

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Burlington, Iowa (the "City") and Park West, LLC, an Iowa limited liability company (the "Developer") as of the 20<sup>th</sup> day of February, 2018 (the "Commencement Date").

WHEREAS, the City has established the West Avenue – Mason Road Urban Renewal Area (the "Urban Renewal Area") and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain property in the Urban Renewal Area, the legal description of which is set out in Exhibit A hereto (the "Property"), and the Developer intends to develop a residential housing subdivision (the "Housing Development") on the Property, including the construction of certain public improvements in connection therewith (the "Infrastructure Project"); and

WHEREAS, the Housing Development is proposed to consist of a 16-lot single family and two-family residential subdivision, with lots of between approximately 10,000 square feet and 27,000 square feet in size, with homes ranging in value from approximately \$180,000 to \$275,000; and

WHEREAS, the Developer has requested that the City provide tax increment financing assistance for the Infrastructure Project; and

WHEREAS, the taxable valuation of the Property as of January 1, 2017 was \$22,000 (the "Base Value"); and

WHEREAS, the City Council is willing to provide tax increment financing assistance to the Developer in order to assist in paying the cost of the Infrastructure Project; and

WHEREAS, the Iowa Urban Renewal law requires that any project related to housing which receives tax increment financing assistance must also generate funds to be used to provide assistance related to housing for low and moderate income families; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

**A. Developer's Covenants:**

1. **Housing Development Construction and Subdivision.** The Developer agrees to construct the Housing Development on the Property in accordance with the details and timeline as set forth on Exhibit B hereto. The Developer has submitted a preliminary plat (the "Preliminary Plat") for the development of the Housing Development to the City, and the City Council has approved the Preliminary Plat on October 2, 2017. Prior to beginning construction

of the Housing Development, the Developer will subdivide the Property in accordance with applicable ordinances and regulations.

**2. Infrastructure Project Construction.** The Developer agrees to complete the construction of the Infrastructure Project in accordance with the timeline and specifications set out in Exhibit C hereto. Prior to constructing the Housing Development, the Developer will submit copies of all engineering documents related to the Infrastructure Project to the City for review. The City may request reasonable changes in such documents, to ensure compliance with applicable ordinances or regulations.

Upon completion of the Infrastructure Project, the Developer shall provide documentation to the City of the costs incurred by the Developer related to such completion (the "Infrastructure Costs"). Eligible Infrastructure Costs may include, design and construction of the public improvements, landscaping and grading. At a minimum the documentation of the Infrastructure Costs shall be shown by invoices confirming that the costs detailed were incurred in the installation and completion of the Infrastructure Project. Upon acceptance of this documentation, the total Infrastructure Costs shown in the invoices shall represent the maximum amount of Payments that will be made by the City to the Developer under this Agreement.

The City shall retain all rights to inspect the Infrastructure Project for quality of work and full compliance with the City Code. Upon completion of the Infrastructure Project, provided that (i) such improvements are of the type ordinarily dedicated to the City in connection with housing development projects; (ii) the City confirms to the Developer in writing that such completed improvements meet City requirements; and (iii) the City accepts such Infrastructure Project in accordance with state law, the Developer will provide the City with either a deed or permanent easement to the improvements and related right-of-way which constitute the Infrastructure Project, which shall thereafter be maintained by the City.

**3. Developer's Certifications - TIF Estimates.** The Developer agrees to certify to the City by no later than October 15 of each year during the Term, as hereinafter defined, beginning October 15, 2018, the estimated amount (the "Developer's Estimate") of Incremental Property Tax Revenues anticipated to be paid with respect to the Property in the fiscal year immediately following such certification. In submitting each such Developer's Estimate, the Developer will complete and submit the worksheet attached hereto as Exhibit D. For purposes of this Agreement, Incremental Property Tax Revenues are determined 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; and (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Des Moines County, above and beyond the "Base Valuation".

**4. Remedy.** The Developer hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold the Payments under Section B of this Agreement at its sole discretion, such right being additional to the right of annual appropriation as set forth in Section B.2 below.

## **B. City's Covenants:**

1. **Payments.** In recognition of the Developer's obligations set out above, the City agrees to make economic development tax increment payments (the "Payments") to the Developer in each fiscal year as hereinafter set forth in this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided, however, that the total Payments over the term of the Agreement shall not exceed the lesser of the total amount of the Developer's documented Infrastructure Costs as defined under Developer's Covenants above or Three Hundred Fifty Thousand Dollars (\$350,000) (the "Payment Ceiling"), and all Payments under the Agreement shall be made subject to annual appropriation by the City Council as hereinafter set forth.

The Payments will be made on December 1 and June 1 of each fiscal year, beginning on the first December 1 for which incremental property tax revenues become available with respect to the Property, and continuing for a total of ten (10) fiscal years, or until such earlier time as total Payments equal to the Payment Ceiling have been made. It is anticipated that new incremental property valuation relative to the Housing Development will go on the property tax rolls as of January 1, 2019, and thus the first Payment would be made on December 1, 2020.

Each Payment shall be in an amount which represents the Incremental Property Tax Revenues received by the City with respect to the incremental valuation of the Property resulting from the Housing Development during the six months immediately preceding such payment date reduced by the LMI Amount as set forth in Section B.4 below.

2. **Security and Annual Appropriation.** The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Des Moines County Treasurer which are attributable to the Property with the Housing Development thereon.

Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the term of this Agreement, the City Council shall consider the question of obligating for appropriation to the funding of the Payments and the LMI Amount due in the following fiscal year, an amount of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Developer's Estimate (the "Appropriated Amount").

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 Payments 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 Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments 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 A.3 above.

3. **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 B.2 above, then the City Clerk will certify by December 1 of each such year to the Des Moines

County Auditor an amount equal to the most recently obligated Appropriated Amount for the funding of the Payments and the LMI Amount due in the next succeeding fiscal year.

4. **Low and Moderate Income Set Aside.** On each Payment date, the City shall retain from then-accumulated Incremental Property Tax Revenues received with respect to the Property an amount (the "LMI Amount") equal to such accumulated Incremental Property Tax Revenues multiplied by the minimum percentage required by Section 403.22 of the Code of Iowa (as of the date of this Agreement, such minimum percentage which is applicable to this project in Des Moines County is 38.4%).

The LMI Amount shall be retained by the City for use in the provision of assistance to low and moderate income families, pursuant to Section 403.22 of the Code of Iowa. The Developer may apply to the City for all or a portion of the funds set aside for assistance to low and moderate income families, provided the Developer can document to the satisfaction of the City that housing units which are located on the Property are occupied or reserved to be occupied by families which meet the required income limits of state law. The City reserves the right to allocate funds accumulated through the LMI Amount in any lawful manner of its choosing. Should the Developer choose to submit an application seeking a reduction in the minimum percentage, as set forth above in this Section B.4, as provided in Section 403.22 of the Code of Iowa, the City agrees to cooperate with the Developer in such effort.

### C. **Administrative Provisions**

1. **Assignment.** This Agreement may not be amended or assigned by either party without the prior written consent of the other party. However, the City hereby gives its permission that the Developer's rights to receive the economic development tax increment payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken in connection with the Housing Development and/or the Infrastructure Project, without further action on the part of the City.

2. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on the date on which the last Payment is made by the City to the Developer under Section B.1 above.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Developer have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF BURLINGTON, IOWA

By: Shane McCasbell  
Mayor

Attest:

Kathleen P. Brown  
City Clerk

PARK WEST, LLC

By: David Paul  
President

## **EXHIBIT A**

### **Legal Description of Property**

Certain real property in the City of Burlington, County of Des Moines, State of Iowa, more particularly described as follows:

Lot Number 3, in Swisher Subdivision, a Subdivision in the City of Burlington, Des Moines County, as Per Plat Filed 07/14/2017, recorded as Doc. No. 2017-003559 in the Office of the County Recorder of Des Moines County, Iowa.

Parcel #: 16-06-381-012

Note: Lot number 3 in Swisher Subdivision is to become Park West Subdivision upon approval and acceptance of this Final Plat by the City of Burlington, Iowa.

## **EXHIBIT B**

### **Description and Timeline for Housing Development**

The Housing Development consists of a planned 16-lot single family and two-family subdivision.

The approximate timeline for construction of the Housing Development is as follows:

October 2, 2017	Subdivision plat approval – Preliminary Plat
June 4, 2018	Subdivision plat approval – Final Plat
June 5, 2018	Initial housing construction commences
June 5, 2028	Estimated build-out completed

## **EXHIBIT C**

### **Infrastructure Timeline and Details**

Estimated 870 lineal feet of street and related utilities located south off of West Avenue to the southern border of Park West Subdivision

Street connections to West Avenue: Estimated Completion – May 1, 2018

Street connections to southern border of subdivision: Estimated Completion – May 1, 2018

**EXHIBIT D**

**DEVELOPER'S ESTIMATE WORKSHEET**

This Worksheet is being prepared with respect to the Property

- (1) Date of Preparation: \_\_\_\_\_, 20\_\_\_\_.
- (2) Taxable Valuation of Property as of January 1, 20\_\_\_\_:  
\$ \_\_\_\_\_.
- (3) Taxable Base Valuation of Property (determine as of January 1, 2017):  
\$ \_\_\_\_\_.
- (4) Incremental 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
- (7) Developer's Estimate = \$ \_\_\_\_\_  
x 61.6% = \$ \_\_\_\_\_ (Estimated Payments)  
x 38.4% = \$ \_\_\_\_\_ (Estimated LMI Amount)