the Minimum Improvements thereon by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements thereon.

3. Developer agrees that its obligations to make the tax payments required hereby and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any abatement or diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason whatsoever.

4. Developer agrees that, prior to the Termination Date, it and any subsequent buyer will not:

a. seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained as a part of the Development Property or the Minimum Improvements thereon determined by any tax official to be applicable to the Development Property or the Minimum Improvements thereon, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

b. seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local or State law, of the taxation of real property, including improvements and fixtures thereon, contained in the Development Property or the Minimum Improvements thereon between the date of execution of this Minimum Assessment Agreement and the Termination Date; or

c. request the Assessor to reduce the Minimum Actual Value; or

d. appeal to the board of review of the County, State, District Court or to the Director of Revenue of the State to reduce the Minimum Actual Value; or

e. cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

5. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Mahaska County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or any part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

6. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Agreement.

7. This Minimum Assessment Agreement shall not be assignable without the consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

8. Nothing herein shall be deemed to waive the rights of Developer or any subsequent buyer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer or any subsequent buyer seek to reduce the actual value to an amount below the Minimum Actual Value established herein during the term of this Minimum Assessment Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

9. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

10. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Termination Date set forth in Section 1 above.

11. Developer shall provide a title opinion or title search to the City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders shall have signed consents to this Assessment Agreement, which consents are attached hereto and made a part hereof.

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

CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Minimum Improvements described in the foregoing Minimum Assessment Agreement, certifies that upon completion of the Minimum Improvements, but in no event later than January 1, 2021, the actual value assigned to the Minimum Improvements and Development Property shall not be less than Five Million Dollars (\$5,000,000) (combined building/improvement and land value) after rollback, until the Assessment Agreement Termination Date of this Minimum Assessment Agreement.

Assessor for Mahaska County, Iowa.

Date

STATE OF IOWA)
) SS
COUNTY OF MAHASKA)

Subscribed and sworn to before me by _____, Assessor for Mahaska County, Iowa.

Notary Public in and for said State

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

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