# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**ITEM:** Approval to execute a Development Agreement between Fore Right, L.C., Ferguson Property Management Services, L.C., and the City of West Des Moines

**DATE:** May 6, 2019

**RESOLUTION:** Approval of Development Agreement

**FINANCIAL IMPACT:** Based on the Westown V Urban Renewal Plan and the attached development agreement between the City and Fore Right, L.C., Ferguson Property Management Services, L.C., and the City of West Des Moines, the City anticipates providing incentives in the form of property tax rebates not to exceed $143,010 under the Property Tax Rebate program (please note: this figure has been updated since the April 16, 2018 City Council meeting due to the existing value of the property and a decrease in incremental value.) These costs will be funded by incremental property tax revenues generated by the property. Fore Right, L.C. intends to undertake the construction of a 12,000 square-foot retail building valued at $2.9 million proposed to be located at 7160 University Avenue.

**BACKGROUND:** On September 6, 2016, the City Council adopted a resolution creating the Property Tax Rebate Pilot Program to stimulate economic development activity in certain areas of the City. Basically, the program would provide a five-year, 100% rebate of the incremental increase in property taxes on a property if the owner of the property agrees to expend a minimum of $500,000 on building upgrades/construction. The program also requires the creation/retention of a minimum of five (5) full-time equivalent jobs.

On December 12, 2016, the City Council amended the property Tax Rebate Program to clarify and modified the program guidelines to extend the development agreement to a minimum of ten (10) years.

In this particular case, the developer, Fore Right, L.C., is going to undertake the construction of a 12,000 square-foot retail building with an estimated value of $2.9 million. Ferguson Property Management will be the tenant located at the development property and will guarantee the creation/retention of five (5) full-time equivalent jobs.

At the April 11, 2018, F&A Subcommittee meeting, the Subcommittee members recommended approval of the initiation of the Development Agreement, and authorization to commence building construction.

At the April 16, 2018, City Council meeting, the Council recommended approval of initiation of the Development Agreement, and authorization to commence building construction.

This Development Agreement was delayed to ensure adequate time for review.

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Adopt the resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: Katie Hernandez, Business Development Coordinator, Community and Economic Development KH

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | Clyde Evans, Community and Economic Development Director |
| Appropriations/Finance | Tim Stiles, Finance Director |
| Legal | |
| Agenda Acceptance | |

**PUBLICATION(S)** (if applicable)

| | | |
|---|---|---|
| Published In | Des Moines Register | |
| Date(s) Published | 4/19/2019 | |
| Letter sent to surrounding property owners | | N/A |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | Finance & Administration | | |
| Date Reviewed | April 11, 2018 | | |
| Recommendation | Yes ☒ | No ☐ | Split ☐ |

**ATTACHMENTS:**

Exhibit I - Development Agreement
Exhibit II - Resolution

EXHIBIT I

# AGREEMENT FOR PRIVATE DEVELOPMENT

By and among

CITY OF WEST DES MOINES, IOWA

AND

FORE RIGHT, L.C.

AND

FERGUSON PROPERTY MANAGEMENT SERVICES, L.C.

_____, 2019

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the _____ day of_____, 2019, by and among the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2019, as amended ("Urban Renewal Act"), FORE RIGHT, L.C., an Iowa limited liability company having offices for the transaction of business at 1840 N.W. 118th St., Suite 100, Clive, Iowa 50325 ("Developer"), and FERGUSON PROPERTY MANAGEMENT SERVICES, L.C., an Iowa limited liability company having offices for the transaction of business at 1840 N.W. 118th St., Suite 100, Clive, Iowa 50325 ("Tenant"). The City, Developer and Tenant are the Parties to this Agreement.

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 Westown V Urban Renewal Area (the "Urban Renewal Area"), which is described in the Urban Renewal Plan originally approved for such area by Resolution No. 09-11-02-08 on November 2, 2009 (the "Urban Renewal Plan"); and

WHEREAS, a copy of the foregoing Urban Renewal Plan has been recorded among the land records in the offices of the Recorder of Polk County, Iowa and Dallas County, Iowa; and

WHEREAS, Developer is the owner of 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 shall complete the Minimum Improvements on the Development Property; and

WHEREAS, Tenant shall operate its business at the Minimum Improvements on the Development Property and commit to hire and retain employees in the community; and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment 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 and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

Annual Certification means the certifications that Developer and Tenant must complete and submit to the City each year as described in Section 5.7 of this Agreement and attached as Exhibits E and F.

Area or Urban Renewal Area means the area known as the Westown V Urban Renewal Area.

Base Valuation shall mean the taxable valuation of the Development Property as of January 1, 2018.

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 West Des Moines, Iowa, or any successor to its functions.

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

Commencement Date means the dated date of this Agreement.

Construction Plans means the plans, specifications, drawings, and related documents reflecting the construction work to be performed by 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 inspection division of the City as required by applicable City codes.

Developer means Fore Right, L.C., an Iowa limited liability company, and each assignee that assumes in writing all of the obligations of Developer under this Agreement with the written consent of the City as provided in Section 6.1 of this Agreement.

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

Development Property TIF means the Incremental Property Tax Revenues derived relative to the Minimum Improvements and the Development Property divided and made available to the City for deposit into the Fore Right, L.C. Subfund of the Westown V Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance measured from and above the Base Valuation.

Westown V Urban Renewal 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 will be 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.

Event of Default means any of the events described in Section 9.1 of this Agreement that have continued beyond applicable notice and cure periods.

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 either (i) an employee who works at least 40 hours per week or 2,000 hours per year; or (ii) any combination of employees who, in the aggregate, work at least forty hours per week at least 2,000 hours per year.

Incremental Property Tax Revenues means the amount of dollars calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Development Property, as shown on the property tax rolls of Dallas County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Property.

Fore Right, L.C. Subfund means a separate account within the Westown V Urban Renewal Tax Increment Revenue Fund of the City in which Development Property TIF received by the City with respect to the Minimum Improvements and the Development Property shall be deposited.

Minimum Improvements means the construction of a 12,000 square-foot retail building, and related improvements, as more particularly described in Exhibit B to this Agreement.

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

Minimum Assessment Agreement means the minimum assessment agreement in the form of Exhibit G attached hereto.

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, as applicable, under a policy or policies of insurance required to be provided and maintained by Developer pursuant to Article IV of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means Ordinance Number 2125 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 Westown V Urban

Renewal Tax Increment Revenue Fund.

Payments means the payments to be made by the City to Developer under Article VII of this Agreement.

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

State means the State of Iowa.

Tenant shall mean Ferguson Property Management Services, L.C., an Iowa limited liability company, and each assignee that assumes in writing all of the obligations of Tenant under this Agreement with the written consent of the City as provided in Section 6.1 of this Agreement

Term means the time period beginning on and including the Commencement Date and ending on and including the Termination Date.

Termination Date means the date of termination of this Agreement, as established in Section 10.8 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 acts of the City, with respect to a City-claimed delay).

Urban Renewal Plan means the Urban Renewal Plan, as amended, approved with respect to the Westown V 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, 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. Fore Right, L.C. is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution, and delivery by the City and Tenant, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws relating to or affecting creditors' rights generally.

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

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

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

f. Developer shall cooperate 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.

g. Developer shall 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.

h. Developer shall obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and shall 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.

i. The construction of the Minimum Improvements will require a total investment of not less than $2,400,000.

j. 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.

k. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed by December, 2019.

l. Developer would not undertake its obligations under this Agreement without the Payments being made to Developer pursuant to this Agreement.

Section 2.3. Representations and Warranties of Tenant. Tenant makes the following representations and warranties:

a. Ferguson Property Management Services, L.C., 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 the Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Tenant and, assuming due authorization, execution, and delivery by the City and Developer, is in full force and effect and is a valid and legally binding instrument of Tenant 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, nor will result in a violation or breach of the terms, conditions, or provisions of the governing documents of Tenant or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Tenant 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 Tenant 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 Tenant or which in any manner raises any questions affecting the validity of the Agreement or Tenant's ability to perform its obligations under this Agreement.

e. Tenant will occupy the Minimum Improvements on the Development Property and maintain its business operations and add and retain employees at the Minimum Improvements until the sooner of (i) the Termination Date or (ii) the date that other tenants occupy and maintain their business operations at the Minimum Improvements on the Development Property or a portion thereof, subject to the terms and conditions of this Agreement and the lease between Developer and Tenant.

f. Tenant has not received any notice from any local, State, or federal official that the activities of Developer or Tenant 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). Tenant 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 Tenant 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.

g. Tenant will cooperate 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.

h. Tenant would not undertake its obligations under this Agreement without the Payments being made to Developer by the City pursuant to this Agreement.

## 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 in accordance with Section 3.2 below. 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 not less than $2,400,000 in construction costs.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be developed for the Minimum Improvements, which shall be subject to approval by the City as provided in this Section 3.2, and which approval shall not be unreasonably withheld, conditioned or delayed. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable 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 and is continuing beyond applicable notice and cure periods; provided, however, that any such approval of the Construction Plans pursuant to this Section 3.2 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, and shall not be deemed to be sufficient plans 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 and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Construction Plans, if such site plans are approved by the building official.

Approval of the Construction Plans by the City shall not relieve 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.

Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not

constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed.

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 December, 2019; 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, subject to Developer's rules and regulations for the construction site.

Section 3.4. Certificate of Completion. Within fifteen (15) business days after written request by Developer and 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 Dallas County Recorder's Office 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 such fifteen (15) business day period, instead provide a written statement indicating 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.

## ARTICLE IV. INSURANCE

Section 4.1. 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 the full replacement cost of the Minimum Improvements, 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, or either entity's directors, officers, shareholders, 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 limitation 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. 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 IV 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 IV, each policy shall contain a provision that the insurer shall not cancel it without giving written notice to Developer and the City at least thirty (30) days (ten (10) days in the case of non- payment of premium) before the cancellation becomes effective. Within ten (10) days of being notified of any modification to the policy by the insurer that would cause a party's coverage to be less than the minimum requirements as set forth in this Agreement, the Developer will provide written notice to the City of the modification. Within fifteen (15) days after 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 IV, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Developer may maintain 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 (as applicable to the specific policy), and Developer, as applicable, 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 V. FURTHER COVENANTS OF DEVELOPER AND TENANT

Section 5.1. Maintenance of Development Property. Developer will maintain, preserve, and keep the Development Property (whether owned in fee or a leasehold interest), 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 5.2. Maintenance of Records. Developer and Tenant 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 and Tenant relating to this Project, and Developer and Tenant will provide reasonable protection against loss or damage to such books of record and account.

Section 5.3. Compliance with Laws. Developer and Tenant, at such time as each party has possession and control of the Development Property, will comply with all State, federal, and local laws, rules, and regulations relating to the Minimum Improvements.

Section 5.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Developer and Tenant, each for themselves, shall not discriminate against any employees or applicants for employment on the basis of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status and shall include a similarly non-discrimination provision in all agreements associated with their business agreements with the City.

Section 5.5. Available Information. Upon request, Developer and Tenant shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

Section 5.6. Employment. Tenant shall employ and retain a total Monthly Average of at least five (5) Full-Time Equivalent Employment Units at the Development Property from the time of Tenant's occupancy of a portion of the Minimum Improvements (but no later than December, 2019) until October 2024 [or October 2025 if the schedule of Payments is delayed as set forth in Section 7.1(b)]

"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 the Tenant's Annual Certification in Section 5.7 and in Exhibit F.

Section 5.7. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer and Tenant hereunder, duly authorized officers of Developer and Tenant, as applicable, shall provide Annual Certifications to the City.

Until such time as Developer is released from its obligations hereunder, Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property in the Urban Renewal Area have been paid for the prior fiscal year; (ii) the date of the first full assessment of the Minimum Improvements and the fully assessed value; (iii) proof of occupancy of the Minimum Improvements; and certification that such officer is familiar with the terms and provisions of this Agreement and that at the date of such certification, there is no Event of Default by Developer hereunder, or if the signer is aware of any such 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. Furthermore, the Developer's Annual Certification shall include the calculation and reporting of an amount (the "Developer's Estimate") equal to the estimated Development Property TIF anticipated to become available in the fiscal year immediately following such Annual Certification with respect to the Development Property and the Minimum Improvements. In submitting each such Developer's Estimate, the Developer will complete and submit the worksheet attached hereto as part of Exhibit E. The City reserves the right to review and request revisions to each Developer's Estimate to ensure the accuracy of the figures submitted.

Tenant shall annually provide to the City (i) certifications 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; and (ii) certifications that such officer is familiar with the terms and provisions of this Agreement and that at the date of such certification, there is no Event of Default by the certifying party hereunder, or if the signer is aware of any such 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 certificates required above shall be provided not later than October 15 of each year during the Term, commencing October 15, 2020. Developer and Tenant shall provide supporting information germane to each of their respective Annual Certifications upon request of the City. *See* Exhibit E for the form required for Developer's Annual Certification and Exhibit F for the form required for Tenant's Annual Certification.

Section 5.8. 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: (a) construction of the Minimum Improvements shall be completed generally within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in substantial accordance with the Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

Section 5.9. Term of Operation. Developer and Tenant will enter into a lease (the "Lease") with a term in effect as of the completion date for the Minimum Improvements and continuing through the Termination Date of this Agreement, during which period the Tenant will maintain its operations at

the Minimum Improvements on the Development Property, including the employee obligations in Section 5.6. If either the Developer or Tenant, or any Replacement Tenant (as permitted by and defined in Section 6.3 of this Agreement) terminates the Lease prior to the Termination Date it shall be an Event of Default under this Agreement.

## ARTICLE VI. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 6.1. Status of Developer and Tenant; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer and Tenant under this Agreement, Developer and Tenant represent and agree that, prior to the Termination Date, Developer and Tenant will maintain their existence as companies and will not wind up or otherwise dispose of all or substantially all of their assets or transfer, convey, or assign their 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 then-outstanding obligations of Developer or Tenant (as the case may be) under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

Section 6.2. 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 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)).

Section 6.3. Permitted Assignments of Lease. During the term of this Agreement, Tenant may assign the Lease, or a portion thereof, to other tenants (each, a "Replacement Tenant") who will occupy and maintain their business operations at the Minimum Improvements on the Development Property, or a portion thereof, provided that collectively Tenant and/or any Replacement Tenant satisfy the employee obligations in Section 5.6 and the annual certification requirements in Section 5.7.

## ARTICLE VII. ECONOMIC DEVELOPMENT PAYMENTS

Section 7.1. Payments.

a. Number of Payments. In recognition of the Developer's and the Tenant's obligations set out above, the City agrees to make five (5) annual Payments to the Developer during the Term, pursuant to Chapters 15A and 403 of the Code, provided, however, that the aggregate amount of the Payments shall not exceed $143,010 (the "Maximum Payment Total"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

b. Schedule of Payments. This Agreement assumes that the new valuation from the Minimum Improvements will go onto the Dallas County property tax rolls as of January 1, 2020. Accordingly, Payments will be made on or before each June 1 of each fiscal year, commencing June 1, 2022, and continuing through and including June 1, 2026, or until such earlier date upon which the total Payments equal to the Maximum Payment Total have been made. The amount of each Payment shall be determined using the following formula:

| | |
|---|---|
| June 1, 2022 | 100% of Development Property TIF for Fiscal Year 2021-2022 |
| June 1, 2023 | 100% of Development Property TIF for Fiscal Year 2022-2023 |
| June 1, 2024 | 100% of Development Property TIF for Fiscal Year 2023-2024 |
| June 1, 2025 | 100% of Development Property TIF for Fiscal Year 2024-2025 |
| June 1, 2026 | 100% of Development Property TIF for Fiscal Year 2025-2026 |

The above schedule of the Payments is based on the first full assessment of the Minimum Improvements being January 1, 2020. If the completion of the Minimum Improvements is delayed so that the Minimum Improvements are not fully assessed as of January 1, 2020, then the first Payment will not begin as scheduled, but will be delayed one year. However, in no event shall the schedule of Payments be delayed more than one year, meaning that the latest potential date for Developer's first Payment, if eligible, is June 1, 2023.

c. Amount of Payments. The Payment to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payment due on June 1, 2022, the maximum amount of such Payment would be determined by the Appropriated Amount determined for certification by December 1, 2020). Furthermore, the amount of each such Payment shall not exceed the amount of Development Property TIF (excluding allocations of "back-fill" or "make-up" payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Dallas County Treasurer under the terms of the Ordinance deposited into the Fore Right, L.C. Subfund (excluding any interest that may accrue thereon prior to payment to Developer) during the twelve-months immediately preceding the extant Payment due date, but subject to limitation and adjustment as provided in this Article.

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

Section 7.2. Conditions Precedent. Notwithstanding the provisions of Section 7.1 above, the obligation of the City to make a Payment in any year shall be subject to and conditioned upon the following:

(a) compliance with the terms of this Agreement by Developer and Tenant including, but not limited to, the employment obligations in Section 5.6 of this Agreement, and payment of property taxes;

(b) timely filing by Developer and Tenant of the Annual Certifications required under Section 5.7 hereof and the Council's approval thereof;

(c) continual use of the Development Property and Minimum Improvements by Tenant;

(d) the construction of the Minimum Improvements must have cost at least $2,400,000 (and the Developer shall provide receipts or other reasonable evidence to the City to substantiate the expenditure of this amount, if requested);

(e) execution of the Minimum Assessment Agreement by Developer and all lienholders and mortgage holders to the Development Property contemporaneous to execution of this Agreement; and

(f) compliance with the terms of the Minimum Assessment Agreement and assessment of

the Minimum Improvements and Development Property as set out in the Minimum Assessment Agreement.

In the event that an Event of Default occurs or any certification filed by Developer or Tenant under Section 5.7 (or other information) discloses the existence of an Event of Default that was not cured or cannot reasonably be cured, the City shall have the remedies set forth in Section 9.2.

Each Annual Certification filed by Developer and Tenant under Section 5.7 hereof shall be considered separately in determining whether the City shall make a Payment available to Developer under this Section. Under no circumstances shall the failure by Developer or Tenant to qualify Developer for a Payment in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Payments 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 Payments only if Developer and Tenant fully comply with the provisions hereof and the Developer becomes entitled thereto, up to the maximum aggregate amount set forth in Section 7.3.

After the Minimum Improvements are first fully assessed and if in compliance with this Agreement, if the Developer's and Tenant's Annual Certifications are timely filed and contain the information required under Section 5.7 and the Council approves of the same, the City shall certify to the County prior to December 1 of that year its request for the available Development Property TIF 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 Developer on the following June 1 provided Developer and Tenant remain in compliance with the terms of this Agreement at the time of payment. (Example: assuming completion by December, 2019, and first full assessment on January 1, 2020, if Developer and Tenant certify in October, 2020 and the City certifies to the County by December 1, 2020, the first Payment would be paid to Developer on June 1, 2022 (for 100% of the Tax Increment for fiscal year 2021-2022) provided Developer and Tenant are in compliance with the Agreement at the time of payment). Compliance with the terms and conditions of this Agreement is a condition precedent to receiving a Payment.

Section 7.3. Annual Appropriation. The Payments shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term, commencing in calendar year 2020 (or 2021 if delayed as set forth in Section 7.1(b) above), the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payment due in the following fiscal year, an amount (the "Appropriated Amount") of Development Property TIF to be collected in the following fiscal year equal to or less than the most recently submitted Developer's Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payment scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payment in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payment shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section 5.7 above, provided however that no Payment shall be made after June 1, 2027. Failure to appropriate the funding of part or all of a Payment shall not constitute an Event of Default.

Notwithstanding the provisions of Section 7.1 hereof, the City shall have no obligation to make a Payment to Developer if at any time during the Term the City fails to appropriate funds for payment, or receives an opinion from its legal counsel to the effect that the use of Development Property TIF resulting from the Minimum Improvements to fund a Payment to Developer, as contemplated under said Section 7.1, 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 Payments would otherwise have been paid to Developer under the terms of Section 7.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer and Tenant.

Section 7.4. Source of Payments. The Payments shall not constitute general obligations of the City, but shall be made solely and only from the Development Property TIF received by the City from the Dallas County Treasurer attributable to the taxable valuation of the Minimum Improvements on the Development Property, Furthermore, the Payments shall be payable from and secured solely and only by amounts deposited and held in the Fore Right, L.C. Subfund. The City hereby covenants and agrees to maintain the Ordinance in force with respect to the Development Property during the term hereof and to make sufficient deposits of Development Property TIF, if available, into the Fore Right, L.C. Subfund to fund the Payments. The Payments 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 Payments 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 Payments for which Developer is eligible.

Section 7.5. Certification of Payment Obligation. In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section 7.3 above, then the City Clerk will certify by December 1 of each such year to the Dallas County Auditor an amount equal to the most recently obligated Appropriated Amount.

Section 7.6. 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 such obligations have been assumed by any other person, all pursuant to the provisions of this Agreement, Developer shall be responsible for all assessments and taxes.

Developer and Tenant and their permitted 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 or the Minimum Improvements between the date of execution of this Agreement and the Termination Date.

c. The assessment category for the Development Property is commercial/industrial and Developer shall not take any action to request or effect a change in such category.

Section 7.7. Minimum Assessment Agreement. As further consideration for this Agreement, Developer shall execute, contemporaneous with the execution of this Agreement, an Assessment Agreement pursuant to the provisions of Iowa Code Section 403.6(19) specifying the Assessor's Minimum Actual Value for the Development Property, with the Minimum Improvements thereon, for calculation of real property taxes in the form attached as Exhibit G ("Assessment Agreement" or "Minimum Assessment Agreement"). Specifically, Developer, the City, the County Assessor, the holder of any mortgage and all prior lienholders shall agree to a minimum actual value for the Development Property, with the Minimum Improvements thereon, of not less than $2,900,000 upon completion of the Minimum Improvements 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".

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, 2029 (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 first mortgage, each of which shall sign a consent to the Minimum Assessment Agreement.

## ARTICLE VIII. INDEMNIFICATION

Section 8.1. Release and Indemnification Covenants.

a. Developer and Tenant release the City and the governing body members, officers, agents, servants, and employees thereof (hereinafter, for purposes of this Article VIII, the "indemnified parties") from, covenant and agree 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 to the extent arising from any willful misrepresentation, gross negligence, or any willful or wanton misconduct or any unlawful act of the indemnified parties, Developer and Tenant agree to protect and defend the indemnified parties, now or forever, and further agree to hold the indemnified parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any personor 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 or Tenant 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 Tenant 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. The provisions of this Article VIII shall survive the termination of this Agreement.

## ARTICLE IX. REMEDIES

Section 9.1. 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. Failure by Developer, Tenant or Replacement Tenant to comply with Sections 5.6, 5.7, 5.8, or 5.9 of this Agreement, as applicable;

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

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

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

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;

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 bankrupt or either entity's 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;

h. Any representation or warranty made by Developer or Tenant in this Agreement or in any written statement or certificate furnished by Developer, Tenant or Replacement Tenant 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; or

i. Failure of the Developer or any lienholder to execute or comply with the Minimum Assessment Agreement.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by the City to Developer, Tenant, 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 Developer and/or Tenant 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 and/or Tenant, deemed adequate by the City, that Developer and/or Tenant will cure the default and continue its performance under this Agreement;

b. The City may 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 and/or Tenant, as the case may be, under this Agreement; or

e. The City will have no obligation to make Payments 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 Payments previously made to Developer under Article VII 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 amounts from Developer.

Section 9.3. 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 9.4. 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 9.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the drafting and execution of this Agreement, including, but not limited to publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City, associated with the preparation and adoption of the Urban Renewal Plan and negotiation, drafting and authorization of this Agreement. Payment by Developer of such costs will be made by the Developer to the City within thirty (30) days of the date on which the City presents a statement to the Developer demonstrating such costs, or if not previously paid the costs shall be deducted from the first Economic Development Grant.

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 Developer or Tenant herein contained, and the City prevails in an action to enforce this Agreement, Developer and Tenant agree that the defaulting party 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 X. MISCELLANEOUS

Section 10.1. Conflict of Interest. Developer and Tenant represent and warrant that, to their 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 10.2. 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 Fore Right, L.C. at 1840 N.W. 118th St., Suite 100, Clive, Iowa 50325, Attn: Darin E. Ferguson;

b. In the case of Tenant, is addressed or delivered personally to Ferguson Property Management Services, L.C. at 1840 N.W. 118th St., Suite 100, Clive, Iowa 50325, Attn: Darin E. Ferguson;

c. In the case of the City, is addressed to or delivered personally to the City at 4200 Mills Civic Pkwy, PO Box 65320, West Des Moines, Iowa 50265-0320, Attn: Ryan Jacobson, 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 10.3. 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 10.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 10.6. 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 10.7. 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 10.8. Termination Date. This Agreement shall terminate on December 31, 2029, or as otherwise provided herein.

Section 10.9. 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 10.10. 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 and Tenant have caused this Agreement to be duly executed in their names and behalf by their authorized representatives, all on or as of the day first above written.

[Signatures start on the next page]

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

FORE RIGHT, L.C.

By:_____
Darin E. Ferguson, Manager

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Darin E. Ferguson, to me personally known, who, being by me duly sworn, did say that he is the Manager of Fore Right, L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Darin E. Ferguson as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

FERGUSON PROPERTY MANAGEMENT
SERVICES, L.C.

By:_____
Darin E. Ferguson, Manager

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Darin E. Ferguson, to me personally known, who, being by me duly sworn, did say that he is the Manager of Ferguson Property Management Services, L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Darin E. Ferguson as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

EXHIBIT A

DEVELOPMENT PROPERTY

The Development Property is described as follows:

Lot 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Address: 7160 University Avenue, West Des Moines, Iowa

EXHIBIT B

MINIMUM IMPROVEMENTS

Minimum Improvements shall mean the construction of a 12,000 square-foot retail building. The construction of the Minimum Improvements are expected to be completed by December, 2019. Construction costs for the Minimum Improvements are expected to be no less than $2,400,000.

The assessed value after construction of the Minimum Improvements for the purpose of this Agreement is required to be at least $2,900,000 pursuant to the Minimum Assessment Agreement entered into by and among the City, Developer, and the Dallas County Assessor.

A preliminary site plan for the Minimum Improvements is attached as Exhibit B-1. A final site plan further describing the Minimum Improvements will be attached as Exhibit B-1 when completed and approved.

EXHIBIT B-1

[Preliminary Site Plan – to be replaced with final upon approval by the City]

EXHIBIT C

CERTIFICATE OF COMPLETION

WHEREAS, the City of West Des Moines, Iowa (the "City"), Fore Right, L.C. (the "Developer"), and Ferguson Property Management Services, L.C. (the "Tenant") did on _____, 2019, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby the 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 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Address: 7160 University Avenue, West Des Moines, 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 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 Dallas 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.

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

**EXHIBIT D**

| | |
|---|---|
| **Type of Document:** | **MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT AMONG THE CITY OF WEST DES MOINES FORE RIGHT, L.C., and FERGUSON PROPERTY MANAGEMENT SERVICES, L.C.** |
| **Return Document to:** | **Ryan T. Jacobson**<br>**City of West Des Moines**<br>**4200 Mills Civic Parkway, Suite 1A**<br>**West Des Moines, IA 50265** |
| **Preparer Information:** | **John P. Danos**<br>**Dorsey & Whitney, LLP**<br>**801 Grand Avenue, Suite**<br>**4100 Des Moines, IA**<br>**50309 (515) 283-1000** |
| **Taxpayer Information:** | **N/A** |

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION:

Lot 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Address: 7160 University Avenue, West Des Moines, Iowa

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of West Des Moines, Iowa (the "City"), Fore Right, L.C., an Iowa limited liability company ("Developer"), and Ferguson Property Management Services, L.C., an Iowa limited liability company ("Tenant") did on _____, 2019, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Tenant agreed, in accordance with the terms of the Agreement and the Westown V Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within Westown V Urban Renewal Area.

The Development Property is described as follows:

Lot 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Address: 7160 University Avenue, West Des Moines, Iowa

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the_____day of _____, 2019 and terminates on December 31, 2029, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City, Developer, and Tenant 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, West Des Moines, Iowa.

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

[Signatures Start on Next Page]

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

FORE RIGHT, L.C.

By:_____
Darin E. Ferguson, Manger

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Darin E. Ferguson, to me personally known, who, being by me duly sworn, did say that he is the Manager of Fore Right, L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Darin E. Ferguson as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

FERGUSON PROPERTY MANAGEMENT
SERVICES, L.C.

By:_____
Darin E. Ferguson, Manger

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Darin E. Ferguson, to me personally known, who, being by me duly sworn, did say that he is the Manager of Ferguson Property Management Services, L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Darin E. Ferguson as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

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

Developer certifies the following:

During the time period covered by this Certification, Developer is and was in compliance with Section 5.7 of the Agreement as follows:

(i) all ad valorem taxes on the Development Property in the Urban Renewal Area have been 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 $_____, and are currently assessed at $_____;

(iii) The Minimum Improvements are occupied by the following commercial enterprise(s) employing individuals therein:

_____
_____
_____

Please attach proof of occupancy (e.g., a rent roll with occupant's name or a signed statement on tenant's letterhead).

(iv) the undersigned officer of Developer 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, certify that 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 certification, or if the signers are aware of any such Event of Default, said officers have disclosed 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___.

FORE RIGHT, L.C.

By: _____
_____
[Name, Title]

**DEVELOPER'S ESTIMATE WORKSHEET**

(1) Date of Preparation: October _____, 20____.

(2) Assessed Valuation of Property as of January 1, 20_____:

$_____.

(3) Base Taxable Valuation of Property:

$_____.

(4) Incremental Taxable Valuation of Property (2 minus 3):

$_____ (the "TIF Value").

(5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):

$_____ per thousand of value.

(6) The TIF Value (4) factored by the Adjusted Levy Rate (5).

$_____x $_____/1000 = $_____ (the "TIF Estimate")

(7) Subtract anticipated property tax credits from the TIF Estimate (6 minus 7) = $_____ (the "Available TIF Estimate")

Developer's Estimate = $_____

EXHIBIT F
TENANT ANNUAL CERTIFICATION
(due by October 15th as required under terms of Development Agreement)

Tenant certifies the following:

During the time period covered by this Certification, Tenant is and was in compliance with Section 5.7 as follows:

(i) The number of Full-Time Equivalent Employment Units 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 :_____ |

(iii) the undersigned officer of Tenant is familiar with the terms and provisions of this Agreement and certifies that Tenant is not in default in the fulfillment of any of the terms and conditions of this Agreement, or if the signer is aware of any such Event of Default, said officer has disclosed 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___.

[NAME OF TENANT OR REPLACEMENT TENANT]

By: _____

_____
[Name, Title]

**EXHIBIT G**

| | |
|---|---|
| **Type of Document:** | **MINIMUM ASSESSMENT AGREEMENT AMONG THE CITY OF WEST DES MOINES AND FORE RIGHT, L.C.** |
| **Return Document to:** | **Ryan T. Jacobson**<br>**City of West Des Moines**<br>**4200 Mills Civic Parkway, Suite 1A**<br>**West Des Moines, IA 50265** |
| **Preparer Information:** | **John P. Danos**<br>**Dorsey & Whitney LLP**<br>**801 Grand Ave, Ste.**<br>**#4100 Des Moines, IA**<br>**50309 (515) 283-1000** |
| **Taxpayer Information:** | **N/A** |

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION:

Lot 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Address: 7160 University Avenue, West Des Moines, Iowa

# MINIMUM ASSESSMENT AGREEMENT

THIS AGREEMENT, dated as of the _____ day of _____, 2019, by and among the City of West Des Moines, Iowa (the "City"), Fore Right, L.C. (the "Developer"), and the County Assessor of Dallas County (the "Assessor").

WITNESSETH

WHEREAS, the Developer owns the real property, the legal description of which is contained in Exhibit A attached hereto (the "Property"), which is located in the Westown V Urban Renewal Area in the City; and

WHEREAS, an development agreement (the "Development Agreement"), dated _____, 2019, has been executed between the City and the Developer with respect to the construction of a retail building on the Property (the "Project"); and

WHEREAS, the Assessor's records show the valuation for the Property and any improvements as of January 1, 2018 to be $1,711,790 and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, the City and the Developer desire to establish a minimum taxable value for the Property and the improvements to be constructed thereon, which shall be effective as of January 1, 2020, and from then until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum market value of the land and improvements;

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

1. Effective January 1, 2020, the minimum actual value which shall be assessed for the Property taking into account the improvements to be constructed thereon, shall be Two Million Nine Hundred Thousand Dollars ($2,900,000) until termination of this Agreement.

2. The Developer hereby agrees that the assessed valuation (hereinafter referred to as the ("Minimum Actual Value") set forth in Section 1 above shall become and remain effective as of January 1, 2020, and throughout the term of this Agreement, regardless of the actual degree of completion or incompletion of the Project, even if construction of the Project is not commenced by such date. Furthermore, the Developer acknowledges that the City has changed its position in reliance on the timeliness of such increase in valuation as set forth in the Development Agreement.

3. The Developer agrees to pay when due, all taxes and assessments, general or special, and all other charges whatsoever levied upon or assessed or placed against the Property, subject to any limitations set forth in the Development Agreement. The Developer further agrees that until this Agreement is terminated it will not seek administrative or judicial review of the applicability, enforceability, or constitutionality of this Agreement or the obligation to be taxed based upon the Minimum Actual Value or to raise any such argument by way of defense in any proceedings, including delinquent tax proceedings.

4. This Agreement, and the minimum assessed valuation established herein, shall be effective until December 31, 2029.

5. Nothing herein shall be deemed to waive the Developer's rights under Section 403.6(19) Code of Iowa, (2019) or otherwise, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value.

6. This Agreement shall be promptly recorded with the Dallas County Recorder, along with a copy of Iowa Code Section 403.6.

7. All lienholders shall have signed consents to this Assessment Agreement, which consents are attached hereto and made a part hereof.

8. Neither the preamble nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of any other contract between the City and the Developer, including the Development Agreement.

EXHIBIT A

(Legal Description of Property)

Certain real property situated in the City of West Des Moines, Dallas County, State of Iowa legally described as follows:

Lot 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Address: 7160 University Avenue, West Des Moines, Iowa

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POLK )

On this_____day of_____, 2019, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

FORE RIGHT, L.C.

By:_____
Darin E. Ferguson, Manager

STATE OF_____ )
) SS
COUNTY OF_____ )

On this_____day of_____, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Darin E. Ferguson, to me personally known, who, being by me duly sworn, did say that he is the Manager of Fore Right, L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Darin E. Ferguson as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

LIENHOLDER'S CONSENT, IF ANY

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Minimum Assessment Agreement entered into between the parties, and agrees to be bound by its terms. This provision shall be binding on the parties and their respective successors and assigns.

_____[NAME OF LIENHOLDER]

By: _____
Signature

_____
Date

STATE OF_____ )
) SS
COUNTY OF_____ )

On this _____day of _____, 2019, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively, of _____ and that said instrument was signed on behalf of said Developer, and that the said_____ and_____ acknowledged the execution of said instrument to be the voluntary act and deed of said domestic Developer by them voluntarily executed.

_____
Notary Public in and for the State of _____

[Add additional pages for each Lienholder]

[If no Lienholders exist, this consent will not be completed]

CERTIFICATION OF ASSESSOR

The undersigned Assessor, being legally responsible for the assessment of the above described property upon completion of improvements to be made on it, hereby certifies that the actual value assigned to such land and improvements upon completion, shall be not less than Two Million Nine Hundred Thousand Dollars ($2,900,000) until termination of the Agreement.

_____
County Assessor for Dallas County,
State of Iowa

STATE OF IOWA )
) SS
COUNTY OF DALLAS )

Subscribed and sworn to before me by_____, Assessor for the County of Dallas, Iowa.

_____
Notary Public in and for the State of Iowa

**EXHIBIT II**

RESOLUTION_____

Resolution Approving Development Agreement with Fore Right, L.C. and Ferguson Property Management Services, L.C., Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of West Des Moines, Iowa (the "City"), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Westown V Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the "Urban Renewal Tax Revenue Fund"), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal of and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, a certain development agreement (the "Agreement") among the City, Fore Right, L.C. (the "Developer") and Ferguson Property Management Services, L.C. (the "Tenant") has been prepared, pursuant to which the Developer would undertake the construction (the "Project") of a new retail building (the "Retail Building") located at 7160 University Avenue in the Urban Renewal Area for use in the business operations of the Tenant, and the Tenant would occupy the Retail Building and commit to retain employees as part of its business operations; and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Developer in a total amount not exceeding $143,010; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on May 6, 2019, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa ("Chapter 15A") declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of West Des Moines, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The Project will add diversity and generate new opportunities for the West Des Moines and Iowa economies;

(b) The Project will generate public gains and benefits, particularly in the creation of new jobs, which are warranted in comparison to the amount of the proposed property tax incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Developer thereunder.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "Fore Right L.C. Subfund") which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property as described as follows:

Lot 2 in West Lakes Office Park Plat 14, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

Dallas County, Iowa Parcel ID number: 1601104002

Section 5. The City hereby pledges to the payment of the Agreement the Fore Right L.C. Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Fore Right L.C. Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Dallas County to evidence the continuing pledging of the Fore Right L.C. Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved May 6, 2019.

_____
Mayor

Attest:

_____
City Clerk